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THE PUBLIC SERVICE COMMISSION ACT

(No. 17 of 2017)

THE PUBLIC SERVICE COMMISSION (COUNTY APPEALS
PROCEDURES) REGULATIONS, 2022

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THE PUBLIC SERVICE COMMISSION ACT

(No. 17 of 2017)

THE PUBLIC SERVICE COMMISSION (COUNTY APPEALS PROCEDURES) REGULATIONS, 2022

IN EXERCISE of the powers conferred by section 92 of the Public Service Commission Act, 2017, the Public Service Commission makes the following Regulations—

THE PUBLIC SERVICE COMMISSION (COUNTY APPEALS PROCEDURES) REGULATIONS, 2022

PART I—PRELIMINARY

1. These Regulations may be cited as the Public Service Commission (County Appeals Procedures) Regulations, 2022. Citation.
2. In these Regulations, unless the context otherwise requires— Interpretation.
 - “appeal” means an application to the Commission against a decision of a county executive, county public service or county assembly service;
 - “appellant” means a person who appeals against decision of a county executive, member of a county executive committee, county public service board or county assembly service board;
 - “pleadings” means documents relating to an appeal filed by parties to the appeal with the Commission; and
 - “respondent” means a person against whom an appeal has been filed with the Commission.
3. The purpose of these Regulations shall be to regulate the hearing and determination of appeals filed with the Commission by public officers or other persons in respect of county governments public service. Purpose of the Regulations.
4. Subject to Article 234 (3) (a) of the Constitution, these Regulations shall apply— Application of the Regulations.
 - (a) to any person working in a county public service;
 - (b) to each county public service board;
 - (c) to each county assembly service board;
 - (d) to the decisions of a county government executive or a member of a county government executive committee; and
 - (e) to any other person dissatisfied or affected by a decision of a county government executive, member of a county government executive committee, county public service board or county assembly service board.
5. The Commission shall be guided by the following principles when hearing and determining an appeal or when considering an application for review— Governing principles.
 - (a) the promotion of the purposes, values and principles of the Constitution;

- (b) justice and fairness;
- (c) the rules of natural justice;
- (d) the application of substantive justice that does not rely on undue regard to technicalities of procedure; and
- (e) the timely disposal of appeals.

6. The Commission may, on its own motion or the application of any person, make such orders as are necessary for—

Inherent powers of the Commission.

- (a) the fair and expeditious determination of appeals or applications;
- (b) the just conclusion of appeals or applications; or
- (c) the prevention of abuse of the processes of the Commission.

7. (1) The Commission may, on its own motion or the application of any person make such orders as may be necessary for conciliation, mediation or negotiation in respect of any appeal filed with the Commission.

Conciliation, mediation and negotiation.

(2) The conciliation, mediation or negotiation referred to in subregulation (1) shall be concluded within sixty days after the order of the Commission.

(3) Where conciliation, mediation or negotiation in respect of an appeal fails, the Commission shall determine the appeal in accordance with these Regulations.

PART II—APPEALS

8. (1) A person who is dissatisfied with a decision of a county government public service may appeal to the Commission against that decision.

Appeals.

(2) A public officer who wishes to file an appeal with the Commission shall do so after all internal processes of the county government public service have been exhausted.

9. The Commission may hear and determine an appeal against any decision regarding the engagement of any person in a county government, including—

Commission may hear and determine appeals.

- (a) the recruitment, selection, appointment, promotion, re-designation, deployment and qualifications attached to any office;
- (b) training and development;
- (c) the remuneration, benefits, and terms and conditions of service;
- (d) disciplinary control including dismissal and imposition of any other administrative punishment;
- (e) the national values and principles of governance set out in Article 10 of the Constitution;

- (f) the values and principles of public service as set out in Article 232 of the Constitution;
- (g) retirement or other forms of removal from service; and
- (h) any other decision of a county public service that falls within the Commission's jurisdiction.

10. (1) A person shall file an appeal against a decision of a county public service with the Commission within ninety days after the making of the decision by the county public service. Filing appeals.

(2) Notwithstanding the provisions of subregulation (1), the Commission may, upon written request, allow a person to file an appeal after the expiry of ninety days, if the Commission determines that the circumstances of the case warrant it.

(3) An appeal under these Regulations shall be in Form CA 1 as set out in the Schedule and shall—

- (a) where the appellant is a public officer, specify therein—
 - (i) the name and date of birth of the public officer;
 - (ii) name of the respondent;
 - (iii) the public officer's personal number;
 - (iv) the public officer's designation;
 - (v) the public officer's terms of service;
 - (vi) the public officer's job group;
 - (vii) a declaration on whether there are or have been proceedings or decisions before any court or tribunal on the subject matter of the appeal;
 - (viii) the grounds of the appeal;
 - (ix) the facts in support of the appeal;
 - (x) the documents in support of the appeal;
 - (xi) the prayers sought; and
 - (xii) the contact details of the public officer including postal address, email address and telephone number; or
- (b) where the appellant is not a public officer, specify therein—
 - (i) the name and, where applicable, date of birth, of the appellant;
 - (ii) the description of the appellant;
 - (iii) the name of the respondent;
 - (iv) a declaration on whether there are or have been proceedings or decisions before any court or tribunal on the subject matter of the appeal;

- (v) the grounds of appeal;
- (vi) the facts in support of the appeal;
- (vii) the documents in support of the appeal;
- (viii) the prayers sought; and
- (ix) the contact details of the appellant including postal address, email address and telephone number.

