

SUBSIDIARY LEGISLATION

to the Gazette of the United Republic of Tanzania No. 35 Vol 95 dated 29th August, 2014
Printed by the Government Printer, Dar es Salaam by Order of Government

GOVERNMENT NOTICE NO. 304 published on 29/08/2014

THE BASIC RIGHTS AND DUTIES ENFORCEMENT ACT

(CAP. 3)

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THE BASIC RIGHTS AND DUTIES ENFORCEMENT ACT
(CAP. 3)

RULES

(Made under section 15)

THE BASIC RIGHTS AND DUTIES ENFORCEMENT
(PRACTICE AND PROCEDURE) RULES, 2014

- Citation 1. These Rules may be cited as the Basic Rights and Duties Enforcement (Practice and Procedure) Rules, 2014.
- Application 2. -(1) These Rules shall apply to all proceedings under the Act.
 (2) These Rules shall be applied with a view to advancing and realizing the basic rights and duties contained in the Constitution.
 (3) The provisions of these Rules shall not limit or affect the inherent powers of the Court to make necessary orders for the ends of justice or to prevent abuse of the process of the Court.
- Definition 3. In these Rules, unless the context otherwise requires-
 “application” means an application brought by or on behalf of a person for the purpose of enforcing or securing the enforcement of fundamental rights;
 “Court” means the High Court of United Republic of Tanzania;
 “judge in-charge” means a Judge in-charge of the District Registry or Division of the High Court;
 “petitioner” means a person who institutes proceedings under these Rules; and
 “subordinate court” has the meaning ascribed to it under the Act.

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Petition 4. Any petition filed in accordance with the provisions of the Act shall be by way of originating summons.

Service of the petition 5.-(1) The Petitioner shall, within seven days after filing the petition, serve a copy of the petition on the respondent.

(2) The Petitioner shall, within three days before the hearing date, file in Court an affidavit stating-

(a) the names, address of the place and date of service on all persons who have been served with chamber summons; and

(b) the fact and reasons why the service has not been effected to a person who ought to be served under the provisions of this rule.

(3) Where the Court is of the opinion that a person who ought to have been served with a copy of Petition, has not been served, it may adjourn the hearing, to facilitate the process of serving that person.

Reply to petition 6.-(1) The respondent shall, within fourteen days of service of the petition, file a reply to the petition accompanied by a counter affidavit.

(2) Where the respondent fails to file a reply to the petition within the time stipulated under sub-rule (1), the Court may hear and determine the petition ex -parte.

Notice of preliminary objection 7.-(1) The respondent who intends to challenge the Court's jurisdiction to hear the petition shall file the notice of preliminary objection when filling the reply to the petition.

(2) The preliminary objection by the respondent challenging the Court's jurisdiction shall be heard by a single Judge.

Consolidation of applications 8. A Judge may, upon application or on his own motion, consolidate applications relating to the infringement of a particular right or rights pending against several parties in respect of the same matter and grounds.

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Determina-
tion of
competence
of
application

9.-(1) A Judge shall, within thirty days of completion of pleadings, hear and determine all preliminary matters of law relating to the petition.

(2) Where the Judge decides that the petition is vexatious or frivolous, any party aggrieved by that decision may refer the matter to a panel of three Judges.

Reference by
subordinate
courts

10.-(1) Where a question in respect of the contravention of any basic right arises in any proceeding before a subordinate court, the presiding Magistrate shall-

(a) in case of a Primary Court, within fourteen days from the date when the question arose, prepare a statement containing facts, the question raised, and his opinion in respect of the question and refer such statement to the Court of a Resident Magistrate or a District Court;

(b) in case of a District Court or a Court of Resident Magistrate, within fourteen days from the date when the question arose, prepare a statement containing facts, the question raised, and his opinion in respect of the question and refer such statement to the High Court.

(2) The Court of Resident Magistrate or a District Court shall, within fourteen days from the date of receiving the statement referred to it under paragraph (a) of sub rule (1), determinate the matter and may refer the matter to the High Court if it deems appropriate.

Stay of
proceedings

11. Where a reference is made under rule 9 of these Rules, the proceeding of the subordinate court shall be stayed pending the determination of the reference by the High Court.

Decision of
High Court
on the
reference

12.-(1) The Court composed of three Judges shall, upon receiving the reference from the subordinate court, hear and determine the reference within ninety days and transmit a copy of its decision to the Court which made a reference.

(2) The Court from which the reference was made

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shall, on receipt of decision by the High Court, dispose of the case in conformity with the decision.

Written
submissions

13.-(1) The applicant shall, within seven days after the determination of the competence of the application, file and serve upon the respondent a written submission, in support of the application.

(2) The respondent may, within seven days from the date of service of the applicant's written submission, file a reply thereto.

(3) The written submission shall contain the following-

- (a) a brief statement of facts with reference to exhibits, if any, attached to the petition;
- (b) issues for determination;
- (c) a concise statement of argument on each issue with supporting authorities; and
- (d) list of authorities and copies of unreported cases.

A friend of
the Court
and
interested
party

14.-(1) The Court may, upon a request by any party, invite or allow any person with expertise in a particular issue to appear as a friend of the Court in the proceedings before it.

(2) The Court may, on application, allow any interested person to join in the proceedings.

Assignment
and hearing
before the
panel of
three Judges

15.-(1) Where the petition is found to be competent by a single Judge, the Principal Judge or the Judge in-charge shall, within seven days assign the application to a panel of three Judges.

(2) The petition shall be heard and determined within ninety days after the assignment.

(3) The Court may, in its discretion or upon application by any party-

- (a) receive evidence by affidavit in addition to or in substitution of oral evidence and may limit the time for oral submissions by the parties; or
- (b) call, examine and allow the cross examination of any witness if the Court is of the opinion that the

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evidence is likely to assist the Court to arrive at a just decision.

(4) A person summoned as a witness by the Court may, with leave of the Court, be cross examined by the parties to the petition.

Withdrawal

16.-(1) The petitioner may, by notice to or with leave of the Court, withdraw the petition.

(2) The Court shall, before granting leave to withdraw a petition, determine the effects of the withdrawal.

(3) Where the Court refuses to grant leave to withdraw the petition, it shall-

(a) state the reasons for the refusal; and

(b) order the petitioner to proceed with the petition.

Settlement
by consent

17. The parties may, with leave of the Court, record an amicable settlement reached in partial or final determination of the case.

Costs

18.-(1) The award of costs shall be in the discretion of the Court.

(2) The Court may, in determining the award of costs, consider the bona fides of the proceedings, its public interest and the court's role in advancing human rights jurisprudence in the United Republic.

(3) The Court shall, in exercising its powers to award costs, take appropriate approaches to ensure that citizens have access to the Court.

Matters not
provided for
in these
Rules

19. Where there is any matter not provided for in these Rules, the practice and procedure applicable to the High Court shall apply.

Dar es salaam,
26th May, 2014

MOHAMED CHANDE OTHMAN
Chief Justice