

Tanzania

Loans and Advances Realisation Trust Act

## LART Loans Recovery Tribunal Rules

### Government Notice 309 of 1997

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# LART Loans Recovery Tribunal Rules

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# Tanzania

## Loans and Advances Realisation Trust Act

### LART Loans Recovery Tribunal Rules

#### Government Notice 309 of 1997

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*[Note: This legislation has been thoroughly revised and consolidated under the supervision of the Attorney General's Office, in compliance with the Laws Revision Act No. 7 of 1994, the Revised Laws and Annual Revision Act (Chapter 356 (R.L.)), and the Interpretation of Laws and General Clauses Act No. 30 of 1972. This version is up-to-date as at 31st July 2002.]*

*[Section 19(3); G.N. No. 309 of 1997]*

#### Part I – Preliminary provisions (rules 1-2)

1.

These Rules may be cited as the LART Loans Recovery Tribunal Rules.

2.

In these Rules unless the context otherwise requires—

"**act**" means and includes any decision, determination, advice or recommendation made under a power or duty conferred or imposed by the provisions of the Act;

"**petitioner/applicant**" means a person who is entitled under the Rules to bring action under the provisions of the Act;

"**Chairman**" means the Chairman appointed under section 18(2)(a) of the Act and includes a Vice-Chairman;

"**member**" means a person appointed under section 18(2)(b) of the Act;

"**Registrar**" means the Registrar of the Tribunal appointed under section 22 of the Act;

"**respondent**" means a person against whom an action has been preferred in the LART Loans Recovery Tribunal;

"**the Tribunal**" means the LART Recovery Tribunal established under section 18(1) of the Act.

#### Part II – General administrative and procedural provisions (rules 3-9)

3.

- (1) Every petition shall be instituted by filing in the registry a petition in triplicate signed by the petitioner or his agent and presented to the Registrar at the registry.
- (2) The petition shall be accompanied by copies of documents which the petitioner intends to rely at the hearing of the petition.

- (3) A document which ought to be produced by the petitioner when the petition is presented, shall not without the leave of the Tribunal, be received in his evidence on his behalf at the hearing of the petition.
- (4) The petition shall set forth, concisely and under distinct heads facts giving rise to a cause of action without giving any arguments or narrative, and such facts shall be numbered consecutively.
- (5) A prescribed fee and any reasonable deposit as the Registrar shall reasonably assess and affix shall be paid to defray costs.
- (6) Nothing in this rule applies to documents produced for a cross examination of the witnesses, or handed to a witness merely to refresh his memory.

#### 4.

- (1) No petition shall be entertained in the Tribunal later than fifteen (15) days after the act being complained of was done.
- (2) The Tribunal may for good cause allow a petition to be instituted after the elapse of fifteen days (15) from the day the act has been complained of was done.

#### 5.

Where a petition has been duly instituted summons shall be issued to the respondent not later than two days from the date on which the petition is instituted:

Provided that no summons shall be issued under this rule when the respondent has appeared at the presentation of the petition, and has proved his identification to the satisfaction of the Tribunal and has admitted the petitions claim.

#### 6.

Save where the Tribunal requires the personal appearance of the respondent, a respondent in respect of whom a summons to appear is issued may appear—

- (a) in person; or
- (b) by an advocate duly instructed and able to answer all material questions relating to the petition; or
- (c) by an advocate accompanied by some person able to answer all such questions.

#### 7.

The day for appearance of the respondent shall be fixed with reference to the current business of the Tribunal, the place of residence of the respondent and the time necessary for the service of the summons; and the day shall be so fixed as to allow the respondent sufficient time to enable him to appear and answer on such day.

#### 8.

Where the summons has been issued, the respondent, may before the first hearing or within such time as the Tribunal may permit, present to the Tribunal a written reply to the petition.

#### 9.

- (1) Where the respondent has been required to present a written reply under Rule 8 and fails to present the same within the time fixed by the Tribunal, the Tribunal may pronounce judgment against him or make such order in relation to the petition, as the case may be, and as it thinks fit.

- (2) When all pleadings have been completed, the Tribunal shall fix a day of hearing on an application by either of the parties, but, if no application is made within seven days of the date on which the petition is deemed to be ready for hearing, the Tribunal on its own motion shall fix the hearing date.

### **Part III – Hearing of petitions (rules 10-18)**

#### **10.**

- (1) The Tribunal shall have power to dismiss any petition summarily if it considers that the petition does not disclose any cause of action.
- (2) Where the Tribunal dismisses a petition summarily, notice of such dismissal shall be served upon the petitioner or his agent.
- (3) The Registrar shall have the power to enter a consent judgment where it is requested by the parties.

#### **11.**

- (1) The Tribunal may at any time, and on its own motion or on the application of any party adjourn the proceedings to a date fixed or to be fixed by it.
- (2) Where proceedings are adjourned to a date to be fixed, the Tribunal shall, after fixing the date for the resumed hearing, give notice of its or of the adjournment to the parties or their agents.

#### **12.**

On the day fixed or on any other day to which the hearing may be adjourned the Tribunal shall first hear the petitioner or his agent and then the respondent or his agent shall have the right of reply.

#### **13.**

Where the petitioner appears, and the respondent having been duly served does not appear, the hearing of the petition shall proceed in the absence of the respondent, unless the Tribunal for any sufficient reason, sees fit to adjourn the hearing.

