



# COMESA COURT OF JUSTICE **RULES OF PROCEDURE, 2016**



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**RULES OF PROCEDURE, 2016**



LEGAL NOTICE NO. .... OF 20..

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**LEGAL NOTICE NO. .... OF 20..**

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

**(Under Article 38)**

**THE COURT OF JUSTICE OF THE COMMON MARKET FOR EASTERN AND SOUTHERN AFRICA  
RULES OF COURT, 2016**

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, with the approval of Council, hereby makes the following Rules of Court-

# PART I

## GENERAL PROVISIONS





## **SECTION I**

### **PRELIMINARY**

#### **Rule 1**

##### **Citation**

1. These Rules may be cited the Rules of Court of the Court of Justice of the Common Market for Eastern and Southern Africa, (herein after referred to as "the Rules").
2. The Rules of Court of the Court of Justice of the Common Market for Eastern and Southern Africa 2006 are hereby revoked.

#### **Rule 2**

##### **Definitions**

1. In these Rules, unless the context otherwise provides -
  - **"Amicus curiae"** means a natural or legal person not a party to a case permitted by the Court to give its opinion or advise the Court in respect of any matter before the Court;
  - **"Appellant"** means a legal or natural person, Member State or Institution that has appealed against a judgment of the First Instance Division to the Appellate Division;
  - **"Appellate Division"** means the Appellate Division of the Court provided for under Article 19(2) of the Treaty;
  - **"Applicant"** means a legal or natural person, Member State or institution that has referred a matter in dispute to the Court;
  - 
  - **"Authority"** means the Authority of the Common Market established under Article 7 of the Treaty;
  - **"Common Market"** means the Common Market for Eastern and Southern Africa established under Article 1 of the Treaty;
  - **"Council"** means the Council of Ministers of the Common Market established under Article 7 of the Treaty;
  - **"Counsel"** means an advocate who is entitled to appear before a court of any Member State;
  - **"Court"** means the Court of Justice of the Common Market established under Article 7 of the Treaty ;

- **“Currency Point”** means the rate at which the United States Dollar is converted in conformity with Schedule IV;
- **“Decree”** means the form of expression of an adjudication which, so far as regards the court expressing it, conclusively determines the rights of the parties with regard to any of the matters in controversy in the suit and may either be preliminary or final;
- **“Division”** means the Appellate Division or the First Instance Division of the Court, as the case may be;
- **“First Instance Division”** means the First Instance Division of the Court provided for under Article 19(2) of the Treaty;
- **“Institution”** means an institution established by the Common Market;
- **“Instrument”** means a Statute, Protocol, Rules, Regulations, Directives or any other legal document of a similar nature made in furtherance of the objectives of the Treaty;
- **“Intervener”** has the meaning given to it under Article 36 of the Treaty;
- **“Judge”** means a Judge of the Court appointed under Article 20 of the Treaty;
- **“Letter of Request”** means a letter issued by the Court for the examination of witnesses or experts;
- **“Member State”** means a Member State of the Common Market;
- **“Notice of Motion”** means a party's written notice under these Rules requesting the Court's determination on an interlocutory application pertaining to a matter before the Court;
- **“Notification”** means a notice of claim issued by the Court in accordance with sub rule (1) of Rule 25;
- **“Official Gazette”** means the Official Gazette of the Common Market;
- **“Party”** means the applicant, appellant, the respondent or a third party intervener in proceedings before the Court;
- **“Pleadings”** includes any document lodged by a party relating to a matter before the Court in compliance with the Rules;
- **“President”** means the President of the Court appointed under Article 20 of the Treaty;
- **“Presiding Judge”** means the President, the Principal Judge or other judge presiding over the Appellate Division or the First Instance Division;

- **“Principal Judge”** means the Judge designated as such by the Authority under Article 20 of the Treaty;
- **“Reference”** means a notice in writing addressed to the Registrar by which proceedings before the Court are commenced;
- **“Registrar”** means the Registrar of the Court appointed under Article 41 of the Treaty and includes Assistant Registrars;
- **“Respondent”** means a legal or a natural person, Member State or institution against which proceedings have been brought by an applicant or appellant before the Court;
- **“Secretary-General”** means the Secretary-General of the Common Market as provided for by Article 17 of the Treaty;
- **“Treaty”** means the Treaty establishing the Common Market for Eastern and Southern Africa.

### **Rule 3**

#### **Scope of Application**

1. Nothing in these Rules shall limit or otherwise affect the inherent power of the Court to administer substantive justice without undue regard to technicalities, and to preserve the dignity, or prevent abuse of the process of the Court.
2. The provisions of these Rules shall apply from the day of their coming into force to all references pending on such day and instituted thereafter.
3. Any matter within the jurisdiction of the Court under the Treaty shall be commenced, proceeded with and disposed of by the Court in accordance with these Rules.
4. The Court may, from time to time, issue such practice directions as are necessary for the proper implementation of these Rules.

## **SECTION II**

### **Organization of the Court**

#### **Rule 4**

##### **Seat, Sessions and Sittings of the Court**

1. The Seat of the Court shall be at such place as may be determined by the Authority, as provided for by Article 44 of the Treaty but the Court may in any particular case sit and exercise its functions in any other place within any other Member State if it considers it expedient.
2. The dates, times of the sittings and the length of sessions of the First Instance and the Appellate Divisions shall be fixed by the Principal Judge and the President respectively.
3. The Court shall have its Registry at the place where it has its Seat.
4. Subject to approval by the Council, there may be sub-registries of the Court at such places in the Member States as the Court may, from time to time, decide.

#### **Rule 5**

##### **Oath/Affirmation**

Before taking up her or his duties, a Judge shall take an oath or affirmation administered by the most senior Judge of the Court before the Chairperson of the Authority as set out in Form A of Schedule III.

#### **Rule 6**

##### **Seniority of Judges**

1. The President and the Principal Judge shall, respectively, rank first and second whilst the Judges in the Appellate Division shall rank senior to Judges in the First Instance Division.
2. Judges of the same Division shall rank according to the date of their respective appointments except that, where there is equal seniority in office, precedence shall be determined by age.
3. Retiring Judges who are re-appointed shall retain their former precedence.

**Rule 7****Powers of the President and the Principal Judge**

1. The President shall direct the overall functions of the Court and shall, unless she or he designates another Judge to do so, direct the judicial functions of the Appellate Division and preside over the hearings and deliberations of that Division.
2. The Principal Judge shall direct the judicial functions of the First Instance Division and, unless she or he designates another Judge to do so, preside over the hearings and deliberations of that Division.
3. The President and the Principal Judge, as the case may be, may issue to the Registrar such instructions for the proper administration of these Rules as may be necessary.

**Rule 8****Absence of President or Principal Judge**

1. When the President of the Court is absent or unable to perform the functions of the President, such functions shall be performed by the most senior Judge present in the Appellate Division.
2. When the Principal Judge is absent or unable to perform the functions of the Principal Judge, such functions shall be performed by the most senior Judge present in the First Instance Division.

**Rule 9****Composition and Quorum**

1. The Appellate Division shall sit in plenary session or with a quorum of three Judges, as the President may determine.
2. The First Instance Division shall sit in plenary session or with a quorum of five (5) or three (3) Judges as the Principal Judge may determine.
3. Where, by reason of a Judge being absent or prevented from taking part in the proceedings the Court cannot sit in plenary session -
  - (a) For the Appellate Division, the President, , may direct the case to be heard with a quorum of three judges.
  - (b) For the First Instance Division the Principal Judge may direct the case to be heard with a quorum of five (5) or three (3) Judges.

4. If after a Division has been convened it is found that the quorum of Judges has not been attained, the presiding Judge shall adjourn the sitting until there is a quorum.
5. A Judge shall disqualify herself or himself in any proceedings in which her or his impartiality might reasonably be questioned.
6. A party may request for the recusal of a Judge, in any proceedings in which the impartiality of the Judge might reasonably be questioned. Such application shall be made in writing, orally in chambers through the Presiding Judge or by formal application in conformity with Rule 41.
7. The nationality of a Judge shall not, on its own, be sufficient ground to disqualify a Judge from any proceedings.

## **Rule 10**

### **Vacations of Court**

1. Subject to any special decision of the Court, its vacations shall be determined by the President who shall publish the days of vacation in each year in the Official Gazette.
2. In a case of urgency, the President or the Principal Judge, as the case may be, may convene the Court during vacations of the Court.
3. The Court shall observe the official public holidays of the Member State where it has its Seat.

## **Rule 11**

### **Powers and Functions of the Registrar**

The Registrar shall -

- (a) have custody of the seals of the Court;
- (b) attend all the sittings of the Court;
- (c) implement the instructions issued by the President and the Principal Judge, as the case may be, for the proper implementation of these Rules;
- (d) prepare the cause list of the Court with the approval of the President in the case of the Appellate Division and with the approval of the Principal Judge in the case of the First Instance Division
- (e) be responsible for the acceptance, transmission and custody of documents;

- (f) be responsible for issuing notifications as provided under these Rules;
- (g) be responsible for keeping the records of the Court;
- (h) arrange for the publication of reports of cases decided by the Court;
- (i) assist the Court, the President, the Principal Judge and the Judges in all their official functions;
- (j) be responsible for taxation of bills of costs; and
- (k) any other duties as may be assigned to the Registrar by the Court.

## **Rule 12**

### **Assistant Registrars**

The Court may, with the approval of Council, appoint one or more Assistant Registrars to whom the Registrar may delegate some of her or his powers and functions under the provisions of these Rules.

## **Rule 13**

### **Commissioners of Oath and Notaries Public**

For the purposes of discharging the functions of the Court, the Registrar and the Assistant Registrars shall be *ex-officio* Commissioners of Oath and Notaries Public.

## **Rule 14**

### **Registers**

1. There shall be kept in the Registry, under the control of the Registrar, separate registers for the Appellate Division and the First Instance Division initiated by the President and the Principal Judge, as the case may be, in which all pleadings and supporting documents shall be entered in the order in which they are filed.
2. When a document has been registered, the Registrar shall make a note to that effect on the original and, if a party so requests, on any copy submitted for the purpose.
3. Entries in the registers and the notes provided for in sub rule (2) shall be deemed to be authentic.
4. Rules for keeping the registers shall be prescribed in the instructions to the Registrar referred to in paragraph (c) of Rule 11.
5. Subject to sub rule (7) of Rule 50-

- (a) a person having interest in a matter before the Court may consult the register and may obtain copies or extracts of the documents referred to in sub rule (1) on payment of the prescribed fee;
  - (b) a party to a case may, on payment of the prescribed fee, obtain copies of pleadings and certified copies of judgments and orders;
  - (c) a person or institution may, on payment of the prescribed fee, obtain certified copies of any judgment;
  - (d) the fees payable under this sub rule shall be those prescribed in Schedule I hereto; and
  - (e) the Registrar may, with the approval of the Court, amend Schedule I.
6. Notice shall be given by the Registrar in the Official Gazette of the date of registration of a reference, the names and addresses of the parties, the subject-matter of the proceedings and the relief sought by the applicant.

### **SECTION III**

#### **LANGUAGES**

##### **Rule 15**

##### **Languages**

1. The official languages of the Court shall be the official languages of the Common Market.
2. The language of the case shall be chosen by the applicant from one of the official languages of the Court except that
  - (a) at the joint request of the parties, the Court may authorize any other language from the official languages of the Common Market to be used as the language of the case for all or part of the proceedings; and
  - (b) at the request of one of the parties, and after the opposite party has been heard, the Court may, by way of derogation from paragraphs (a) and (b) of this sub rule, authorize another of the languages mentioned in sub rule (1) of this Rule to be used as the language of the case for all or part of the proceedings, but such a request may not be submitted by an institution.
3. (a) The language of the case shall be used in the pleadings and oral submissions of the parties, in supporting documents, and also in the record and decisions of the Court;



- (b) any supporting documents expressed in another language other than the language of the case shall be accompanied by a translation into the language of the case. In the case of lengthy documents, translations may be confined to extracts unless otherwise ordered by the Court on its own motion or at the instance of a party;
  - (c) every translated document shall be accompanied by a duly signed certificate of translation; and
  - (d) the Registrar shall cause any statement or submissions referred to in paragraph (a) to be translated into the language of the case.
4. Where a witness or expert notifies the Registrar at least fifteen (15) days before the hearing, that she or he is unable adequately to express herself or himself in one of the languages referred to in sub rule (1), the Court may authorize the witness or expert to give her or his evidence in another language and the Registrar shall cause any such evidence to be interpreted and translated into the language of the case.
5. The Presiding Judge of the Court in conducting oral proceedings and the Judges in putting questions and when delivering their opinions may use one of the languages referred to in sub rule (1) other than the language of the case and the Registrar shall arrange for interpretation or translation into the language of the case.

