

GUIDELINES FOR COURT BROKERS AND COURT PROCESS SERVERS



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PREFACE

The Judiciary of Tanzania (JoT) is, according to article **107A** of the Constitution of the United Republic of Tanzania, 1977 the authority which has the final decision in justice dispensation. In the process of dispensation of justice, the court has to among other things, afford all litigants right to be heard, award compensation to victims for wrongdoing committed by other persons, and avoid delays of justice without reasonable grounds. The duty to avoid delay is reflected in the Vision of the JoT. The Vision calls for "Timely and Effective Justice for All". It is also reflected in the Five Years Strategic Plan 2015/2016 – 2019/2020. The Strategic Plan provides for expeditious access to justice for all, and efficient and effective case management system geared at accelerated case disposal.

Parties can timely appear and argue their case before the courts of law only when they are properly notified of the litigation in which they are involved and they have all case documents properly served upon them. A decree holder will also timely benefit from the fruits of his decree only when the execution system is effective and efficient. The Court Process Servers (CPS) and Court Brokers (CB) are the key players in the Court service and execution. Thus, the powers and functions of the court process servers and court brokers must be monitored and regulated.

The Chief Justice (CJ) on 22nd September 2017 promulgated the Court Broker and Process Servers (Appointment, Remuneration and Disciplinary) Rules through G.N. No. 363 of 2017 (the Rules) which regulate the appointment,

remuneration and disciplinary process for CB and CPS. The CJ also issued the Code of Conduct for CB and CPS under the 2nd Schedule to the Rules.

Considering the importance of having Guidelines for effective implementation of the Rules, the Jaji Kiongozi further nominated a group of individuals from various stakeholders to develop these Guidelines for CB and CPS. These Guidelines are an important tool for the smooth implementation of the Rules. They provide guidance to the Committee, CB, CPS and other Court officers for the implementation of the Rules.



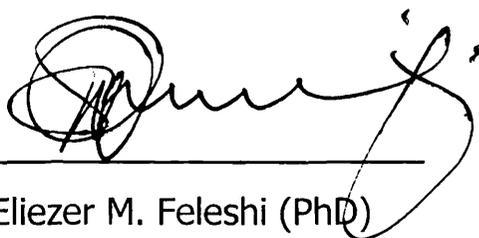
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CHIEF JUSTICE

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Eliezer M. Feleshi (PhD)

PRINCIPAL JUDGE

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ACRONYMS

AG	-	Attorney General
CAT	-	The Court of Appeal of Tanzania
CB	-	Court Broker
CBPS	-	Court Brokers and Process Servers
CCA	-	Chief Court Administrator
CPS	-	Court Process Server
DR	-	Deputy Registrar
IJA	-	Institute of Judicial Administration
JoT	-	Judiciary of Tanzania
PCCPC	-	Primary Court Civil Procedure Code
JK	-	Jaji Kiongozi
PS	-	Proclamation of Sale
TLS	-	Tanganyika Law Society
TOR	-	Terms of Reference

1.0 INTRODUCTION

These Guidelines are for the implementation of the Court Brokers (CB) and Court Process Servers (CPS) Rules, promulgated under G.N. No.363 of 2017. They also serve as a guiding tool or checklist for the activities by the CB and CPS in the discharge of their duties. The guidelines, therefore, provide mechanisms on how to implement the above Rules. In any activity which involves services of the CB and CPS, the guidelines provide the manner and mode in which such activity is to be carried out. Failure to abide by the Rules, for which these Guidelines are meant to facilitate their implementation, constitutes a breach which may invite a hand of Court Brokers and Process Servers Appointment and Disciplinary Committee, against the person who does so. It is expected, therefore, that CB and CPS will take into consideration these Guidelines in executing the orders of the Court.

2.0 REASONS FOR THE GUIDELINES

CB and CPS are the ones who serve the Court documents and execute orders and decrees of the Court pursuant to their responsibilities provided under the Rules. For a long time, the discharge of duties of the CB and CPS has led to both credits and complaints. The credits are associated with good performance of the Courts and the Judiciary at large. On the other hand, complaints relate to misconducts in the discharge of duties of the CB and CPS which distort the image of the Judiciary. The office of the Jaji Kiongozi as an overseer and regulator of the CB and CPS discipline prepared rules which have now been amended with Code of Ethics for CB and CPS made

part of the rules hence need to develop Guidelines for smooth Operationalisation.

3.0 DEFINITIONS OF KEY TERMS

3.1 Registrar

Registrar of the High Court including the Deputy Registrar of the High Court.

3.2 Court broker and process server

A Court Broker is a person appointed under Rule 5 whereas Court Process Server is a person appointed under Rule 5(2).

3.3 Service of the process

The procedure by which a party to a lawsuit gives an appropriate notice of either initial legal action or notice for execution against another party in the exercise of jurisdiction of the Court.

3.4 Resident Magistrate –in–charge

The Magistrate In–Charge of the region in which the Court Broker or Court Process Server is practicing or wishes to practice.