#### **14.**

- (1) Where the respondent appears and the petitioner does not appear the Tribunal shall dismiss the petition.
- (2) Where an order is made to dismiss the petition the petitioner may apply to the Tribunal to set it aside if he satisfies the Tribunal that the summons was not duly served, or that he was prevented by any sufficient and reasonable cause from appearing when the suit was called on for hearing.
- (3) The Tribunal shall make an order to set aside the dismissal upon such terms as to costs, payment into the Tribunal or otherwise as it thinks fit and shall appoint a day for proceeding with the petition.

#### **15.**

- (1) If after hearing the petitioner and the reply by the respondent, the Tribunal is of the opinion that evidence be produced or witness summoned.
- (2) The Tribunal shall order the parties to produce such evidence or call witnesses to clarify on issues raised which the Tribunal may by order seek to be clarified.

16.

Where the Tribunal requires any evidence to be produced or witnesses to be called, it shall record its reasons for so doing.

17.

When the Tribunal orders evidence to be produced or witnesses to be called, the Tribunal shall specify the points to which the evidence is to be confined, and record on its proceedings.

18.

The Tribunal may, in its discretion, receive evidence by affidavit in addition to or in substitution for oral evidence.

### **Part IV – Judgment (rules 19-21)**

19.

The Tribunal after hearing the parties or their agents and evidence if any ordered to be produced, and testimony of witness ordered to testify, shall pronounce judgment in public either at once or on some future date of which notice shall be given to the parties or their agents.

20.

- (1) The judgment of the Tribunal shall be in writing and shall state—
  - (a) the points for determination;
  - (b) the decision;
  - (c) the reasons for the decision;
  - (d) a relief which the parties are entitled and the time that it is pronounced be signed and dated by the Chairman or the Registrar who shall certify it.
- (2) Such judgment may be pronounced notwithstanding the absence of all the members who comprised the Tribunal or any of them, and the judgment may be read by the Chairman or the Registrar.

21.

The Tribunal shall have power to pass any decree and make any order similar to those passed by the High Court of Tanzania and such decree or orders shall have the same effect as if the same were passed by the High Court of Tanzania in accordance with the provisions of the Civil Procedure Code <sup>1</sup>.

### **Part V – Decree (rules 22-23)**

22.

- (1) The decree shall bear the date and the day on which the judgment was pronounced.
- (2) The decree shall contain the number of the petition, the names and description of the petitioner and respondent, and clear specification of the relief granted or other adjudication made.

<sup>1</sup>



- (3) The decree shall also state amount of costs incurred in the trial, and by whom out of what property, and in what proportion such costs and the costs in the suit are to be paid.
- (4) The decree shall be signed by the Chairman who passed it or the Registrar.

**23.**

Certified copies of the judgment and decree shall be furnished to the parties on application to the Tribunal and on payment of fees.

**Part VI – Fees and costs (rules 24-27)****24.**

- (1) The fees which shall be set by the Chairman and published in the *Government Gazette* shall be payable in respect of the matters and services specified therein.
- (2) The fee payable on lodging any document shall be payable at the time when the document is lodged.

**25.**

- (1) The Tribunal may in its discretion, either before the respondent is called to appear and answer or afterwards on the application of the respondent, demand from the petitioner security for the costs of the petition.
- (2) The amount of security shall be such as the Chairman or the Registrar shall in his discretion assess and fix.
- (3) Where such security is not furnished within such time as appointed the Tribunal shall dismiss the petition.
- (4) The Tribunal may at any time, if it thinks fit, direct that further security for costs be given and may direct that security be given for the payment of the past costs relating to the matters in question in the petition.

**26.**

The Tribunal may make such order as to the costs of a petition as it shall deem just.

**27.**

- (1) When making any decision as to the payment of costs, the Tribunal may assess them or direct them to be taxed, and any decision as to the payment of costs, not being a decision whereby the amount of the costs is assessed shall operate as a direction that the costs be taxed.
- (2) Where the Tribunal directs that costs of a petition shall be taxed, such costs shall be taxed in accordance with the provisions of the Advocates Remuneration and Taxation of Costs Rules, 1991.
- (3) The Registrar shall be a Taxing Officer with power to tax the costs, as between party and party.
- (4) The remuneration of an advocate by his client in respect of any petition shall be subject to taxation in the Tribunal and shall be governed by the rules and scales applicable to proceedings in the High Court.
- (5) For the purposes of execution in respect of costs, the decision of Tribunal directing taxation and the certificate of the Taxing Officer as to the result of such taxation shall together be deemed to be a decree.

## Part VII – Final provision (rules 28-29)

### 28.

Without prejudice to the provisions under these Rules, where any matter in a proceeding before the Tribunal is not expressly provided for by these Rules, the Tribunal shall have the power to make such orders as may be necessary for the ends of justice or to prevent abuse of due process under the law.

### 29.

Temporary injunctions and interlocutory orders when granted shall be in force for a period of thirty days only from the date of the order and shall thereafter expire unless the Tribunal extends such period for a further period which the aggregate shall not exceed sixty days, upon being satisfied, on the application of the holder of such injunction that the applicant has diligently been taking steps so settle the matter complained of and such extension sought is in the interest of justice, necessary or desirable. No application for an injunction or interlocutory order shall be heard *ex parte*.