## **Rule 16**

### **Translation**

The Registrar shall, at the request of any Judge or a party, arrange for anything said or written in the course of the proceedings before the Court to be translated into the languages she or he chooses from those referred to in Rule 15.

## **Rule 17**

### **Authentic Texts**

The texts of documents prepared in the language of the case or in any other language authorized by the Court under Rule 15 shall be deemed to be authentic.

# PART II

## PARTIES AND REPRESENTATION



**Rule 18****Representation**

1. A party to any proceedings in the Court shall be represented by Counsel appointed by that party and who is entitled to practice before a court of a Member State.
2. The Counsel may be assisted by a lawyer certified to practice before a court of a Member State.
3. The Counsel to the Common Market may appear and represent the Common Market or any of its institutions in any matter where the Common Market or any of its institutions is a party.
4. A corporation or company may either appear by its director, or any other person, appointed by resolution under the seal of the corporation or the company, and shall be represented by Counsel.
5. Counsel shall appear before the Court in the attire prescribed under Schedule IV.

**Rule 19****Counsel to Enjoy Immunity and Privileges**

1. All Counsel appearing before the Court or before any judicial authority to which the Court has issued a commission or letter of request under Rule 56 (1), shall enjoy immunity in respect of words spoken by them in Court or pleadings prepared by them concerning the case or the parties.
2. Counsel representing parties shall enjoy the following further privileges and facilities-
  - (a) the papers and documents relating to the proceedings shall be exempt from both search and seizure; in the event of a dispute the customs officials or police may seal those papers and documents; they shall then be immediately forwarded to the Court for inspection in the presence of the Registrar and the person concerned;
  - (b) they shall be entitled to-
    - (i) such authorization for foreign currency by Member States as may be necessary for the performance of their duties; and
    - (ii) travel in the course of duty without hindrance.

**Rule 20****Proof of Status**

Counsel shall furnish proof of their status by filing with the Registrar, together with the pleadings-

- (a) a Special Power of Attorney in conformity with Form B of Schedule III; and
- (b) a valid certificate to practice law in a Member State.

## **Rule 21**

### **Change of Counsel**

1. A party may change Counsel and shall accordingly lodge with the Registrar a notice of the change and within fifteen (15) days thereafter, serve a copy of such notice on each party.
2. When there is a change of Counsel, where judgment has been delivered, such change shall not be effected without leave of the Court upon an application with notice to all Counsel on record.

## **Rule 22**

### **Exclusion of Counsel from Proceedings**

1. Any Counsel whose conduct towards the Court, a Judge or the Registrar is not in accordance with the dignity of the Court or proper administration of justice may, at any time, be excluded from the proceedings by an order of the Court after having been given an opportunity to explain herself or himself.
2. An order issued under this Rule shall have immediate effect.
3. Where a Counsel is excluded from the proceedings, the proceedings shall be suspended for a period fixed by the Presiding Judge in order to allow the party concerned to appoint another Counsel.
4. Any decisions taken under this Rule may be rescinded by the Court.

## **Rule 23**

### **Death of Parties**

1. Subject to any law by which any right or cause of action is extinguished by the death of a person, proceedings before the Court shall not abate upon the death of any party.
2. Where the death of a party occurs during the continuance of proceedings, the duly appointed legal representative may take over the proceedings.
3. Where no legal representative is appointed within a reasonable time, the surviving party may, with leave of the Court, proceed *ex parte*.

# PART III

## PROCEEDINGS IN THE FIRST INSTANCE DIVISION



## **SECTION I**

### **WRITTEN PROCEDURE**

#### **Rule 24**

##### **Reference**

1. A Member State or any other party wishing to refer a matter in dispute to the Court shall do so by filing a reference with the Registrar.
2. A reference to the Court shall state-
  - (a) the name, designation, address and residence of the applicant;
  - (b) the name, designation, address and residence of the respondent;
  - (c) a concise statement of facts on which the claim is based;
  - (d) relief sought by the applicant;
  - (e) a list of witnesses including their full names and addresses;
  - (f) where appropriate, a witness' statement;
  - (g) a list of documents, and copies thereof on which the applicant relies; and
  - (h) a physical and/or electronic address for service, and shall be accompanied by documents outlined in Rule 20.
3. Where the reference seeks the annulment of a decision of an institution, the reference shall be accompanied by-
  - (a) documentary evidence of the decision the annulment of which is sought; or
  - (b) in the case of proceedings against an implied decision, documentary evidence of the same on which the decision was by implication made.
4. A reference made by a legal person shall be accompanied by-
  - (a) the instrument or instruments constituting or regulating that legal person or a recent extract from the register of companies, firms or associations or any other proof of its existence in law; and
  - (b) proof that the authority granted to the applicant's Counsel has been properly conferred on Counsel by someone authorized for the purpose.

- 5 (a) If a reference does not comply with the requirements set out in sub rules (2) to (4) of this Rule, the Registrar shall prescribe a reasonable period within which the applicant is to comply with them whether by putting the reference itself in order or by producing any of the above mentioned documents;
- (b) Without prejudice to the applicant commencing fresh suits, if the applicant fails to put the reference in order or to produce the required documents within the time prescribed, the Registrar shall, after hearing the Counsel, decide whether the noncompliance with these conditions renders the application formally inadmissible; and
- (c) A party aggrieved by the decision of the Registrar may appeal to the Court by application.

## **Rule 25**

### **Notification of Reference**

1. Upon the filing of a reference the Registrar shall issue a notification in accordance with Form C of Schedule III requiring the respondent to file a statement of defence.
2. A notification shall be signed by the Registrar or an officer authorized by the Court and shall be sealed with the seal of the Court.
3. A notification shall be accompanied by a copy of the reference.

## **Rule 26**

### **Mode of Service**

1. (a) Any notice or other document which is required to be served under these Rules shall be served in accordance with Form D of Schedule III, by the party filing, who shall file an affidavit of service;
- (b) Where by these Rules a document is required to be served on any person, service of the document shall be made by tendering to that person a duplicate thereof and requiring her or him to endorse the original, acknowledging service; where a party fails to sign acknowledgment, the affidavit of service shall state so.
- (c) Where a party to be served is in the service of the Government of a Member State, a duplicate of the communications, documents or pleadings shall be served on the head of the department in which such party is employed, for the purpose of being served on her or him, if it appears to the President or the Principal Judge, as the case may be, 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;
- (d) Where personal service cannot be effected, any notice or other document which is

required to be served by these Rules may, on application by a party revealing sufficient cause, be served by registered post, by courier or similar delivery system, facsimile or electronic means with proof of delivery or by any other means as may be directed by the Presiding Judge;

- (e) Where the Court is satisfied that the person refused to endorse the document, it may declare that the document was duly served; and
  - (f) A notice shall be deemed to be received on the day it is served.
2. The Registrar shall certify the copies of documents to be served.
  3. Communications, documents or pleadings addressed to or served on Counsel 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.
  4. Where communications, documents or pleadings are to be served on-
    - (a) a Member State, they shall be served on the Minister of Justice, the Attorney General or any other competent authority of the Member State;
    - (b) an institution, corporate body or other legal personality, they shall be served in respect of the institutions established by 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 or director of the corporate body, and on the heads of other legal personalities or any person acting in the capacities designated herein;
    - (c) a partnership firm, where partners are sued in the name of their firm, by notice in writing, 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 firm. In default of such notice the person served shall be deemed to be served as a partner:

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 firm, or in both capacities. In default of such notice the person served shall be deemed to be served as a partner.

## **Rule 27**

### **Statement of Defence**

1. Within thirty (30) days after service on the respondent of the reference, the respondent shall file a statement of defence, with or without a counter-claim.



2. A statement of defence shall contain-
  - (a) the name and address of the respondent;
  - (b) preliminary objections, if any;
  - (c) an admission or denial of the facts stated in the reference;
  - (d) a concise statement of facts relied on;
  - (e) the nature of any evidence in support, where appropriate;
  - (f) the relief sought by the respondent;
  - (g) a list of witnesses including their full names and addresses;
  - (h) where appropriate, witness statements;
  - (i) a list of documents and copies thereof on which the respondent relies; and
  - (j) a physical and/ or electronic address for service; and shall be accompanied by the documents outlined in Rule 20.
3. The provisions of sub rules (1) to (5) of Rule 31 shall apply to the statement of defence.
4. The time limit laid down in sub rule (1) may be extended by the Principal Judge on *ex parte* application by the respondent.
5. If a respondent on whom a reference has been duly served fails to file a statement of defence within the time prescribed, the matter will be fixed for hearing with notice to the respondent.
6. In the course of the hearing under sub rule (5), the Court shall consider whether the reference initiating proceedings is admissible, whether the appropriate formalities have been complied with, and whether the reference appears well founded.
7. Where the statement of defence is not in the proper form, a party may be given an opportunity to amend, in which case the provisions of Rule 24 (5) shall apply *mutatis mutandis*.

## **Rule 28**

### **Counter-Claim and Reply**

1. A respondent who desires to make a counter-claim shall include her or his counterclaim in the statement of defence.
2. A counter-claim shall contain-
  - (a) an admission or denial of the facts stated in the claim;

(b) any additional facts relied on, as may be necessary; and

(c) the relief sought.

3. Within thirty (30) days after service of the counter claim, the applicant may file a reply in default of which the matter shall be fixed for hearing.
4. The provisions of Rule 24(2) shall apply *mutatis mutandis* to the reply to the counter-claim.

## **Rule 29**

### **Joinder of Causes**

1. The Court may, at any time, after hearing the parties, order that two or more cases concerning the same subject matter shall, on account of the connection between them, be joined for the purposes of the written or oral submissions or of the final judgment.
2. The Court may, for sufficient cause shown, disjoin cases.

## **Rule 30**

### **Contents of Pleadings**

1. Subject to the provisions of this Rule, Rules 33, 34 and 41, every pleading shall contain a concise statement of material facts upon which the party's claim or defence is based and not the evidence by which those facts are to be proved.
2. Without prejudice to sub rule (1), the effect of any document or the purport of any conversation referred to in the pleading shall, if material, be briefly stated, but the precise words of the document or conversation shall not be stated, except in so far as those words are themselves material.
3. A party need not plead any fact if it is presumed by law to be true or the burden of disproving it lies on the other party, unless the other party has specifically denied that fact.

## **Rule 31**

### **Verification of Pleadings**

1. The original of every pleading shall be signed by the party's Counsel.
2. The original, accompanied by all annexes referred to therein, shall be filed with the Registrar together with eight (8) copies for the Court and a copy for every other party to the proceedings. Copies shall be certified by the party filing them.

3. Parties shall, in addition, produce, within time-limits laid down by the Court, translations of all pleadings into the languages specified by the Registrar. Sub rule (2) shall apply to such pleadings.
4. All pleadings shall bear a date but in the reckoning of time limits for taking steps in proceedings, only the date of filing with the Registrar shall be taken into account.
5. Where in view of the length of a document only extracts from it are annexed to the pleading, the whole document or a full copy of it shall be filed with the Registrar.

## **Rule 32**

### **Matters to be Specifically Plead**

1. Every pleading shall contain the necessary particulars of any claim, defence or other matter pleaded, and without prejudice to the generality of the foregoing, shall include-
  - (a) particulars of any misrepresentation, fraud, negligence, breach of trust, willful default or undue influence on which the party pleading relies; and
  - (b) Where a party pleading alleges any condition of the mind of any person, such as disorder or disability of mind, malice, fraudulent intention or other condition of the mind except knowledge, particulars of the facts on which the party relies.
3. A party shall plead every matter which-
  - (a) is alleged to make the pleading of the opposite party not maintainable;
  - (b) if not specifically pleaded, would take the opposite party by surprise; or
  - (c) raises issues of fact not arising out of the preceding pleading.
4. Subject to Rules 30 and 33, a party may in any pleading plead any matter which has arisen at any time, whether before or since the filing of the reference.