3.5 Certificate of competency

This means a certificate of competency in discharging duties of a court broker or Court Process Server issued by IJA or any other Institution recognized by the committee as per Rule 6(2)(e).

3.6 Certificate of Appointment

Certificate appointing CB or CPS to undertake responsibilities of a CB and or CPS pursuant to Rule 5(7).

3.7 Summons

A document of the court calling or demanding/compelling the procuring of the person indicated in that document to appear before the court on the date and place indicated on the document.

3.8 Agent

A person who is authorized to do or act on behalf of another person.

3.9 Committee

Means the CBS and CPS Appointment and Disciplinary Committee.

4.0 APPLICABILITY OF THE GUIDELINES.

- 4.1 The Guidelines apply to all Courts particularly the Court of Appeal, High Court, Court of the Resident Magistrate, District Courts and Primary Courts.
- 4.2 In respect of the Court of Appeal, the Guidelines apply, only on matters related to the process of service, and only when the Court of Appeal Rules are silent on these matters (Rule 22 (1) of the Court of Appeal Rules). Scales of remuneration provided under these Rules also apply to the service made in the CAT.
- 4.3 Rules of execution do not apply to the Court of Appeal since the Court of Appeal cannot be the executing court (section 32 (a) of the CPC).
- 4.4 Rules of service and execution under the Rules apply before Primary courts only when the service and execution in the Primary court are affected by the CPS and CB respectively. In that case, the scale of remuneration under the Rules will apply. However, rules of execution

and services will be as prescribed under the Magistrates' Courts (Civil Procedure in Primary Courts) Rules (Rule 60 of and rule 1 of the 2nd schedule to PCCPC).

5.0 INTENDED USER GROUP

5.1 Users of the Guidelines will be the following:

- (i) **CB**–In execution of orders of the Court.
- (ii) **CPS**–In serving summons and other legal documents of the Court.
- (iii) **The Court**–in regulating activities by the CB and CPS.
- (iv) **The public officer**–See rule 31–As in CB and CPS. The discharge of public officer duties is in respect of rule 31 not otherwise.
- (v) **Practicing Advocates** –To view whether the Guidelines were followed when representing parties. An Advocate may wish to advise parties in respect of the Guidelines.
- (vi) Any person affected by acts or omissions by the CBS or CPS.

6.0 APPOINTMENT OF CBS AND CPS

6.1 Appointing authority for CBS and CPS is the Committee

6.2 The composition of the committee (Rule 3 of the GN 363 of 2017) shall be as follow.

- (i) Jaji Kiongozi or his representative, who shall be the chairperson.
- (ii) One member representing **TLS**.

- (iii) One member representing the Attorney General.
- (iv) One member representing CBs.
- (v) One member representing CPS.
- (vi) The Registrar who shall be the Secretary to the Committee.

6.3 Functions of the Committee (Rule 4 of the GN 363 of 2017)

- (i) To consider applications and issue Practicing Certificate of CBs and PCS.
- (ii) To cause to be advertised in the *newspaper*, that is, a widely spread newspaper of names of appointed CBs & PCS.
- (iii) To hear and determine misconduct allegations made against CBs and PCS and to take necessary measures under the Rules or any written laws.
- (iv) To establish sub – Committee at High Court Centres to perform any of its functions on its behalf.
- (v) To monitor compliance with Rules of 2017

6.4 Appointment Process

6.4.1 Qualification (Rules 6 of 2017)

The qualification for one to be appointed as a CB and CPS

- i. He must be above 18 years of age.
- ii. He must be citizen and resident of Tanzania.

- iii. He must have at least attained an ordinary secondary school level of education.
- iv. He must be fluent in Kiswahili and English.
- v. He should be a Director of a company registered in Tanzania or a partner of an entity registered and licensed under the General Auctioneers Act.
- vi. He must have a certificate of competency in the discharge of CB or PC duties issued by **IJA** or any other Institution recognized by the Committee.
- vii. He must be conversant with rules of execution or service of Court process as the case may be under relevant laws.
- viii. He must have a good reputation, high integrity, good financial standing and adequate and safe premise for storage of goods.
- ix. He must have obtained or undertaken steps to obtain a business license relating to the function of the Process server.

Explanatory note– Qualifications number **v** and **viii** do not apply to CPS as is qualification **ix** which does not apply to CBs.

6.4.2 Mode of application

(1) The application should be in prescribed form 3 for court broker and prescribed form 4 for the court process server as attached to these Guidelines.

(2) The application should be submitted to the Secretary of the Committee through RM in-charge in accordance with Rule 6(3) for CB and CPS.

(3) Together with the documents required to be attached in the aforesaid forms, the Court Broker or Court Process Server must attach the following documents:

- i. Certificate of Competency and proof of fluency in Kiswahili and English languages.
- ii. Certified copy of TIN Certificate.
- iii. Bond of 400 million with 2 sureties in form 5 and
- iv. Proof of payment for nonrefundable application fee of Tshs.30,000/= for Court Process Server and Tshs.250,000/= for Court Broker in accordance with Rule 6(2)(c)(j) and (i) of the Rules. The sample form for the CBs and CPS showing the bond is appended as **Folio G**.

6.4.3 Persons not eligible for appointment

The following persons are not eligible to apply for appointment as **CB** or **CPS** in accordance with Rule 5(3) of the Rules:

- i. A person formerly convicted of an offence of fraud, dishonesty or immorality and sentenced for a term exceeding ten months within past ten years.
- ii. A person who had his Certificate previously revoked.
- iii. A sitting Judge or Magistrate or Officer of the Court.
- iv. A practicing advocate.
- v. A Member of Parliament.
- vi. A Councilor.
- vii. A person employed in public service.
- viii. A person of unsound mind as per Rule 5(3) of the Rules.

6.4.4 Processing the Application

(1) The Committee should process the application within two months from receipt of the application by the Committee.

(2) The applicant shall appear to the committee for an interview and upon passing at the required grade, he may be appointed as per Rule 3 of the Rules.

(3) The sample application form for appointment as CB is appended as **Folio E** whereas sample application for appointment as a CPS is appended as **Folio F**.

7.0 OATH OF OFFICE AND CERTIFICATE

(1) The certificate of appointment of CBs and CPS is provided in form 1 and 2 respectively including their oath/affirmation in office as appended in terms of Rule 5 of the Rules.

(2) The sample oath for the CB and CPS is annexed as **Folio A** on the appendix.

(3) The certificate shall be valid for 1 year for CB and 3 years for CPS. The certificate for CPS and CB shall expiry on the 31st January of the 3rd year and 31st January of the 1st year respectively. The certificate of appointment as CB is appended as **Folio C**, as is the Certificate for appointment as CPS which is appended as **Folio D**.

Explanatory note– the oath has not been provided under the Rules but the same has been designed to create a sense of responsibility and accountability to both CB and CPS.

8.0 SERVICE OF SUMMONS AND DOCUMENTS

The Order, Ruling, copies of Judgments, Proceedings, Decree, Notice of engagement and any other documents as ordered by the Court are among the documents to be served by CPS.

8.1 Mode and proof of service

The service can be done manually or electronically.

8.1.1 Personal service

The personal service is conveyed by the CPS to the intended person. The service shall be direct to the person. Proof of service is by

endorsement acknowledging receipt of the summons by the recipient. The CPS has to swear or affirm an affidavit showing the time when and the manner in which the summons was served, the name and address of the person (if any) identifying the person served and witnessing the service to the intended person.

8.1.2 Service on Agent

(1) Service can be conveyed by CPS to the agent of the intended person if that person has identified himself through the agent. Proof of service is a service in person. Advocates of the parties are deemed to be an agent of the parties.

(2) Service may be affected on the agent when:

- (i) It is impracticable to serve the intended person in person.
- (ii) Where the intended person is not ordinarily a resident within the jurisdiction of the Court but has an agent within the jurisdiction of the Court.
- (iii) When the suit is founded on immovable property and the defendant is not within the jurisdiction of the Court, the service can be made to an agent of the defendant or the person-in-charge of the property.

8.1.3 Service to an adult member

The summons is affected to the adult member who is of sound mind within the family when:

- (1) When the defendant is absent from the residence.

- (2) No likelihood of being found within a reasonable time and has no agent. Proof of service is as in-person and agent service.

8.1.4 Affixation or service inconspicuous part

(1) When the intended person is not found, and there is no agent or any other person authorized to receive the service, the service can be done through affixation on the door or any other conspicuous parts, or where the intended person ordinarily resides or does his business.

(2) The proof of service is by an affidavit stating to have affixed the copy, circumstances under which he did so, indicating the name and the address of the person by whom the house was identified and whose presence the copy was affixed to.

8.1.5 Substituted service

(1) This is a type of service effected when all other modes of service have failed or when the intended person is avoiding service and he cannot be served ordinarily.

(2) It could be by affixing the summons in conspicuous part in the Court house and some conspicuous part of the house of the intended person or place of business or by the publication of the summons in the local, serious and widely circulating newspaper.

(3) Proof of service is by swearing an affidavit indicating the time and the manner in which the service was effected. In case of publication, a copy of the newspaper in which the summons was published has to be filled in Court.

8.1.6 Service by Post

When substituted service has not proved convenient, service by post may be an option. The proof is by producing summons returned and endorsed with acknowledgment of receipt. By a letter or other document from the receiver acknowledging that, stands proof that the addressee has received the document. Other documents will include the memo showing to have received the document. It could be through evidence of producing a postal packet supported with a certificate of CPS that the postal package contained the summons.

8.1.7 Service outside the jurisdiction of the court

(1) When the person intended to be served is outside the jurisdiction of the Court, the intended summons will be sent by sending it to the receiving Court where the intended person is residing.