## **Rule 33**

### **Departure from Pleadings**

1. No party may, in any pleading, make an allegation of fact, or raise any new ground of claim, inconsistent with that party's previous pleading in the same case.
2. Sub rule (1) shall not prejudice the right of a party to apply for leave to amend any previous pleading.

## **Rule 34**

### **Further and Better Particulars**

1. The Court may, on application by a party, or on its own motion, order a party to supply to any other party further and better particulars of any application, claim, defence or other matter stated in its pleading, and the order may be made on such terms as the Court thinks just.
2. An order under this Rule shall not be made before the filing of the defence unless the order is necessary or desirable to enable the respondent to plead or for some other special reason.

## **Rule 35**

### **Admissions and Denials**

1. Any allegation of fact made by a party in a pleading shall be deemed to be admitted unless it is denied by the opposite party in its pleading.
2. A denial may be made either by specific denial or by a statement of non-admission either expressly or by necessary implication.
3. Every allegation of fact made in a pleading which is not admitted by the opposite party shall be specifically denied by that party; and a general denial or a general statement of non-admission of such allegation shall not be a sufficient denial.

## **Rule 36**

### **Closure of Pleadings**

1. The pleadings in any case shall be closed fifteen (15) days after service of defence or reply to counter-claim.
2. After the close of pleadings, no further documents may be produced in the Court by either party except with leave of the Court.

## **Rule 37**

### **Striking out Pleadings**

The Court may, on application by any party or on its own motion, strike out or expunge all or part of a pleading or other document, on such conditions as the Court may deem fit, on the ground that the pleading or other document-

- (a) may prejudice or delay the fair trial of the case;
- (b) is scandalous, frivolous or vexatious; or

(c) is an abuse of the process of the Court.

## Rule 38

### Amendment of Pleadings

1. For the purpose of determining the real question in controversy between the parties, or of correcting any defect or error in any pleading, the Court may, at any time before delivery of judgment, allow amendment of pleadings-
  - (a) on substantive matters with the consent of all parties or on application with leave of the Court; or
  - (b) in a summary manner orally to the Court in respect of minor amendments.
2. A party that amends its pleadings under paragraph (a) of sub rule 1, shall lodge the original of the amended version of the pleading in the registry, and shall forthwith serve a copy thereof on every other party with proof of service.
3. Where a party is served with an amended pleading under sub rule (2) of this Rule, after it has filed its reply it may, without leave of the Court, amend its own reply to the pleading which is being amended, and shall lodge it in the registry within fifteen (15) days after being so served.
4. The Court shall not grant leave to amend any pleadings if-
  - (a) the amendment sought involves the addition or substitution of a new cause of action, which does not arise out of the same or substantially the same facts as the cause of action already pleaded; or
  - (b) the amendment is sought to be made after the expiry of the period of limitation pertinent to the particular cause of action pleaded.
5. Where leave to amend is granted by the Court under paragraph (a) of sub rule (1) -
  - (a) the applicant shall, within fifteen (15) days of the date of the Court's order, or such other time as the Court may specify, file with the Court the amended pleadings and serve a copy thereof on every party to the proceedings, unless the Court orders otherwise; and
  - (b) the respondent shall be afforded an opportunity to reply or otherwise respond to the amendment within fifteen (15) days of service.
6. In the event of any variance between the issues contained in the pleadings and the issues proved at the hearing, the pleadings may be amended either at once or on such terms as to notice of amendment in the interest of justice, by consent or by application.

7. A party amending its pleadings shall highlight any words or figures added to the original pleadings.

## **Rule 39**

### **Lack of Jurisdiction**

1. Where the Court considers that it has no jurisdiction to entertain an action or where the party has no right of action, the Court may, either on its own motion or on application by any party or person without taking further steps in the proceedings, give a reasoned decision on the issue of jurisdiction.
2. The Court may, at any time of its own motion, consider whether there exists any bar to proceeding with a case and shall give a reasoned decision on the issue.

## **Rule 40**

### **Documents**

1. The Court may require any party to the proceedings to produce any document and to supply any information, which the Court considers necessary.
2. The Court may require the Member States and institutions not being parties to the case and *amicus curiae* to supply any information, which the Court considers necessary.

## **Rule 41**

### **Interlocutory Applications**

1. Subject to sub rule (4) of this Rule, all applications to the Court shall be by motion, supported by an affidavit which shall state the grounds of the application.
2. No motion shall be heard without notice to the persons affected by the application:  
  
Provided that the Court, if satisfied that the delay caused by proceeding in the ordinary way would or might entail irreparable injustice, may hear the motion and make an *ex parte* order upon such terms as to costs or otherwise, and subject to such undertaking, if any, as the Court deems just.
3. Upon making an *ex parte* order the Court shall set down the application for *inter parties* hearing within sixty (60) days of the *ex parte* order.
4. A notice of motion shall be in conformity with Form E of Schedule III.

5. Every formal application to the Court shall be supported by one or more affidavits of the applicant or of some other person or persons having knowledge of the facts, in conformity with Form F of Schedule III.
6. An applicant may, with the leave of the Court or with the consent of the other party, lodge one or more supplementary affidavits. Application for such leave may be made orally or in writing.
7. The provisions of this Rule shall not apply to applications made –
  - (a) orally in the course of a hearing; or
  - (b) in writing with consent of the parties,
8. Subject to paragraph (b) of sub rule (7) the Court may either adopt the consent as an order of the Court or reject it.
9. The applicant shall serve the notice of motion and copies of all affidavits on all other parties to the case not more than fifteen (15) days after filing.

## **Rule 42**

### **Affidavits in Reply**

1. A person served with a notice of motion under Rule 41 (8) may lodge one or more affidavits in reply not later than thirty (30) days before the date of hearing and shall serve a copy or copies thereof on the applicant no later than Fifteen (15) days before hearing.
2. Any such person may, with the leave of the Court or with the consent of the applicant, lodge one or more supplementary affidavits in conformity with Form F of Schedule III.
3. An application for leave under sub rule (2) may be made orally or in writing.

## **Rule 43**

### **Applications to Set Aside**

1. An application may be made to set aside an *ex parte* order, proceedings, or judgment.
2. The application to set aside shall be by way of motion made within thirty (30) days from the date of service of the *ex parte* order or judgment and shall be filed in the form prescribed by Rules 24 and 31.
3. The Court may grant an order for a stay of execution of an *ex parte* order or judgment pending its decision on any application to set aside, or it may make execution subject to the provision of

security of an amount and nature to be fixed in light of the circumstances, which shall be released if no such application is made or if the application fails.

4. After the application has been served, the President or the Principal Judge, as the case may be, shall prescribe a period of time within which the other party may file written submissions.
5. The Court shall decide by way of an order, which may not be set aside.

## **Rule 44**

### **Stay of Proceedings**

1. The Court may stay proceedings where-
  - (a) the Court or any court or tribunal of a Member State are seized of a case which has a substantial bearing on the proceedings before it;
  - (b) any subsequent suit is brought before compliance with an order in respect of costs of a discontinued case under Rule 45, for the same or substantially the same cause of action;
  - (c) the Court orders costs to be paid or security to be given for costs by any party and the party concerned fails to pay the costs or to give the security in conformity with Rule 75;
  - (d) a party to the proceedings dies or becomes mentally incompetent;
  - (e) the respondent relies on a counterclaim which extinguishes either wholly or in part the applicant's claim;
  - (f) an agreement between the parties provides for submission of the subject matter of the action to arbitration and a party raises the issue of first going to arbitration in its pleadings and requests for a stay of proceedings pending such arbitral proceedings;
  - (g) a party fails to comply with an order of the Court; or
  - (h) the Court deems fit.
2. The Court may give an order for stay of proceedings under sub rule 1 of this Rule-
  - (a) on its own motion;
  - (b) on application of a party to the proceedings; or
  - (c) on application of a person who, not being a party to the proceedings, establishes that it has a substantial interest in the subject matter of the action or will be adversely affected



by the decision in the matter.

3. Subject to sub rule (6) of this Rule, the stay order shall be vacated upon expiry of the time for which it has been granted or the fulfillment of any conditions imposed, or on application to the Court in accordance with Rule 41.
4. The stay of proceedings shall take effect on the date indicated in the order or decision of stay or, in the absence of such indication, on the date of that order or decision.
5. While proceedings are stayed time shall cease to run for the purposes of prescribed time limits for all parties.
6. Where the order or decision of stay does not specify the length of stay, it shall end on the date indicated by the order or decision of resumption or, in the absence of such indication, on the date of the order or decision of resumption.
7. From the date of resumption time shall begin to run afresh for the purposes of the time limits.

## **Rule 45**

### **Discontinuance**

1. If, before the Court has given its decision, the parties reach a settlement of their dispute and intimate to the Court the abandonment of their claims in conformity with Form G of Schedule III, the President or the Principal Judge, as the case may be, shall order the case to be removed from the cause list and shall give a decision as to costs.
2. If an applicant informs the Court in writing that she or he wishes to discontinue the proceedings, the President or the Principal Judge, as the case may be, shall order the case to be removed from the cause list and shall give a decision as to costs in accordance with sub rule (8) of Rule 74.

## **SECTION II**

### **SPECIAL FORMS OF PROCEDURE**

## **Rule 46**

### **Application for Suspension or for Interim Measures**

1. An application to suspend the operation of any measure adopted by a Member State or an institution, made pursuant to the Treaty, shall be admissible only if the applicant is challenging that measure in proceedings before the Court.
2. An application to compel a Member State or an institution to adopt an interim measure shall be

admissible only if it is made by a party to a case before the Court and relates to that case.

3. An application under sub rule (1) shall state the subject-matter of the proceedings, the circumstances giving rise to urgency and the points of fact establishing a *prima facie* case for the interim measures applied for.

## **Rule 47**

### **Procedure on Application**

1. An application under Rule 46 shall be served on the opposite party within thirty (30) days of filing.
2. The party so served shall, within thirty (30) days, file written submissions.
3. The Presiding Judge may grant the application before the submissions of the opposite party have been filed when there is sufficient justification to grant an *ex-parte* order; or if the opposite party fails to file written submissions.
4. A decision under this sub rule shall be by a reasoned order which may be varied or cancelled with or without any application being made by any party.
5. The applicant and the opposite party may be heard on the application and the decision shall take the form of a reasoned order which shall be final and served on the parties forthwith.
6. The enforcement of the order may be made conditional on the lodging by the applicant of security of an amount and nature to be determined in the light of the circumstances.
7. Unless the order determines the date on which the interim measure is to lapse, the measure shall lapse when final judgment is delivered.
8. The order shall have only an interim effect and shall be without prejudice to the decision of the Court on the substance of the case.
9. On application by a party, the order may at any time be varied or cancelled on account of a change in circumstances.

## **Rule 48**

### **Further Application on Rejection**

A rejection of an application for an interim order shall not bar the party who made it from making a further application on the basis of new facts which could not, by reasonable diligence, have been discovered.

**Rule 49****Suspension of Enforcement of Decision**

1. Any party aggrieved by a decision of this Court may apply to suspend the enforcement of a decision of the Court on any measure adopted by a Member State or an institution submitted pursuant to the Treaty.
2. The order granting the application shall specify, where appropriate, a date on which the interim measure is to lapse.

**Rule 50****Intervention by Third Party**

1. A Member State, the Secretary-General or a resident of a Member State who is not a party to a case before the Court may, with leave of Court, intervene in that case by filing an application containing the grounds which justify such intervention:

Provided that such intervention shall be limited to evidence supporting or opposing the arguments of a party to the case.

2. An application to intervene shall be by motion supported by affidavit and be made within ninety (90) days of the publication of the notice referred to in sub rule (6) of Rule 14.
3. The application shall contain-
  - (a) a description of the case;
  - (b) a description of the parties;
  - (c) the name and address of the intervener;
  - (d) the address of service of the intervener;
  - (e) the relief sought by one or more of the parties, in support of or in opposition to which the intervener is applying for leave to intervene; and
  - (f) except in the case of applications to intervene made by Member States or institutions, grounds for intervention establishing the intervener's interest in the result of the case.
4. The intervener shall be represented in accordance with Rule 18; and Rules 24 and 31 shall apply to the application.
5. The President or the Principal Judge, as the case may be, shall give the parties an opportunity to file their written submissions or make oral submissions before deciding on the application.