(2) In the case of Zanzibar, it is sent to the High Court of Zanzibar. Proof of service is by sending a served summons from the Court where the summons was sent in proof of the manner the same was served.

8.1.8 Service outside the country

If the intended person is believed to be outside the country and has no agent in the country, the Court may order service of summons by post, to intended persons own agent and Court of the country where the intended person is believed to reside. Proof of service is through endorsement from Court of the country in which the summons was sent indicating a series of the summons.

8.1.9 Service in prison

When the intended person is confined in the prison, service is done through officer-in-charge of the prison. Proof of service is by the endorsement of the officer-in-charge of the prison indicating acknowledgment of the person served with a certificate of service.

8.2.0 Service in armed forces

When the intended person is a member of the armed forces of the Republic, the Court shall send the summons to the intended person through his commanding officer. Proof of service is by the endorsement of the Commanding Officer of the armed forces indicating acknowledgment of the person served with a Certificate of service.

8.2.1 Service on officers of the government and local government authorities

When the intended person is an officer of the Government or local government authority, the Court may send the summons to the intended person through the head office of the intended person. Proof is by the endorsement of Head of the Office indicating acknowledgment of the person served with Certificate of service.

8.2.2 Service of summons to a corporation

The summons may be served on the Secretary or any Director or other Principal Officer of the corporation or by post addressed to the corporation at the registered office or the business place of the Government.

8.2.3 Service of summons to the Central Government

Service may be served to the Solicitor General, Government Ministry, Department or an Officer concerned.

8.2.4 Service to the Local Government

Service of a summons in the Local Government Authorities, the summons should be delivered to the chairperson or Chief Executing Officer of the Authority.

8.2.5 Electronic Service

Service of summons or documents through the electronic system – it could be by e-mail or facsimile. Proof of service is by Delivery Status Report to be presented in Court either in facsimile or email.

9.0. EXECUTION PROCESS

(1) Execution is a final stage towards the finalization of a case in a Court of law. The Court Broker has to be involved at this stage to execute Orders of the Court through attachment, delivery of property and sale of a property.

(2) The application for execution shall be attached to a Decree of the Court. The execution is done by both the Court and the CB. The Court and the CB shall keep and maintain an updated register of all the executions containing particulars as shown in the 1st schedule to the Rules in accordance with rule 20 of the Rules.

(3) When execution is ordered to proceed, the Court Broker will be appointed and notified to execute the Court Order. The notification from Court will be

accompanied by an order of the Court showing the mode and manner the order will be executed by the CB.

(4) Every execution order shall bear the date of the day in which it is issued, signed by a Judge or Magistrate or DR sealed with the seal of the Court.

(5) Where the Decree is to be executed through attachment, the Court will issue an attachment Order to the CB.

(6) The CB shall serve to the Judgment Debtor, a notice of not less than 14 working days to settle Decree of the Court. If the Decree is not settled within the 14 days of the notice, the Decree Holder should file a search report and cause the property in question to be evaluated by a competent person or authority in Court if the property is registered land.

(7) Every application for execution shall be accompanied by a Decree bearing the same date with Judgment of the Court.

(8) The CB shall file a written report showing the mode and manner the order of Court was complied with. The CB shall not attach the property whose value exceeds 5% of the Decree plus the execution expenses. The CB should take note that, no warrant of attachment should be executed between sunset and daybreak unless leave of the executing Court is granted.

9.1 Attachment of Movable Property

(1) Attachment of movable property is by seizure of actual property and keeping the property in custody of the CB.

(2) The CB has to safeguard the attached property. If the property is subject to speedy and natural decay or when the expense of keeping it is in custody

is likely to exceed its value, the CB may sell it at once after obtaining the order of the Court which issued the order.

(3) In any case, if the sale is to take place, the CB shall not conduct auction before the expiration of 15 days from the date of service of the proclamation of sale.

9.2 Attachment of Immovable Property

Attachment of immovable property is done when the CB saves prohibitory order to the Judgment Debtor and a copy of the order is affixed on a conspicuous part of a building and from there, the CB bears the duty to safeguard the premises.

9.3 Attachment of salary

Service of the order of the Court is done either by CPS or CB by issuing a withholding order of the salary of the employee to the employer or paying authority.

9.4 Delivery of Movable and Immovable Property

(1) The delivery of the movable property in question shall be actual. If the movable property is in possession of some other persons other than the Judgment Debtor, delivery of the said property is made by giving notice to the person in possession of the property prohibiting him to deliver possession of the property to any other person except the purchaser.

(2) The delivery of the immovable property is by affixing copy of order of the Court on a conspicuous part of the immovable property and proclaim under public pronouncement if it is occupied by a tenant. If it is not in

occupation by a tenant, delivery is by putting the purchaser or any other person the purchaser may appoint to receive delivery of the property on his behalf and if need be by removing the person who refuses to vacate the premises.

9.5 Eviction and demolition

The CB shall in case of an eviction or demolition of landed property, serve the Judgment Debtor with a notice of not less than 14 working days before eviction or demolition. In case of demolition or eviction, the CB shall make sure the order is executed during working days, should there be a departure from this rule, leave from the executing court should be sought and granted.

9.6 Sale in the absence of attachment

If the intended sale is not resulting from attachment, a CB has to be appointed and notified of the appointment to execute the sale order. If the property has not been evaluated, the Decree Holder shall cause search and evaluation of the immovable property with an evaluation report submitted to the Court before the sale.

9.6 Proclamation of Sale

(1) Where the Decree has not been settled after an attachment order, the Court will issue a PS in a prescribed form, advertised in the newspaper and affixed to the property intended to be sold and copy of the publication filed in Court if the Court so directs.

(2) The Court shall issue a proclamation of sale upon application signed and verified by CB indicating the current market value of the property to be sold

and the forced market value of the same for the Court to ascertain whether a Decree can be fully satisfied.

(3) The PS should be affixed to the conspicuous part of the Court and the building to be sold, served to the Judgment Debtor. If the Court orders for the order to be published in the Gazette and or local and widely circulated newspapers, the PS shall contain the property to be sold, name of the Court issuing the order, name of the parties involved in the order, number of the case, Court issuing a Decree and expression of the day, time and place where the sale is intended to take place. It should also indicate the amount in figures to be settled including costs of the execution.

(4) The PS shall be signed by Magistrate in-charge or DR; sealed, dated and signed. The sale shall not take off by auction until the expiration of 30 days from the date of publication.

9.7 Auction-who may qualify to bid

Any person except a Court Officer, the CB or any other person on his behalf may bid. However, the Decree Holder upon leave of the Court may also bid.

9.8 Sale

(1) The sale shall be by public Auction and should be during working days unless the leave of the court is sought and obtained. The time of sale shall be not between sunset and daybreak.

(2) The Decree Holder may settle the Decree with costs of execution before the fall of the hammer. If the Decree is not settled before the fall of the hammer, the highest bidder shall be declared a successful bidder by the CB.

The winner shall promptly deposit 25% of the purchasing price on the same day while the remaining 75% of the purchasing price must be paid within 15 days after the auction.

(3) All the money should be paid in the specific Court account designated for execution. If 75% is not paid within 15 days, the already paid 25% will be forfeited and the Auction will be re-advertised in accordance with the above procedure.

(4) If the 75% is duly paid within the prescribed period, the sale shall be declared absolute and a certificate of Sale shall be issued by the Court.

9.9 Properties not liable for attachment

The following are not subject to attachment and sale including:

- a) Garments, cooking vessels, beds, beddings, and personal ornaments.
- b) Tools of artisans and where the Judgment Debtor is agriculturalists, his implements of husbandry and such cattle and seed grain which enable him to earn his livelihood.
- c) House and other buildings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to an agriculturist and occupied by him.
- d) Land used for agricultural purposes by a village, an Ujamaa village, a co-operative society or an individual whose livelihood is wholly dependent upon the use of such land.

- e) Any residential house or building or part of the house or building occupied by the Judgment Debtor, his wife, and dependent children for residential purposes.
- f) Salary of an employee to the extent of whole of the salary where it does not exceed two-thirds of the salary in any other cases, the expense allowances of any employees, an expectancy of succession by survivorship or other merely contingent or possible right or interest, a right to future maintenance and any other property declared by any written law not be liable for attachment.
- g) The property belongs to the Government or Local Government Authorities.

9.10 Garnishee Order Nisi

(1) Where the execution process involves garnishment, the Court will issue a garnishee order nisi through a CB or CPS to serve the said order directing the third party (Garnishee) and it can include a Bank where the Judgment Debtor operates his account directing him to attach the said account and require him to furnish the Court with a report through a CB or CPS on how the order was complied with or refused to be complied with including status of the Judgment Debtors account in not less than 14 days.

(2) In absence of any objection against the garnishee order nisi in 14 days and upon a report filed in court by a third party (Garnishee), the Court shall issue a Garnishee order absolute after 30 days from the date when the garnishee order nisi was issued. The order is to direct the garnishee to pay and remit the sum of money stated in the order into the special Judiciary

account supervised by the Chief Court Administrator who will upon the order of the Court, pay the Decree Holder.

9.11 Arrests and detention as a civil prisoner

(1) The Court shall issue a warrant of arrest against the Judgment Debtor and the order shall be served to the CB or any Public Officer who will arrest the Judgment Debtor to cause his appearance to the Court. Before the Court issues an order for arrest, the Decree Holder shall pay and remit the sum of the money determined by the Judge or Magistrate as costs for arrest and subsistence allowances of the Judgment Debtor from the time of his arrest until he is brought to the Court into the special Judiciary account supervised by the CCA.