6. The President or the Principal Judge, as the case may be, shall decide on the application by order or shall refer the application to the Court.
7. Where the President or the Principal Judge as the case may be, grants the application for intervention, the intervener shall receive a copy of every document served on the parties:  
  
Provided that the President or the Principal Judge, as the case may be, may, however, on application by one of the parties, omit classified or confidential documents.
8. The intervener shall proceed with the case as it is at the time of intervention.
9. The President or the Principal Judge, as the case may be, shall prescribe a period of time within which the intervener may submit a statement of intervention.
10. The statement of intervention shall contain-
  - (a) a statement of the relief sought by the intervener in support of or opposition to, the relief sought by one of the parties whether in whole or in part;
  - (b) the facts and arguments relied on by the intervener; and
  - (c) the evidence relied upon.
11. After the statement of intervention has been filed, the President or the Principal Judge, as the case may be, shall prescribe a time-limit within which the parties may reply to that statement.

## **Rule 51**

### ***Amicus Curiae***

1. At the request of the Court or upon formal application, with leave of the Court, a person may appear as *amicus curiae* before the Court.
2. The provisions of Rule 50 shall apply in such cases *mutatis mutandis*.

## **Rule 52**

### **Joinder of Parties**

1. The Court may at any stage of the proceedings, on application by a party or on its own motion and on such terms as may appear to the Court to be just, order that the names of any persons who ought to have been joined as respondents, or whose presence before the Court may be necessary in order to enable the Court to adjudicate upon and settle all the questions involved

in the reference or matter, be joined.

2. Where a respondent claims as against any other person not already a party to the reference (hereinafter referred to as the "third party") -

- (a) any contribution or indemnity;
- (b) any relief or remedy relating to or connected with the original subject matter of the reference and substantially the same as some relief or remedy claimed by the applicant; or
- (c) that any question or issue relating to or connected with the said subject is substantially the same question or issue arising between the applicant and the respondent and should properly be determined not only as between the applicant and the respondent but also as between the applicant and respondent and the third party or between any or either of them;

the respondent may, with leave of the Court, issue a third party notice to that effect. An application for such leave shall be by *ex parte* motion supported by affidavit.

3. A copy of such third party notice shall be filed and served on the third party in accordance with the Rules relating to the service of a notification.

4. The notice shall state the nature and grounds of the claim, and shall, unless otherwise ordered by the Court, be filed within the time limit for filing the response, and shall be in conformity with Form H of Schedule III with such variations as circumstances require. The third party notice shall be served with a copy of the claim.

5. A third party who has against another person a claim referred to in sub rule (1) may similarly apply to the Court for leave to issue a notice to such other person. The provisions of the preceding sub rules shall also apply and the expressions "third party notice" and "third party" shall respectively apply to include every notice so issued and every person served with such notice.

6. The provisions of sub rule (4) shall apply to any subsequent person made a party to the claim or reference.

## **SECTION III**

### **ORAL PROCEEDINGS**

#### **A. PRE-TRIAL PROCEEDINGS**

#### **Rule 53**

##### **Scheduling Conference**

1. The Court shall, within thirty (30) days after the close of pleadings, hold a scheduling conference to ascertain-
  - (a) issues for determination by the Court;
  - (b) the possibility of mediation, conciliation or any other form of alternative dispute resolution where the Court may direct that the case proceeds to mediation or other form of alternative dispute resolution and fix a time frame for their completion;
  - (c) whether evidence shall be adduced orally or by affidavit;
  - (d) whether legal submissions shall be written or oral, or both;
  - (e) the estimated length of the hearing; and
  - (f) Any other matter as the Court may deem necessary.
2. The Principal Judge shall determine and appoint the number of judges to conduct the scheduling conference under sub rule (1) of this Rule.
3. If the matter is to proceed to hearing, the Court shall fix a date for parties to file heads of arguments and for hearing.
4. In any case where there is no need for oral evidence and all parties opt to present legal arguments in writing, the Court shall prescribe the time within which the parties shall file their respective written legal submissions.
5. Where the mediation or conciliation or any other form of alternative dispute resolution fails, the matter shall proceed to trial.

#### **Rule 54**

##### **Oral Proceedings**

1. The Court shall, wherever possible, fix the date for the opening of the oral proceedings to take place within a period not exceeding six (6) months from the close of pleadings unless the Court

is satisfied that there is adequate justification for deciding otherwise.

2. The Court shall, when fixing the date for the opening of the oral proceedings or postponing the opening or continuance of such proceedings, have regard to-
  - (a) the need to hold the hearing without unnecessary delay;
  - (b) any special circumstances, including the urgency of the case or other cases on the list of cases; and
  - (c) the views expressed by the parties.
3. Nothing herein contained shall limit the power of the Court to change the hearing dates on its own motion or on request of a party.
4. After the date for opening of oral proceedings is fixed, the Registrar shall issue a notice of hearing stating the date and place of hearing, and cause it to be served on the parties.
5. A notice of hearing under this Rule shall be in conformity with Form I of Schedule III.

## **Rule 55**

### **Summoning Witnesses**

1. The Court on the application by any party in a reference may, summon any person whose attendance is required either to give evidence or to produce a document or both.
2. Every summons shall specify the time and place of attendance, and whether attendance is required for the purpose of giving evidence or to produce a document, or both. The summons shall describe with reasonable precision the document required.
3. The Court may on its own motion summon any person to give evidence or to produce any document if in the opinion of the Court such evidence or document is essential for the just determination of any matter before it.
4. When a person summoned to give evidence or produce a document fails to appear or refuses to give evidence or to produce the document, the Court may in its discretion, impose upon the witness a fine not exceeding 50 currency points in conformity with Schedule IV.
5. A fine imposed under this Rule shall be enforceable as an order of the Court.
6. Summons under this Rule shall be in conformity with Form J of Schedule III and shall be served in the manner prescribed for service of notification.

## **Rule 56**

### **Commission to Examine Witnesses**

1. The Court may, on its own motion or on application, issue a commission or letter of request for the examination, on interrogatories or otherwise, of any person resident within the limits of its jurisdiction who due to sickness, infirmity or for any other sufficient reason is unable to attend Court.
2. The Court may issue a commission, for the examination of-
  - (a) any person resident beyond the local limits of its jurisdiction;
  - (b) any person who is about to leave such limits before the date on which she or he is required to be examined in Court; or
  - (c) any civil or military officer of a Government of any Member State, or any servant of the Common Market, who in the opinion of the Court, cannot attend without detriment to the public service.
3. Where application is made for issue of a commission or letter of request for the examination of a person residing outside the jurisdiction of the Court, the Court shall be satisfied that the evidence of such person is necessary before issuing such commission or letter of request.
4. Where a commission has been duly executed, it shall be returned, together with the evidence taken under it, to the Court, and the commission, the return thereto and the evidence taken under it shall form part of the record of the proceedings.
5. Before issuing any commission, the Court may order such sum as it thinks reasonable for the expenses of the commission, to be paid into Court within a fixed time by the party at whose instance or for whose benefit the commission is issued.
6. Where a person commissioned to give evidence or produce a document fails to appear or refuses to give evidence or to produce the document the Court may in its discretion impose upon the witness a fine not exceeding 50 currency points in accordance with Schedule IV.

## **Rule 57**

### **Expenses of Witnesses**

1. A party calling a witness shall be responsible for the witness's expenses.
2. A party applying for summons shall, before the summons is issued, pay into Court such sum of money as appears to the Registrar to be sufficient to defray the travelling and other expenses of the person summoned in travelling to and from the Court, and for one day's attendance.



3. In the case of any person summoned to give evidence as an expert, the Registrar may allow reasonable remuneration for the time spent both in giving evidence and in performing any work on the case.
4. Where it is proved to the satisfaction of the Registrar that the money deposited into Court to cover such expenses or reasonable remuneration is insufficient, the Registrar may require the party who applied for the summons to pay such further sum which appears to be necessary on that account.
5. In case of default in payment of further sum under sub rule (4), the Court may order such sum to be levied by attachment and sale of the movable property of the defaulting party; or the Court may discharge the person summoned without requiring him or her to give evidence; or may both order such levy and discharge such person as aforesaid.

## ***B. TRIAL PROCEEDINGS***

### **Rule 58**

#### **Proceedings to be Held in Open Court**

1. The proceedings shall be commenced and presided over by the Presiding Judge, who shall be responsible for the proper conduct of the hearing.
2. Subject to sub rule (3) and (4) all proceedings of the Court shall be held in open Court.
3. The Court, on application by any party or on its own motion, may, for sufficient cause, order the proceedings to be held in camera. The proceedings heard in camera shall be recorded but shall not be published.
4. The Court may, if satisfied that the interest of justice so requires, direct that any particular person or category of persons be excluded or removed from the Court.

### **Rule 59**

#### **Hearing and Consequence of Non-attendance**

1. If on the day fixed for hearing, neither party attends, the Court may dismiss the application or reference and make such other order as it thinks fit.
2. If on the day fixed for hearing the applicant does not appear and the respondent appears, the reference may be dismissed and any counterclaim may proceed, unless the Court sees fit to adjourn the hearing.
3. Where the reference is dismissed under sub rule (2) or a counterclaim so proceeds, the Court

may, on application by the applicant, restore the reference for hearing and may re-hear the counterclaim, if satisfied that the applicant was prevented by sufficient cause from appearing.

4. If on the day fixed for hearing the respondent does not appear and the applicant appears, the hearing may proceed in the absence of the respondent and any counterclaim may be dismissed unless the Court sees fit to adjourn the hearing.
5. Where the reference proceeds under sub rule (4) and/or the counterclaim is dismissed the Court may on the application of the respondent rehear the reference or restore the counter-claim for hearing if satisfied that the respondent was prevented by sufficient cause from appearing.
6. Any *ex parte* judgment or order made under sub rule (3) or (4) shall be set aside when the Court orders that a reference, counterclaim or application be restored for hearing or be reheard.
7. Where under sub rule (3) or (4) a reference, counterclaim or application is dismissed and an application for its restoration is disallowed, no fresh reference, counterclaim or application may be brought upon the same cause of action.
8. An application for restoration under sub rule (3) or (4) shall be made within thirty (30) days of the decision of the Court.

## **Rule 60**

### **Right to Begin**

1. The applicant shall have the right to begin unless the respondent admits facts alleged by the applicant and contends that either in point of law or on some additional facts alleged by the respondent, the applicant is not entitled to any part of the relief sought, in which case the respondent shall have the right to begin.
2. Where there are several issues, and there is a dispute as to which party is to begin, the Court shall direct the party on whom the greater burden of proof lies to begin.

## **Rule 61**

### **Opening Statements and Production of Evidence**

1. At the hearing, the party having the right to begin may make an opening statement and shall adduce evidence in support of the issues, which that party is bound to prove. The other party may then make opening statements and adduce evidence, and may then address the Court generally on the case. The party beginning may reply.
2. Where, after the party beginning has adduced its evidence the other party does not produce any evidence, the party beginning shall address the Court first on the case, and the other party shall then address the Court in reply. The Court may then allow the party beginning to comment on

any new point raised in the address by the other party.

## **Rule 62**

### **Examination of Witnesses**

1. A witness shall, before giving evidence, take an oath or affirmation set out in Form K of Schedule III.
2. A party may call witnesses who shall be examined-in-chief by such party and may be cross-examined by the other party and re-examined by the party beginning who called her or him.

## **Rule 63**

### **Taking and Recording of Evidence**

1. The evidence of every witness, whether given orally in Court or by affidavit, shall be recorded by the official Court recorder. The record of each hearing shall be signed by the Presiding Judge and shall be kept and maintained by the Registrar.
2. The Court may, at any stage of the hearing, on application by any party or on its own motion, recall any witness who has given evidence, to be further examined, cross-examined and re-examined as the Court deems fit.
3. The Presiding Judge and the other Judges may in the course of the hearing put questions to any witness.

## **Rule 64**

### **Adjournments**

1. Hearing of evidence shall continue from day to day until all the witnesses in attendance have been examined unless the Court finds it necessary to adjourn for reasons to be recorded.
2. Where, on any day to which the hearing is adjourned, the parties or any of them fail to appear, the Court may proceed to dispose of the case in one of the modes set out in Rule 59.
3. Where any party to whom time has been granted fails to produce evidence or to cause the attendance of its witness, or to perform any other act necessary to the further progress of the case, the Court may, notwithstanding such failure, proceed to determine the dispute or reference forthwith.