(2) If the Judgment Debtor settles the amount decreed plus costs of his arrest shall be released forthwith. The arrest in this part can be done at any time within 24 hours in any day, however, but no dwelling house shall be entered after sunset and before sunrise. The arresting officer is not allowed to break the house or any building in the cause of the arrest unless such house is in occupancy of the Judgment Debtor and has refused or in any way prevented access thereto.

9.13 Execution against the Government (section 16 of the Government Proceedings Act)

(1) The CB cannot either attach or sale a Government property except the CPS.

(2) Upon an application by the Decree Holder and upon a certificate issued by the Court containing particulars of the order, the CPS shall serve that

person the certificate order indicating the amount of the money payable to the permanent secretary to the Treasury or such other Government accounting officer as may be appropriate who will pay the money as per the certificate served to him by CPS on behalf of the Decree Holder.

9.14 Execution against the local government

According to section 194A of the Local Government (District Authorities) Act Cap. 287 and section 109B of the Local Government (Urban Authorities) Act Cap.288 as amended by Local Government Laws (Miscellaneous Amendment) Act, 2006, Act No. 13 of 2006, no execution, attachment or process of that nature can be issued against the District or Urban Authority except that the Director of the local authority has to cause to be paid out of the revenue of the authority the decreed amount.

10.0 REMUNERATION

(1) The scale for fees, allowances and other charges for CB and CPS in the discharge of their duties are provided under the 4th and 5th schedule to the rules. Under special circumstances, the Court may allow special fees and allowances for example where the execution or service is to be done out of the geographical boundary of the city or township. It is the Court that determines the fees and allowances levied and collected payable to the CB and CPS.

(2) The CB and CPS shall within 30 days after either the service or execution process file the Bill of Costs in the executing Court whereby the bill will be served to the parties to appear during hearing of the Bill and the Court shall deliver the ruling of the bill of costs within 14 days and the payment shall be

effected by the Court through an order of the Court for the bill of costs taxed preferably within 30 days from the date of an order. The CB and CPS shall be paid the taxed figure within 30 days.

10.1 Contents of Bill of Costs

Name of the Court, name of the parties, number of the case and shall have 5 columns accompanied by a certificate as to folios as shown in the sample annexed as **Folio C** on the appendix. If the CB and CPS are aggrieved by the decision of the Court, he may file reference before the High Court.

11.0 DISCIPLINARY/MISCONDUCT FOR BREACH OF THE RULES

The disciplinary authority for CB and CPS is the "Committee". The misconduct includes breach of the rules and breach of the Code of Conduct for CB and CPS.

11.1 Disciplinary procedure

(1) Any person with a complaint against a CB and CPS must lodge a written complaint, signed and dated by the complainant with Secretary of the Committee with the same served to CB or CPS who will reply to it within 21 days.

(2) The reply shall be submitted before the Secretary who will submit the same to the Committee which upon perusal of the reply, the Committee if finds a case against the CB or CPS, shall charge the CB or CPS against the breach.

(3) Upon charges, the CB or CPS will be served with the charges for him to reply within 14 days and the Secretary shall fix a hearing date of the case

before the Committee. This is in accordance with Rule 15 and 16 of the Rules.

11.2 CONTENTS OF THE CHARGE

(1) As the Rules are silent, the charge may contain the following contents namely:

- a) Name of the charged person.
- b) Address of the charged person.
- c) The breach or misconduct complained of.
- d) Time, date and place the alleged breach complained of was committed, if capable of being ascertained.
- e) It must be signed and dated by the Secretary.
- f) Name and address of the complainant.
- g) The charge must indicate the charging sections of the rules claimed to have been breached.

(2) The CB or CPS shall have a right for legal representation during the hearing of the case against him in accordance with Rule 16(5) of the Rules.

11.3 Sanctions

(1) Upon hearing of the charge, the Committee may dismiss the charges or uphold the charges. If the charge is upheld, the following sanctions may be imposed including:

- (a) Suspend the CB or CPS for a period, not more than 1 year.
- (b) Revoke the appointment of the CB or CPS.
- (c) Reprimand.

(d) Take any other necessary measures under any other written Law as the committee deems fit.

(2) Any property which came into the possession of the CB and CPS before the sanction is imposed must be surrendered to the Court which issued the execution process.

12.0 RENEWAL OF CERTIFICATE

(1) The CB and CPS certificates may be renewed upon application. Application for renewal is made to the Secretary through the RM in charge and is made in form 6 in case of the CB and form 7 in case of CPS.

(2) Application for renewal of the CB and CPS certificate shall be made not earlier than 31st October and not later than 31st December of the 1st and 3rd years respectively. Any application submitted after the expiry of the certificate may be considered upon showing good cause for delay by way of an affidavit.

12.1Renewal fees

A renewal fee for CPS is paid after approval of an application and the fees of Tshs.200,000/- paid before the grant of the certificate. For CB, the procedure is the same as CPS save that the CB shall pay Tshs.25,000/- as the renewal fee.