## **Rule 65**

### **List of Authorities**

1. A party who intends to rely on a judgment in any reported case or to quote from any publication shall lodge with the Registrar a list and copies of cases and publications, including-
  - (a) citations of cases;
  - (b) the names, authors and editions of the publications;
  - (c) reference to the portion of the case or publication relied on;
  - (d) any electronic copy or link where the cases or publications can be accessed; and
  - (e) translation in the language of the case as directed by the Registrar.
2. Such party shall file eight (8) copies for the Court and a copy for every other party to the proceedings; but a supplementary list may, when necessary, be produced at the time of the hearing.
3. The list shall be lodged at least fifteen (15) days before the hearing.

## **SECTION IV**

### **Rule 66**

#### **Deliberations of Judges**

1. The Judges shall deliberate in closed session.
2. The deliberations of the Judges shall be and shall remain secret.
3. Only those Judges who are present at the oral proceedings of the case may take part in the deliberations.
4. If, after the oral proceedings have been conducted, the deliberations cannot take place by reason of a Judge being permanently prevented from taking part in the deliberations, the oral proceedings shall start *de novo* unless the parties agree otherwise.
5. Every Judge taking part in the deliberations shall state her or his opinion and the reasons for it.
6. Any Judge may require that any question be formulated in on the official languages of the Treaty and communicated in writing to the Court before being put to the vote.

7. (a) The conclusions reached by the majority of the Judges after final deliberations shall be the decision of the Court; and  
(b) votes shall be cast in reverse order of seniority of Judges;
8. Differences of view on the substance, wording or order of questions, or on the interpretation of the voting, shall be settled by decision of the Judges who took part in the deliberations.

## **JUDGMENT**

### **Rule 67**

#### **Pronouncement of Judgment**

1. Judgment shall be delivered within sixty (60) days from the conclusion of the hearing except where, for good reason, the Court is unable to do so.
2. Judgment shall be delivered in open court unless the Court considers that, in the special circumstances of the case, it considers it desirable to do so in camera.
3. Such judgment may be pronounced notwithstanding the absence of some of the Judges who composed the Court.
4. At the close of the hearing, the Court may give its judgment at once or on some future date which may be appointed then or subsequently notified to the parties.
5. The Court may, in any particular case, direct that only the decision of the Court and not the reasons for it shall be delivered in Court. The reasons for judgment shall be given on a date to be notified by the Registrar to the parties but not later than sixty (60) days unless the Court, for good reason, is unable to do so.
6. The original of the judgment, signed by all the Judges who took part in the deliberations, shall be sealed by the Registrar and deposited at the Registry and the parties shall be served with certified copies of it.
7. The Registrar shall record on the original of the judgment the date on which it was delivered.
8. The final judgment of the Court shall be translated into the languages of the Court within ninety (90) days of delivery.
9. The Final Judgement of the Court shall be published in the Official Gazette.

## **Rule 68**

### **Contents of Judgment**

A judgment shall contain-

- (a) a statement that it is the judgment of the Court;
- (b) the date of its delivery;
- (c) the names of the Judges taking part in it;
- (d) the name of the Registrar;
- (e) the description of the parties;
- (f) the names of Counsel for the parties;
- (g) a statement of the relief sought by the parties;
- (h) a summary of the facts and the law;
- (i) the reasons for the decision; and
- (j) the decree, including the decision as to costs.

## **Rule 69**

### **Enforcement of Judgment**

1. A judgment shall be binding as from the date of its delivery.
2. The execution of any order, decision or judgment which imposes a pecuniary obligation on any party shall be governed by Article 40 of Treaty.
3. If the Court finds, on application by a party, that a party has defaulted in implementing the Court's judgment, order or decision or otherwise defied it, the Court may impose on that party, a fine to be paid to the Court.
4. Where any order, decision or judgment 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, order or decision.

**Rule 70****Rectification of Judgment**

1. Without prejudice to the provisions relating to the interpretation of judgments, the Court may, of its own motion or on application by a party made within thirty (30) days after delivery, rectify clerical mistakes, errors in calculation and obvious slips in a judgment.
2. Where judgment has been rectified in accordance with sub rule (1), the Registrar shall duly notify the parties concerned of such rectification and they may file with the Registrar their written objections or observations within the period specified in the notice.
3. The Court shall give its decision on any objection filed under sub rule (2).
4. The original of the rectification order shall be annexed to the original of the rectified judgment and a note of the order shall be made in the margin of the original of the rectified judgment.

**Rule 71****Omission in a Judgment**

1. If the Court omits to give a decision on a specific head of claim or on costs, any party may, within thirty (30) days after delivery of the judgment, apply to the Court to supplement its judgment.
2. The application shall be served on the opposite party and the Principal Judge shall prescribe a period within which that party may file written submissions.
3. After the submissions have been filed, the Court shall decide both on the admissibility and on the substance of the application.

**Rule 72****Revision of Judgment**

1. Pursuant to Article 31 (3) of the Treaty, a party may apply for revision of a judgment only if it is based upon-
  - (a) the discovery of some fact which by its nature might have had a decisive influence on the judgment if it had been known to the Court when the judgment was given, but which fact, at that time, was unknown to both the Court and the party making the application, and which could not, with reasonable diligence, have been discovered by that party before the judgment was made;
  - (b) some mistake; or
  - (c) an error apparent on the face of the record.

2. The application for revision shall be made within ninety (90) days from the date of delivery of judgment.
3. (a) Rules 24 and 31 shall apply to an application for revision;  
(b) in addition, such an application shall-
  - (i) specify the judgment contested;
  - (ii) indicate the points on which the judgment is contested;
  - (iii) set out the facts on which the application is based; and
  - (iv) indicate the nature of the evidence to show that there are facts justifying revision of the judgment, and that the time-limit laid down in sub rule (2) has been complied with.
4. The application shall be made against all parties to the case in which the contested judgment was given.

## **Rule 73**

### **Powers of Court on Revision**

1. Without prejudice to its decision on the substance, the Court shall, having regard to the written submissions of the parties, give its decision on the admissibility of the application.
2. If the Court finds the application admissible, it shall proceed to consider the substance of the application and shall give its decision in accordance with these Rules.
3. (a) the original of the decision shall be annexed to the original of the judgment revised; and  
(b) a note of the decision shall be made in the margin of the original of the judgment revised.



# PART IV

## COSTS



## **Rule 74**

### **Decision as to Costs**

1. A decision as to costs shall be given in the final judgment or in the order which closes the proceedings.
2. The Court may order an unsuccessful party to pay the costs except as provided under sub rule (3) and (4) of this Rule.
3. Where there are several unsuccessful parties, the Court shall decide how the costs are to be shared among them.
4. Where each party succeeds on some and fails on other heads, or where the circumstances are exceptional, the Court may order that the costs be shared or that the parties bear their own costs.
5. The Court may order a party, even if successful, to pay costs which the Court considers that party to have unreasonably or vexatiously caused the opposite party to incur.
6. The Member States and institutions, which intervene in the proceedings, shall bear their own costs.
7. The Court may order interveners other than those mentioned in sub rule (6) to bear their own costs.
8. A party who discontinues or withdraws from proceedings shall be ordered to pay the costs if they have been applied for in the other party's pleadings.
9. Upon application by the party who discontinues or withdraws from proceedings, the costs shall be borne by the other party if this appears justified by the conduct of that party.
10. Where the parties have come to an agreement on costs, the decision as to costs shall be in accordance with that agreement.
11. If costs are not claimed, the parties shall bear their own costs.
12. Where a case does not proceed to judgment, the costs shall be at the discretion of the Court.

## **Rule 75**

### **Security for Costs**

1. The Court may, on application by a party and for sufficient cause shown, require the other party to give security for costs.
2. Whenever a party is ordered to furnish security, the Court shall, by the same order, fix the time within which such security shall be furnished by such party.

**Rule 76****Costs in Certain Cases**

Without prejudice to sub rule (5) of Rule 74, in proceedings between the Common Market and its employees, the Common Market shall, unless the Court decides otherwise, bear its own costs.

**Rule 77****Enforcement Costs**

Costs necessarily incurred by a party in enforcing an order, decision or judgment of the Court shall be refunded by the opposite party on the scale in force in the Member States where the enforcement takes place.

**Rule 78****Court Fees**

Proceedings before the Court shall be free of charge, except that-

- (a) where a party has caused the Court to incur avoidable costs, the Court may order that party to refund them; and
- (b) where copying or translation work is carried out at the request of a party, the costs shall, in so far as the Registrar considers them excessive, be paid for by that party on the scale of fees referred to in sub rule (5) of Rule 14.

**Rule 79****Recoverable Costs**

1. Without prejudice to Rule 78, the following shall be regarded as recoverable costs-

- (a) sums payable to witnesses and experts under Rule 57; and
- (b) expenses necessarily incurred by the parties for the purpose of the proceedings, in particular the travel and subsistence expenses and the remuneration of Counsel.

2. If costs are disputed by a party, the party awarded costs by the Court may, within thirty (30) days 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 practitioner's costs in contentious matters stipulated in Schedule II hereto.

4. The Court may amend the scale of legal practitioners' costs contained in Schedule II.

## **Rule 80**

### **Dispute as to Costs**

1. If there is a dispute concerning the costs to be recovered, the Registrar shall, on application by the party concerned and after hearing the opposing party, make an order on the matter.
2. A party who is aggrieved by the decision of the Registrar concerning the costs to be recovered, shall, within thirty (30) days of the decision, file an appeal to the Court to be heard by a single Judge nominated by the President or the Principal Judge, as the case may be, who shall decide on the matter after hearing the opposing party.
3. The decision of the Judge hearing the appeal shall be final and binding on both parties.
4. The parties may, for the purpose of enforcement, apply for a certified copy of the order.

## **Rule 81**

### **Currency of Payment**

1. Sums due from the cashier of the Court shall be paid in United States Dollar (USD).
2. At the request of the person entitled to any sum, this shall be paid in the currency of the Member State where the expenses to be refunded were incurred or where the steps in respect of which payment is due were taken.
3. Other debtors shall make payment in the currency of the transactions in issue.
4. Conversions of currency shall be made at the prevailing market exchange rate ruling on the day of payment at the Central Bank of the Member State where cause of action arose.

# PART V

## TIME LIMITS



## Rule 82

### Time Limits

1. Unless otherwise expressly provided in these Rules, the period of time for the doing of anything which is required to be done in relation to proceedings in court shall be thirty (30) days.
2. Subject to Rule 84, the Registrar shall not accept pleadings or other documents filed after the expiry of the time limits laid down under these Rules.
3. Any period of time prescribed by the Treaty or these Rules for the taking of any procedural step shall be reckoned as follows-
  - (a) a period expressed in days, weeks, months or years shall be calculated from the moment at which an event occurs or an action takes place; the day during which that event occurs or that action takes place shall not be counted as falling within the period in question;
  - (b)
    - (i) a period expressed in weeks, months or years shall end with the expiry of whichever day in the last week, month or year is the same day of the week, or falls on the same date, as the day during which the event or action from which the period is to be calculated occurred or took place; and
    - (ii) if, in a period expressed in months or years, the day on which it should expire does not occur in the last month, the period shall end with the expiry of the last day of that month;
  - (c) periods shall include official holidays, Fridays, Saturdays and Sundays;
  - (d) periods shall not be suspended during the judicial vacations;
  - (e) if the period would otherwise end on a Friday, Saturday, Sunday or an official holiday, it shall be extended until the end of the first following working day; and
  - (f) a list of official holidays drawn up by the Court shall be published in the Official Gazette.

## Rule 83

### When Period of Time Commences

1. The period of time allowed for commencing proceedings against a Member State or an institution shall run from the day following the receipt by the person concerned of notification of the measure or, where the measure is published, from the 15th day after publication thereof in the Official Gazette.
2. The extensions, on account of distance, of prescribed time limits shall be provided for in a

decision of the Court, which shall be published in the Official Gazette.

## **Rule 84**

### **Exceptions to Time Limits**

1. Unless otherwise expressly provided, a time limit fixed by these Rules or set by the Court may either be extended or shortened by the Court.
2. No right shall be prejudiced in consequence of the expiry of a time limit if the party concerned proves the existence of unforeseeable circumstances.

# PART VI

## OPPOSITION BY THIRD PARTY





**Rule 85****Proceedings**

1. Any person who should have or could have been made a party to a reference and whose interests are affected by a judgment in the reference may file an opposition to such judgment.
2. An application initiating opposition proceedings shall be in conformity with Rules 24 and 31 and shall-
  - (a) specify the judgment contested;
  - (b) state how that judgment is prejudicial to the rights of the applicant; and
  - (c) indicate the reasons for which the applicant was unable to take part in the original case.
3. The application shall be made against all the parties to the original case and shall be filed within sixty (60) days of the publication of the judgment in the Official Gazette.
4. The Court may, on application by the applicant, order a stay of execution of the judgment and the provisions of Rules 46 to 49 shall apply.
5. After hearing the parties, the contested judgment may be varied.
6. The original of the judgment in the opposition proceedings shall be annexed to the original of the contested judgment.

# PART VII

## APPEALS AGAINST DECISIONS OF THE FIRST INSTANCE DIVISION



**SECTION I****WRITTEN PROCEDURE****Rule 86****Grounds of Appeal**

Pursuant to Article 23 (3) of the Treaty, an appeal shall lie to the Appellate Division on-

- (a) points of law;
- (b) grounds of lack of jurisdiction; or
- (c) procedural irregularity.

**Rule 87****Language of Case on Appeal**

Without prejudice to the provisions of Rule 15 (2) (a) and (b), in an appeal against a decision of the First Instance Division, the language of the case shall be the language of the judgment of the First Instance Division against which the appeal is brought.

**Rule 88****Application of Rules of Procedure in the First Instance Division to the Appellate Division**

Subject to the provisions of the Rules in this Part, Rules 26, 30, 31, 32, 33, 34, 36, 38, 40 to 45, 50, 53, 57, 59, 63 and 65 to 73, shall apply, *mutatis mutandis*, to the Appellate Division.

**Rule 89****Notice of Appeal**

1. A party wishing to appeal a decision of the First Instance Division to the Appellate Division shall, within thirty (30) days of the date of the decision which he wishes to appeal against, file a notice of appeal with the Registrar in six (6) copies together with sufficient copies for service on all the parties involved in that judgment in conformity with Form L of Schedule III.
2. Every notice of appeal shall state whether it is intended to appeal against the whole or part only of the decision and, where it is intended to appeal against part only of the decision, shall specify the part complained of, shall state the address for service of the appellant and shall state the

names and addresses of all persons intended to be served with copies of the notice.

## **Rule 90**

### **Appeal**

1. A party wishing to appeal shall, within sixty (60) days of the date of the filing of the notice of appeal, lodge a memorandum of appeal in conformity with Form M of Schedule III together with a record of appeal at the Court registry with six (6) copies for the Court and sufficient copies for service on all the parties involved.
2. An appeal shall not operate as a stay of execution of the judgment appealed against unless, on application, the President expeditiously so orders and no immediate act or proceeding shall be invalidated except so far as the Court may direct.

## **Rule 91**

### **Contents of Memorandum of Appeal**

1. A memorandum of appeal shall contain-
  - (a) the name and address of the appellant;
  - (b) the names of the other parties to the proceedings before the First Instance Division;
  - (c) the grounds of appeal; and
  - (d) the relief sought by the appellant.
2. Rule 24 (2) and (3) and 31 shall apply to appeals.

## **Rule 92**

### **Contents of Appeal Record**

1. The appeal record shall be prepared by the appellant and shall contain the following matters in the order in which they are set out below-
  - (a) a complete index of the evidence and all proceedings and documents in the case showing the pages at which they appear-
    - (i) the index shall show the names and sequence of all the witnesses in the First Instance Division and the relevant pages of the record; and
    - (ii) wherever the record comprises more than one volume, the index shall only

- appear in the first volume;
- (b) a certificate of the record of appeal signed by the Registrar;
  - (c) the notice of appeal and the memorandum of appeal;
  - (d) copy of the judgment appealed against;
  - (e) copies of the documents constituting the pleadings, so far as is necessary for showing the matter decided and the nature of the appeal;
  - (f) copies of all affidavits and documents produced in evidence in the First Instance Division so far as they are material for the purposes of the appeal, and, if such documents are not in the language of the judgment, copies of certified translations thereof provided that-
    - (i) affidavits, together with copies of documents exhibited thereto, shall be arranged in the order in which they were originally filed; and
    - (ii) other documentary evidence shall be arranged in strict order of date, without regard to the order in which the documents were submitted in evidence.
  - (g) such other documents, if any, as may be necessary for the proper determination of the appeal, including any interlocutory proceedings which may be directly relevant to the appeal; and
  - (h) the record of proceedings of the First Instance Division signed by the Registrar.
2. Where an appellant omits to comply with this Rule, any respondent who has filed a cross-appeal may proceed with her or his cross-appeal.
  3. In such case the respondent shall, within such time as the President may direct, file copies of the record of appeal, as prescribed by this Rule, and serve copies thereof on the appellant and on all the other parties to the appeal.

## **Rule 93**

### **Relief Sought on Appeal**

1. An appellant may seek-
  - (a) to set aside, in whole or in part, the decision of the First Instance Division;
  - (b) the same relief, in whole or in part, as that sought at first instance, and shall not seek a different relief.

2. The subject matter of the proceedings before the First Instance Division shall not be changed in the appeal.

## **Rule 94**

### **Service of Appeal**

The notice of appeal, the memorandum of appeal and the record of appeal shall be served on all the parties to the proceedings by the appellant and Rule 25 shall apply.

## **Rule 95**

### **Response to Appeal**

1. Any party to the proceedings before the First Instance Division may lodge a response to an appeal, with or without a cross-appeal, within sixty (60) days of the date of service of the memorandum of appeal.
2. A response shall contain-
  - (a) the name and address of the respondent;
  - (b) preliminary objections, if any;
  - (c) the date on which the notice of appeal was served on him;
  - (d) the grounds of opposition;
  - (e) the relief sought by the respondent; and
  - (f) an address for service.
3. Rule 24 (2) and (3) shall apply to a response.

## **Rule 96**

### **Relief to be Sought in Response**

1. A respondent may seek-
  - (a) to dismiss, in whole or in part, the appeal or to set aside, in whole or in part, the decision of the First Instance Division; or
  - (b) the same relief, in whole or in part, as that sought at First Instance Division, and shall

not seek a different relief.

2. The subject matter of the proceedings before the First Instance Division shall not be changed in the response.

## **Rule 97**

### **Cross-Appeal**

1. If a respondent intends to contend that the decision of the First Instance Division should be varied, the respondent may file a cross-appeal in conformity with Form N of the Third Schedule with the Registrar, specifying the grounds thereof.
2. If the respondent fails to file such cross-appeal within the time prescribed under Rule 93, the right to cross-appeal shall be deemed to have been waived.
3. Without prejudice to her or his rights, if any, if the respondent is of the opinion that the record filed by the appellant is defective, the respondent may prepare and file with the Registrar, within thirty (30) days of service on her or him of the appeal record, copies of a supplementary appeal record containing copies of any further documents which may be required for the proper determination of the appeal.
4. A supplementary record shall be prepared substantially in the same manner as a record of appeal.
5. A copy of the supplementary record shall be served on the appellant and on all respondents.

## **Rule 98**

### **Withdrawal of Appeal or Cross-Appeal**

1. At any time before delivery of judgment, a notice of withdrawal of an appeal or cross-appeal, as the case may be, may be filed with the Registrar in conformity with Form O of Schedule III and served on the parties to the appeal.
2. If all parties to the appeal consent to the withdrawal of the appeal or cross-appeal without order of the Court-
  - (a) the appellant or the respondent may file the consent document signed by the parties' Counsel with the Registrar and the appeal or cross-appeal, as the case may be, shall be deemed to have been dismissed; and
  - (b) in such event any sum lodged in Court as security for the costs of the appeal or cross-appeal shall be paid out to the appellant or respondent, as the case may be.
3. If all the parties to the appeal do not consent to the withdrawal of the appeal or cross-appeal, the

appeal or cross-appeal, as the case may be, shall remain alive and proceed for the hearing on any issue as to costs or other issues outstanding between the parties and for the making of an order as to the disposal of any sum lodged in Court as security for the costs.

4. Where a party has withdrawn an appeal, the Court shall decide whether the withdrawal extinguishes the cross-appeal if any.

## **Rule 99**

### **Inadmissible or Unfounded Appeals**

The Appellate Division may, at any time, on application by one of the parties or on its own motion, by reasoned order, dismiss the appeal or the cross-appeal in whole or in part where an appeal or cross-appeal is, in whole or in part clearly inadmissible or unfounded.

## **SECTION II**

### **HEARING OF APPEALS**

## **Rule 100**

### **Preliminary Objection in the Appellate Division**

Where a respondent or an appellant intends to raise a preliminary objection to an appeal or cross-appeal or any part thereof, as the case may be, the party shall, before the scheduling conference provided under these Rules, give not less than fifteen (15) days written notice to the Court and to the other parties to the appeal of the grounds of that objection.

## **Rule 101**

### **Presentation of Arguments in Writing**

1. Any party to an appeal who does not intend to appear at the hearing of the appeal may lodge in the registry a written statement of the party's arguments in support of or in opposition to the appeal or the cross-appeal, if any, as the case may be, and shall, before, or within fifteen (15) days after lodging it, serve a copy of it on all parties.
2. Every such statement shall be lodged-
  - (a) by an appellant, within fifteen (15) days of receiving a response or cross-appeal, as the case may be; and
  - (b) by a respondent, within thirty (30) days of service of the memorandum and record of appeal.



3. An appellant who has lodged a statement under sub rule (1), may, if served with a cross-appeal, lodge a supplementary statement of arguments in opposition to it within thirty (30) days.
4. No party who has lodged a statement under this Rule shall, except with leave of the Court, address the Court at the hearing of the appeal.

## **Rule 102**

### **Hearing Notice**

The Registrar shall give all parties to an appeal not less than fifteen (15) days' notice of the date fixed for the hearing of an appeal; but it shall not be necessary to give that notice to any party with whose consent the date for the hearing was fixed or who has not filed a response.

## **Rule 103**

### **Additional Evidence**

1. In dealing with an appeal, the Appellate Division may take such additional evidence as it may deem necessary.
2. A party seeking to tender additional evidence shall
  - (a) demonstrate that it was not possible to tender the evidence before hand; and
  - (b) That failure to tender the additional evidence would defeat the ends of Justice.
3. The parties to the appeal shall have a right to examine and, where applicable, to cross-examine and re-examine the person adducing such additional evidence.

## **Rule 104**

### **Arguments at Hearing**

At the hearing of an appeal-

- (a) no party shall, without the leave of the court, argue that the decision of the First Instance Division should be reversed or varied except on a ground specified in the memorandum of appeal or in a cross-appeal, or support the decision of the Court of First Instance Division on any ground not relied on by that Court or specified in a notice given under Rule 89;
- (b) the Appellate Division shall not allow an appeal or cross-appeal on any ground not set forth in the memorandum of appeal or cross-appeal, without affording the respondent, or any person who in

relation to that ground should have been made a respondent, or the appellant, as the case may be, an opportunity of being heard on that ground; and

- (c) at the hearing of an appeal, the arguments contained in any statement lodged under Rule 101 shall receive the same consideration as if they had been advanced orally at the hearing.

## **Rule 105**

### **Order of Address**

1. The Appellate Division shall, at the hearing of an application or appeal, hear first the applicant or appellant, then the respondent, and then the applicant or appellant.
2. At the hearing of an appeal where a cross-appeal has been given, the Court shall ordinarily hear the appellant first on the appeal, then the respondent on the appeal and on the cross-appeal, then the appellant in reply on the cross-appeal.
3. The Appellate Division may dismiss, but shall not allow, any preliminary objection, application, appeal or cross-appeal without affording the opposing party an opportunity to be heard.
4. After hearing the opposing party, the Appellate Division may allow, but shall not dismiss, any preliminary objection, application, appeal or cross-appeal without giving the objector, applicant, appellant or cross-appellant an opportunity to reply.
5. The provisions of this Rule shall apply where notice of grounds for affirming the decision has been given, in the same way in all respects as where a cross-appeal has been given.