REFERENCES

1. The Constitution of the United Republic of Tanzania 1977 (as amended from time to time).
2. The Auctioneers (Application) Order Rules G.N. No.5 of 1929.
3. The Auctioneers Act [Cap. 227].
4. The Civil Procedure Code (Amendment of the 1st Schedule) Rules, 2019-G.N. No. 381 of 2019.
5. The Civil Procedure Code Act.
6. The Court Brokers and process Servers (Appointment, Remuneration and Disciplinary) Rules, 2017.
7. The Court Brokers and Process Servers (Appointment, Remuneration and Disciplinary) Rules, 2019.
8. The Criminal Procedure Act [Cap. 20].
9. The Government Proceedings Act of 1998.
10. The Judicature and Application of Laws Act [Cap. 358].
11. The Land Acts No.4 and 5 of 1999.
12. The Land Disputes Act, Regulations, 2003.
13. The Land Disputes Courts Act, 2002 (Act No. 2 of 2002).
14. The Law of Contract Act.
15. The Law of Marriage Act.
16. The Magistrate Courts Act.
17. The Matrimonial Proceedings Rules.
18. The Prisons Act.
19. The Probate and Administration Cause Act, [Cap. 352].
20. The Vienna Convention on Consular Immunity.
21. The Vienna Convention on Diplomatic Immunity.

APPENDIX

FOLIO A

OATH/AFFIRMATION FOR PROCESS SERVER AND COURT BROKER

I _____ of _____, a CB/CPS do hereby solemnly swear that I will maintain allegiances to the Judiciary of Tanzania, I will undertake to obey the laws and rules governing administration of the appointment, remuneration and disciplinary of the Court Broker and Process Server as well as other Orders as may be issued by the Court or the Committee. I will undertake to consider full responsibility for the act or omission to act, allow indemnity Company to indemnify for the loss through my insurance indemnity cover.

I will treat all parties with respect, compassion and professionalism in performing my duties for the Court and will conduct myself as **Court Broker and/or Process Server** to the best of my knowledge and with all good fidelity to the Court and impose upon myself this obligation without any mental reservation or purpose of evasion. So help me God.

Signature..... Name.....

CB/CPS

BEFORE ME:

.....

Chairman for Committee Signature

FOLIO B

CERTIFICATE OF APPOINTMENT OF A COURT BROKER

(Under rule 5 (5))

I,, the Registrar/Deputy Registrar of the High Court of Tanzania, hereby certify that.....***(insert name and details of Court Broker)*** has been appointed a Court Brokers for ***(Insert region for which is appointed)*** for a period of one year expiring on 31st day of December,

Dated at this day of 20.....

Seal

Registrar

FOLIO D

CERTIFICATE OF APPOINTMENT OF A PROCESS SERVER

(Under rule 5 (7))

I, the Registrar/Deputy Registrar of the High Court of Tanzania, hereby certify that..... ***(Insert name and details of process server)*** has been appointed a Process Server for ***(Insert area for which appointed)*** for a period of three years expiring on 31st day of December,
Dated at this day of 20.....

Seal

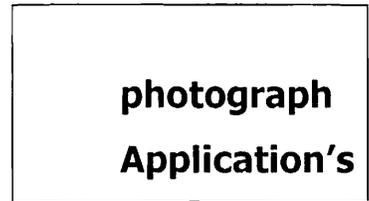
Registrar

FOLIO E

APPLICATION FOR APPOINTMENT AS A COURT BROKER

(Under Rule 6(3))

To: The Registrar
The High Court of Tanzania,
P.O. Box 9004,
Dar es Salaam.



1.hereby apply to be appointed a Court Broker for(Insert full name and region for which appointment is sought)
2. I carry the business of at
 - Physical address.....
 - Place of business.....
 - Postal address/code
 - Email address.....
 - Fax number
 - Cellular Number
 - Landline telephone number
 - Tax Identification Number
 - National Identification Number (where available)
3. I hold a valid general auctioneer's licence issued at on the day of 20.....A certified copy of my general licence for the current year is annexed hereto.

4. I hold a valid business licence issued on licence is attached hereto.
5. I speak, read and write the following languages fluently:
.....
6. I have the following facilities for the safe storage of goods. (*Describe the storage facilities, address, size and type of construction of the warehouse*)
7. I have a bank account number(s) and my bankers (s) is/are (*Attach a bank statement for the past twelve months*).
8. I hereby undertake that in the event of being appointed a Court Broker, I will maintain a policy or policies of insurance covering the goods which may from time to time be in my custody as Court Broker against theft, damage, and destruction by fire in the sum of not less than ***Tshs. 100,000,000/=*** or such sum as you may direct and that I will, if and when called upon by you or a Magistrate, produce for inspection the policy or policies of insurance and the current receipt for premiums paid.
9. I hereby commit myself that upon my appointment, I will open a client's account and submit particulars thereof to the Registrar within thirty days from the date of receipt of the certificate.

Dated at this day of 20.....

Signature of Applicant

Present for filing on day of 20

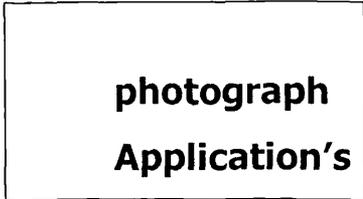
Signature of Registrar

FOLIO F

APPLICATION FOR APPOINTMENT AS A PROCESS SERVER

(Under Rule 6(3))

To: The Registrar
The High Court of Tanzania,
P.O. Box 9004,
Dar es Salaam.



1. hereby apply to be appointed a Process Server for District *(Insert full name and region for which appointment is sought)*

2. I undertake to obtain a business licence as soon as I am appointed to be a Process Server and my contacts are:

.....

- Physical address.....
- Place of business.....
- Postal address/code
- Email address.....
- Fax number

- Cellular number
- Landline telephone number
- Tax Identification number
- National identification number (*where available*)

3. I speak, read and write to the following languages fluently.....

4. I undertake to obtain a business licence as soon as I am appointed and submit a certified copy of the same to the Registrar.

Dated atthis day of 20.....

Signature of Applicant:

FOLIO G

BOND

Know all men by these presents that we: of and of are jointly and severally bound to the Registrar of the High Court of Tanzania in the sum of Tanzanian shillings four hundred million to be paid to the Registrar or to his successor in office for the payment of which we bind ourselves and each of us and our heirs, executor, administrator and assigns.

1.(*Insert the name of the applicant and his two sureties*)
2.(*Insert the name of the applicant and his two sureties*)

Dated this Day of 20.....

The condition of this obligation is that, if the above named who has been selected for appointment as a Court Broker for the time shall at all times, well and truly perform and fulfill all the duties and obligations of a Court Broker in accordance with the rules and practice of the High Court of Tanzania or any Court subordinate to it to which his appointment may relate, AND shall well and faithfully execute all the trust reposed or which shall or may be reposed in him (*Insert name of applicant*).

AND in the case of any default or defaults, we shall pay to the Registrar of the High Court or his successor in Office for the use of the persons who may be entitled to it all the money payable or chargeable to him for or in respect

or in consequence of any default or defaults, then, this obligation shall be void and of no effect or else shall remain in full force.

Signed and delivered by the named:

.....

.....

In the presence of

NAME

SIGNATURE

COMMISSIONER FOR OATHS



.....

(Signatures of persons giving bond)

FOLIO C

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY)

TAXATION CAUSE No. OF 2019

(Arising from Civil Case No. 2 of 2019)

JUMANNE MLILOPROCESS SERVER/APPLICANT

Versus

MZAVAS MRANGO DEFENDANT/RESPONDENT

CERTIFICATE AS TO FOLIOS

I, JUMANNE MLILO, Process Server/Applicant, do hereby certify that the following accompanying the bill of costs is true and correct to the best of my knowledge.

Certified at Morogoro this Day of August,, 2019

.....

JUMANNE MLILO

Presented for filing at Morogoro this day of August 2019

.....

REGISTRY OFFICER

Drawn and filled by:

Jumanne Mlilo,

P.O. Box 80,

MOROGORO

Copy to be served upon:

MZAVAS MRANGO,

Forest Street,

P.O. Box 80,

MOROGORO

FOLIO C

(IN THE DISTRICT REGISTRY)

TAXATION CAUSE No.2 OF 2019

(Arising from Civil Case No. 2 of 2019)

JUMANNE MLILOPROCESS SERVER/APPLICANT

Versus

MZAVAS MRANGO DEFENDANT/RESPONDENT

BILL OF COSTS

DATE	NO OF ITEMS	PARTICULARS	AMOUNT/CHARGE IN TSHS.	AMOUNT TAXED OFF
10/12/2018	1	Fees for effecting service of summons to 5 defendants in Kilosa District each at the rate of Tshs. 50,000/=	250,000/=	
10/12/2018	2	Transport costs to and from Kilosa	20,000/=	
10/12/2018	3	Taxi costs from Kilosa bus Stand to Morogoro and back	50,000/=	
11/12/2018	4	Per Diem for two nights spent at Morogoro at the rate of Tshs. 80,000/= per day	160,000/=	
SUB TOTAL			480,000/=	
DISBURSEMENTS EXPENSES				
14/12/2018	5	Fees for filing an affidavit of service in the High Court Morogoro	20,000/=	
SUB TOTAL B			20,000/=	
15/12/2018	6	Fees for attending Taxation Proceedings.		

Certified at Morogoro this 4th day of August 2019

.....

JUMANNE MLILO

Taxed at this day of, 2019

Presented for filing at Morogoro thisday of August 2019

.....

REGISTRY OFFICER

Drawn and filled by:

JUMANNE MLILO,

P.O. Box 80,

MOROGORO

Copy to be Served upon:-

MZAVAS MRANGO,

Forest Street,

P.O. Box 80,

MOROGORO