## **SECTION III**

### **JUDGMENT**

## **Rule 106**

### **Pronouncement of Judgment**

1. Judgment shall be delivered within sixty (60) days from the conclusion of the hearing except where, for good reason communicated to the parties concerned, the Court is unable to do so.
2. The provisions of Rule 65 to 73 shall apply *mutatis mutandis* to the Appellate Division .
3. A certified copy of the judgment shall be attached to the file of the First Instance Division.
4. The final Judgement shall be published in the Official Gazette.

**Rule 107****Costs on Appeal**

1. Where the Court gives a decision or delivers a judgment in a case, it shall make an order in the issue of costs.
2. In proceedings between the Common Market and its employees-
  - (a) Rule 76 shall apply only to appeals brought by institutions;
  - (b) By way of derogation from Rule 74 (2) and (3), the Court may, in appeals brought by employees of an institution, order the parties to share the costs where it is equitable to do so.
3. If the appeal is withdrawn Rule 74 (8) shall apply.

# PART VIII

## PRELIMINARY RULINGS



## **Rule 108**

### **Preliminary Rulings**

In cases governed by Article 30 of the Treaty the procedure shall be governed by the provisions of these Rules, subject to adaptations necessitated by the nature of the reference for a preliminary ruling.

## **Rule 109**

### **Content of a Request for a Preliminary Ruling**

A request for a preliminary ruling shall contain-

- (a) a summary of the subject-matter of the dispute and the relevant findings of fact as determined by the referring court or tribunal, or, at least, an account of the facts on which the questions are based;
- (b) any national provisions applicable in the case and, where appropriate, the relevant national case-law;
- (c) a statement of the reasons which prompted the referring court or tribunal to inquire about the application or interpretation of the Treaty or the validity of the regulations, directives and decisions of the Common Market.

## **Rule 110**

### **Decisions for Ruling to be Communicated**

1. The decisions of national courts or tribunals referred to in Rule 108 shall be communicated to the Court concerned in the original version, accompanied by a translation into the official language of the Member State to which they are addressed.
2. As regards the representation and attendance of the parties to the main proceedings in the preliminary ruling procedure, the Court shall take account of the rules of procedure of the national court or tribunal which made the reference.
3. Where a question referred to the Court for a preliminary ruling is substantially identical to a question on which the Court has already ruled, the Court may, after informing the court or tribunal which referred the question to it and hearing any submissions filed by the person referred to in Article 30 of the Treaty and Rule 108, give its decision by reasoned order in which reference is made to previous judgment.
4. Without prejudice to sub rule (3), the procedure before the Court in the case of a reference for a preliminary ruling shall also include an oral part:

provided that, after the statements of case or written observations referred to in Article 30 of the Treaty and Rule 108 have been submitted, the Court, acting on a report from the Judges after informing the persons who under the aforementioned provisions are entitled to file such statements or submissions, may decide otherwise, provided that none of these persons has asked to present oral arguments.

# PART IX

## ADVISORY OPINIONS

## **Rule 111**

### **Request for Advisory Opinion**

1. A request by the Authority, Council or a Member State for an opinion under Article 32 of the Treaty shall be made to the Appellate Division through the Registrar.
2. Such a request shall be served by the Court on the Authority, Council and all the Member States.
3. The President shall prescribe a period within which the Authority, Council and Member States which have been served with a request may submit their written observations.

## **Rule 112**

### **Delivery of Advisory Opinion**

1. The Court shall deliver its Advisory Opinion in open Court in accordance with Rule 67, notice having been given to the Authority, Council, Member States and the Secretary-General.
2. The opinion, signed by the Judges who took part in the deliberations shall be served on the Authority, Council, Member States and the Secretary-General.



PART X

COMMENCEMENT

## **PART X**

### **COMMENCEMENT**

#### **Rule 113**

##### **Entry into Force**

These Rules shall come into effect upon approval by Council in accordance with Article 38(2) of the Treaty.

Made by the Court, with the approval of the Council of Ministers at Antananarivo, Madagascar, this 15th day of October in the year two thousand and sixteen in the English, French, Portuguese and Arabic languages, the four texts being equally authentic.



**THE HONOURABLE LADY JUSTICE LOMBE P. CHIBESAKUNDA**

**JUDGE PRESIDENT**

**COMESA COURT OF JUSTICE**

**SCHEDULE I****SCALE OF FEES**

(Under Rule 14 (5))

Fees applicable to all documents other than legal practitioners costs shall be as follows-

	US \$
1. General search	<b>2.00</b>
2. Copies or extracts of any document per page or any part thereof	<b>2.00</b>
3. Copies of pleadings	<b>20.00</b>
4. Authenticated copies of judgments and orders per page or any part thereof	<b>2.00</b>

## SCHEDULE II

### SCALE OF PRACTITIONERS' COSTS IN CONTENTIOUS MATTERS

<b>1. Institution of proceedings</b>		<b>AMOUNT (US\$)</b>
(1)	For letter of demand,	
	- formal (per page)	<b>0.50</b>
	- routine (per page)	<b>0.50</b>
(2)	Preparing, issuing filing and service of the reference endorsed with statement of claim and annexes	<b>90.00</b>
(3)	Preparing, issuing filing and service of a Third Party notice	<b>20.00</b>
<b>2. Instructions</b>		
(1)	Attending on client taking instructions for a reference, or other process or proceedings.	<b>50.00</b>
(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.	<b>20.00</b>
(3)	Attending on and interviewing any witness or possible witness for the trial and taking and preparing proofs of evidence.	<b>20.00</b>
(4)	Requesting for and examining reports or opinions of expert.	<b>80.00</b>
(5)	Examination of any place or property material to the proceedings.	<b>80.00</b>
(6)	Searching and obtaining any relevant documents from any Member State or any public institution of a Member State.	<b>300.00</b>

(7)	Attending on the party or parties or their Counsel including attendance for settlement out of Court.	<b>20.00</b>
(8)	Collating documents for an affidavit or list of documents and for the bundles.	<b>70.00</b>
(9)	Attending to produce documents for inspection (per hour or proportionately any part thereof).	<b>30.00</b>
(10)	Attending to inspect documents.	<b>50.00</b>
(11)	Attending to any calculations to arrive at any damages or interest payable.	<b>20.00</b>
(12)	Preparation, filing and service of any notices or documents.	<b>80.00</b>
(13)	Instructions for brief to an agent to advise on evidence or settle pleadings or affidavit to use as evidence at the trial.	<b>80.00</b>

### **3. Preliminary applications and proceedings in chambers**

(1)	Preparing, issuing filing and service of a preliminary application.	<b>50.00</b>
(2)	Preparation, issuing, filing and arranging for the execution of judgment.	<b>20.00</b>
(3)	Preparing any other documents (to include were necessary filing, service and delivery of any document not otherwise provided for including any document or application to amend any document.	<b>20.00</b>
(4)	Obtaining an order for substituted service, for giving leave to serve out the jurisdiction.	<b>50.00</b>
(5)	Request for and particulars of any pleadings.	<b>50.00</b>

(6)	Preparation, issuing a commission and filing of letters of request.	<b>20.00</b>
(7)	Preparing filing and service of any order made in chambers or any order or judgment made or passed in Court.	<b>50.00</b>
<b>4. Attendances</b>		
(1)	Attendance in chambers or Court on the hearing of preliminary application of an interlocutory nature.	<b>50.00</b>
(2)	Waiting to attend before a Judge in chambers or in Court (per half hour or part thereof).	<b>30.00</b>
(3)	Waiting to attend before the Registrar in chambers (per half hour or part thereof).	<b>20.00</b>
(4)	Attend to conduct a case in Court.	<b>50.00</b>
(5)	Attending generally including attending to hear reserved judgment or order of any decision.	<b>30.00</b>
(6)	Attendance on client on the telephone.	<b>20.00</b>
<b>5. Perusals</b>		
(1)	Perusal of any reference, defence, counterclaim, (if any) or any document being for any of the matters.	<b>50.00</b>
(2)	Perusal of any document other than a routine letter including perusals of Counsels opinion or documents on inspection or any interlocutory process.	<b>30.00</b>
<b>6. Drawing Documents</b>		
(1)	For drawing any order made in open Court.	<b>50.00</b>

(2)	Drawing any document in the proceedings or any brief or opinion not provided for herein (per half page or part hereof).	<b>15.00</b>
(3)	For a photographic, printed or carbon copy of any document being exhibits to an affidavit or copies of the bundles.	<b>15.00</b>
(4)	For drawing case for opinion of Counsel , advise on evidence or to settle any proceedings and affidavit for use as evidence (where Counsel's opinion is justifiably sought)(per page or part thereof)	<b>30.00</b>
<b>7. Opinions</b>		
(1)	For any written opinion given in anticipation of litigation.	<b>30.00</b>
(2)	For any oral opinion given in anticipation of litigation.	<b>15.00</b>
<b>8. Communications</b>		
(1)	For any letter, email, telegram, telex or telefax for each page.	<b>2.00</b>
(2)	Telephone per unit of three minutes or part thereof.	<b>2.00</b>
<b>9. Subpoenas</b>		
(1)	For preparing, issuing, filing and service of subpoenas and the praecipe for each individual served	<b>30.00</b>
<b>10. Adjournments</b>		
(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)	<b>30.00</b>
(2)	Costs to be paid by the party who discontinues or withdraws from proceeding.	<b>150.00</b>
(3)	The fee for adjournments shall be as in heads (4(1) to (6)	





# SCHEDULE III

COURT FORMS

**JUDICIAL OATH OF OFFICE FOR JUDGES**

**(RULE 5)**

I, ..... do solemnly swear /affirm that I will well and truly serve the Common Market for Eastern and Southern Africa (COMESA) as a Judge of the First Instance Division/ Appellate Division of the COMESA Court of Justice and that I will perform my duties impartially and conscientiously and that I will preserve the secrecy of the deliberations of the Court.

So help me God\* (omit in case of affirmation)

.....

**DEPONENT**

**SWORN /AFFIRMED BEFORE ME** this.....day of .....20.....

**AT**.....

.....

**CHAIRPERSON OF THE COMESA AUTHORITY**

**AND**

**HER/HIS LORDSHIP** .....

**JUDGE PRESIDENT**

**COMESA COURT OF JUSTICE**

**FORM B - SPECIAL POWER OF ATTORNEY FOR COUNSEL**

**IN THE COMESA COURT OF JUSTICE**

.....**DIVISION**

**AT**.....

**CASE NO. ....OF 20.....**

.....**APPLICANT**

**VERSUS**

.....**RESPONDENT**

**SPECIAL POWER OF ATTORNEY**

**(Rule 20 (a))**

**KNOW ALL MEN WHO IT MAY CONCERN THAT**

I, (name of party), of (address), (designation),

by these presents do hereby ordain, nominate and appoint (name of counsel), of (address, name of firm)

to be the Counsel of the (insert party appointing), acting solely or with such other Counsel as she or he may choose, to represent and act for (me/the Applicant/Respondent) in all proceedings before the COMESA Court of Justice concerning all matters touching or having to do with Reference/Arbitration No. ( ).

Given under my hand this .....day of .....20 .....

at (Address)

(Signature)

**COMMISSIONER FOR OATHS/NOTARY PUBLIC**

**FORM C - NOTIFICATION**

**IN THE COMESA COURT OF JUSTICE**

..... **DIVISION**

**AT**.....

**CASE NO. .... OF 20.....**

.....**APPLICANT**

**VERSUS**

.....**RESPONDENT**

**NOTIFICATION**

**(Rule 25 (1))**

To: .....

1. ....

.....

You are hereby notified that the above named Applicant has instituted a reference/claim against you, copy of which is annexed hereto. You are hereby required to file a response or written statement of defence within .....days from the date of service hereof in default whereof the claim will be heard and determined in your absence.

Given under my hand and seal of the Court, this .....day of ..... 20.....

.....

**REGISTRAR**

**FORM D - AFFIDAVIT OF SERVICE**

**IN THE COMESA COURT OF JUSTICE**

..... **DIVISION**

**AT**.....

**CASE NO.** ..... **OF 20**.....

..... **APPLICANT**

**VERSUS**

..... **RESPONDENT**

**AFFIDAVIT OF SERVICE**

**(Rule 26 (1))**

I ..... of ..... and Counsel/ a process server of the Court make oath and state as follows:

(1) On ....., 20 ....at ..... (time) I served the notification in this case on ..... at ..... (Place) by tendering a copy thereof to her/him and requiring a signature on the original. She/He signed/refused to sign the notification. She/He was personally known to me/identified to me by ..... who is known to me.

(2) Not being able to find ....., the respondent on ....., 20..... at ..... (time) I served the notification on ..... (Name) an adult member of the family of the respondent who is residing with her/him.

(3) Not being able to find ..... the respondent or any person on whom service could be made, on ....., 20..... at ..... (time), I affixed a copy of the notification to the outer door of ..... being the house in which she/he ordinarily resides/ carries on business/personally works for gain. I was accompanied by..... who identified the house to me.

(4) The original notification is annexed to this affidavit.

(5) (Otherwise specify the manner in which the notification was served).

.....

**DEPONENT**

**SWORN** by the said .....this ..... day of ....., 20.....

**BEFORE ME:**

**COMMISSIONER FOR OATHS/NOTARY PUBLIC**

**FORM E - NOTICE OF MOTION**

**IN THE COMESA COURT OF JUSTICE**

..... **DIVISION**

**AT**.....

**CASE NO**.....**OF 20**.....

.....**APPLICANT**

**AND**

.....**RESPONDENT**

**NOTICE OF MOTION**

**(Rule 41 (4))**

**TAKE NOTICE** that this Honorable Court shall be moved on the.....day of .....20.... at ..... O'clock in the forenoon/afternoon or soon thereafter as Counsel for the applicant shall move the Court for orders that:

1. ....
2. And for an order that the costs of and incidental to this application abide the result of the application.

**TAKE FURTHER NOTICE** that the application will be supported by the affidavit of.....  
.....

Sworn on .....day of .....20....

The address for service of the applicant is.....  
.....

Dated this .....day of .....20....

**SIGNED** .....

Counsel for the Applicant

**LODGED** in the Registry at ..... on the ..... day of ..... 20.....

.....

**REGISTRAR**

**DRAWN AND FILED BY:**



**FORM F - AFFIDAVIT**

**IN THE COMESA COURT OF JUSTICE**

..... **DIVISION**

**REFERENCE/APPLICATION/CLAIM NO .....OF 20.....**

.....**APPLICANT**

**VERSUS**

.....**RESPONDENT**

**AFFIDAVIT**

**(Rule 41 (5), 43(2))**

I ..... of ..... solemnly affirm/ make oath and state as follows:

(1) That.....  
.....

(2) That.....  
.....

(3) That.....  
.....

(4)That I do hereby verify that what is stated herein above is true to the best of my knowledge, information and belief.

**SWORN** by the said .....this ..... day of ....., 20...

.....

**DEPONENT**

**BEFORE ME:**

**COMMISSIONER FOR OATHS/NOTARY PUBLIC**

**FORM G - NOTICE OF WITHDRAWAL/DISCONTINUANCE**

**IN THE COMESA COURT OF JUSTICE**

..... **DIVISION**

**REFERENCE/APPLICATION/CLAIM NO .....OF 20.....**

.....**APPLICANT**

**VERSUS**

.....**RESPONDENT**

**NOTICE OF WITHDRAWAL/DISCONTINUANCE**

**(Rule 45(1))**

**TAKE NOTICE** that the above named Applicant and Respondent have reached a settlement of their dispute in the above stated reference on the -----day of -----20-----and hereby declare the abandonment/ withdrawal of the same reference.

**DATED** this ..... day of .....20...

**SIGNED**..... ..

Counsel for Applicant

Counsel for Respondent

**LODGED** in the Registry at .....on the .....day of .....20.....

**FORM H - THIRD PARTY NOTICE**

**IN THE COMESA COURT OF JUSTICE -**

**FIRST INSTANCE DIVISION**

**REFERENCE/APPLICATION NO .....OF 20.....**

.....**APPLICANT**

**VERSUS**

.....**RESPONDENT**

**THIRD PARTY NOTICE**

**(Rule 52)**

(Issued pursuant to the order of the Court dated ....., 20....)

To: ..... of (address) .....

... Take notice that this action has been brought by the applicant against the respondent. In it the applicant claims against the respondent in accordance with the attached plaint.

The respondent claims against you (here state nature of claim against third party, for instance "for indemnity", contribution" or "the following relief or remedy" namely .....") on the grounds that (state the grounds of the claim).

(\* ) And take notice that if you wish to dispute the applicant's claim against the respondent, or the respondent's claim against you, you must file your statement of defence within twenty one (21) days after the service of this notice on you, otherwise you will be taken to admit the applicant's claim against the respondent and the respondent's claim against you and you will be bound by any judgment given in the suit.

**Dated** the ..... day of ....., 20.....

***Counsel for the Respondent.***

Note - \* Delete this paragraph if the notice is served on a party who has already appeared in the suit.

**FORM I - NOTICE OF DATE OF HEARING**

**IN THE COMESA COURT OF JUSTICE**

..... **DIVISION**

**AT**.....

**CASE NO.**.....**OF 20**.....

.....**APPLICANT**

**VERSUS**

.....**RESPONDENT**

**NOTICE OF DATE OF HEARING**

**(Rule 54 (5))**

**TAKE NOTICE** that the above case has been fixed for hearing on..... day of .....20..... at  
..... O'clock before Justice(s).....

**YOU ARE** required to appear in this Court without fail and you must produce on that day all the documents upon which you intend to rely in support of your case.

**GIVEN** under my Hand and Seal of the Court this..... day of.....20.....

.....

**REGISTRAR**

**TO BE SERVED UPON:**

1. ....

.....

2. ....

**FORM J- SUMMONS TO WITNESS  
(Rule 55(6))**

**IN THE COMESA COURT OF JUSTICE**

..... **DIVISION**

**AT**.....

**CASE NO.....OF 20.....**

..... **APPLICANT**

**VERSUS**

..... **RESPONDENT**

To: .....

**WHEREAS** your attendance is required to give evidence and/or produce documents described as .....  
..... on behalf of .....the applicant/respondent in the above  
stated case/reference, you are hereby required (personally) to appear before this Court on the .....day of  
.....20 ....., at..... O'clock in the forenoon, and/or on such other date or dates to which the case  
may stand adjourned, and not to depart thence without leave of the Court.

If you fail to comply with this order without lawful excuse, you will be subject to the consequences of non-attendance laid down in Rule 55 of the COMESA Court of Justice rules.

**GIVEN** under my hand and seal of this Court, this .....day of..... 20....

.....

**REGISTRAR**

**NOTICE:** - (1) The money for your travel by road/air and other expenses amounting to .....has been deposited in Court and will be paid to you by the Registrar when you attend.

To be signed by person to whom summons is addressed:

I..... hereby acknowledge the receipt of a duplicate of this summons.

Signature .....Date.....

This summons was served by me on the above named on the ..... day of ..... 20....

at .....O'clock by delivering a copy thereof to her/him and requiring her/his signature as the acknowledgement of service.

I effected service as aforesaid in the presence of .....of .....by whom the said ..... was pointed out to me.

.....

**PROCESS SERVER**

**DATED** this ..... day of..... 20.....

.....

**COMMISSIONER FOR OATHS/NOTARY PUBLIC**

**FORM K - WITNESS OATH/AFFIRMATION**

**WITNESS OATH/AFFIRMATION**

**(RULE 62 (1))**

Before giving her/his evidence, the witness shall take oath or affirm as follows:-

"I..... Solemnly Swear/Affirm that I shall tell the truth, the whole truth and nothing but the truth."

**FORM L - NOTICE OF APPEAL**

**IN THE COMESA COURT OF JUSTICE**

**APPELLATE DIVISION**

**AT.....**

**APPEAL NO.....OF 20.....**

**IN THE MATTER OF .....**

**BETWEEN**

..... **APPELLANT**

**AND**

..... **RESPONDENT**

*(Being an Appeal from the .....(\*) of the First Instance Division*

*at .....(Justice (s) .....) dated.....20..... in .....*

*.....Reference/Claim/Application/ No.....of 20.....)*

**NOTICE OF APPEAL**

**(Rule 89 (1))**

**TAKE NOTICE** that .....being dissatisfied with the decision of the Court of First Instance Division (Justice (s) .....given at .....on the ..... day of ..... 20...., intends to appeal to the Appellate Division of the COMESA Court of Justice against the whole of the said decision/ such part of the said decision as decided that .....

The address for service of the Appellant is.....  
.....

It is intended to serve copies of this notice on .....  
.....

**DATED** this ..... day of .....20.....

**SIGNED**.....

Counsel for the Appellant

To: The Registrar of the COMESA Court of Justice

**LODGED** in the Registry of the COMESA Court of Justice this.....day of.....20.....

.....

**REGISTRAR**

**(\*) Insert judgment, decree, or order as the case may be**



**FORM M - MEMORANDUM OF APPEAL**

**IN THE COMESA COURT OF JUSTICE**

**APPELLATE DIVISION**

**AT.....**

**APPEAL NO.....OF 20.....**

**BETWEEN**

.....**APPELLANT**

**AND**

.....**RESPONDENT**

*(being an appeal from the.....(\*) of the First Instance Division*

*at .....( Justice(s ) .....) dated..... 20.....arising from*

*Reference/Application No. .... of 20.....)*

**MEMORANDUM OF APPEAL**

**(Rule 90 (1))**

....., the above-named appellant appeals to the Appellate Division against the whole/part of the above-mentioned decision on the following grounds -

(1).....

(2) .....

It is proposed to ask the Court for an order(s) that -

(1) .....

(2) .....

**DATED** this ..... day of ....., 20.....

**SIGNED:**.....Counsel for the Appellant

Copies to be served on.....

**LODGED** in the Registry at.....on the .....day of..... 20.....

.....

**REGISTRAR**

***(\* Insert judgment, decree, or order as the case may be***

**FORM N - CROSS-APPEAL**

**IN THE COMESA COURT OF JUSTICE**

**APPELLATE DIVISION**

**AT.....**

**APPEAL NO.....OF 20.....**

**BETWEEN**

.....**APPELLANT**

**AND**

..... **RESPONDENT**

*(being an appeal from the.....(\*) of the First Instance Division*

*at .....( Justice(s ) .....) dated..... 20.....arising from*

*Reference/Application No. .... of 20.....)*

**NOTICE OF CROSS-APPEAL**

**(RULE 97(1))**

**TAKE NOTICE** that on the hearing of this appeal, the above-named respondent will contend that the above-mentioned decision ought to be varied or reversed to the extent and in the manner and on the grounds hereinafter set out, namely-

(1) .....

(2) .....

It is proposed to ask the Court for an order(s) that-

(1).....

(2).....

It is intended to serve copies of this notice on.....

**DATED** this..... day of..... 20.....

**SIGNED:**.....

Counsel for the Respondent

**LODGED** in the Registry at ..... on the ..... day of ....., 20.....

.....

**REGISTRAR**

***(\* Insert judgment, decree, or order as the case may be***

**FORM O - NOTICE OF WITHDRAWAL OF AN APPEAL**

**IN THE COMESA COURT OF JUSTICE**

**APPELLATE DIVISION**

**AT.....**

**APPEAL NO.....OF 20.....**

**BETWEEN**

.....**APPELLANT**

**AND**

.....**RESPONDENT**

*(being an appeal from the.....(\*) of the First Instance Division*

*at .....( Justice(s ) .....) dated..... 20.....arising from*

*Reference/Application No. .... of 20.....)*

**NOTICE OF WITHDRAWAL OF APPEAL**

**(Rule 98 (1))**

**TAKE NOTICE** that the Appellant

.....

(Name)

hereby discontinues all further proceedings in the above mentioned matter, or such part thereof as relates to .....

(Set out)

**DATED** at..... this..... day of ..... 20.....

.....

Counsel for the Appellant

Address for service .....

**TO: THE REGISTRAR**

The appellant .....of.....

(Name)

(Address of service)

The respondent .....**of**.....

(Name)

(Address of service)

**FILED THIS** .....day of..... 20 ..... at.....

.....

**REGISTRAR**

**SCHEDULE IV**

**MISCELLANEOUS**

1. **CURRENCY POINTS**

For purposes of these Rules, Five (5) currency points shall be deemed to be an equivalent of 100 USD.

2. **MANNER OF DRESS FOR COUNSEL**

Counsel for the parties shall appear before the Court in plain black gowns, formal black or dark grey suits, white shirts with ties and black shoes.