11. (1) An appellant shall serve the appeal on the respondent after filing the appeal with the Commission.

Appeal to be served on the respondent.

(2) The respondent that has been served with an appeal under subregulation (1) shall, within fourteen days after being served—

- (a) respond to the appeal by filing with the Commission a replying affidavit or grounds of objection;
- (b) attach to the replying affidavit any relevant records and documents regarding the appeal including any proceedings; and
- (c) serve the response on the appellant within seven days after filing it with the Commission.

(3) The appellant may, where necessary, file a rejoinder within seven days after receipt of the respondent's response.

PART III—PRELIMINARY PROCEEDINGS, INTERIM APPLICATIONS AND PRELIMINARY OBJECTIONS

12. After the filing of the response under regulation 11 (2), the Commission shall, within twenty-one days—

Preliminary proceedings.

- (a) where there is insufficient information, require the appellant or respondent to provide additional information or documents in relation to the appeal;
- (b) where an investigation is required to obtain additional information, investigate the matter further in order to obtain the required information; or
- (c) where it is necessary to hold a hearing or where a party requests to be heard in person, notify the parties of the date, time and venue of the hearing.

13. (1) A party to an appeal may, at any time after the filing of an appeal with the Commission but before the final hearing and determination of the appeal, apply in writing to the Commission for directions or orders before the appeal is heard and determined by the Commission.

Interim applications.

(2) An application under this regulation shall be in writing and shall be served on the other party or parties within seven days after the application under subregulation (1).

(3) A party served with an application under subregulation (2) shall file with the Commission and serve the applicant with a replying

affidavit or grounds of objection within seven days after being served with the application.

(4) Where the Commission determines that there is need for parties to file written submissions regarding an application under this regulation, the provisions of regulation 18 (5), with the necessary modifications, shall apply.

(5) The Commission shall determine an application under this regulation—

- (a) within fourteen days after the filing of the replying affidavit under subregulation (3); or
- (b) where the Commission required the parties to file written submissions under subregulation (4), within fourteen days after the written submissions have been so filed.

14. (1) A party to an appeal filed under these Regulations may raise an objection on any point of law at any time before the appeal is finally heard and determined by the Commission.

Preliminary objections.

(2) The objection referred to in subregulation (1) shall—

- (a) be in writing;
- (b) state the points of law and grounds for the preliminary objection; and
- (c) be served on the other party or parties to the appeal within seven days after being filed with the Commission.

(3) A party served with an objection shall file a written response with the Commission within seven days after receipt of the objection.

(4) Where the Commission determines that there is need for parties to file written submissions regarding a preliminary objection, the provisions of regulation 15 (4) shall apply with the necessary modifications.

(5) The Commission shall determine a preliminary objection—

- (a) within seven days after the filing of the response under subregulation (3); or
- (b) where the Commission required the parties to file written submissions under subregulation (4), within fourteen days after the written submissions have been so filed.

PART IV—WITHDRAWAL OF APPEALS OR APPLICATIONS, CONSOLIDATION OF APPEALS AND TEST APPEALS

15. An appellant or applicant may, by written notice to the Commission and respondent, apply to the Commission to withdraw an appeal or application filed under these Regulations.

Withdrawal of appeals or applications.

16. The Commission may, on its own motion or on application by a party to an appeal, consolidate two or more appeals filed under these Regulations on such terms as may be just in the circumstances.

Consolidation of appeals.

17. (1) Where two or more persons have filed appeals against the same respondent, the Commission may, on its own motion or application by any party to the appeal, with written notice to the other party or parties, where it is satisfied that the issues to be determined in each appeal are similar, issue directions that one of the appeals be determined as the test appeal, and the other proceedings in respect of the other appeals shall be stayed until the test appeal is finally heard and determined.

Test appeals.

(2) The Commission's decision of the test appeal under subregulation (1) and the Commission's ruling or determination thereof shall apply to the other appeals.

PART V—HEARINGS

18. (1) Pursuant to the provisions of section 12 of the Act, where the Commission establishes a Committee to hear an appeal or an application, the quorum of the committee shall be two Commissioners and the recommendations of the committee shall be presented to the Commission for consideration and determination.

Hearings.

(2) The Commission may—

- (a) hold hearings before determining an appeal; or
- (b) receive and consider written submissions from parties to an appeal before determining the appeal.

(3) Where the Commission holds a hearing in respect of an appeal, it shall notify the parties to the appeal of the date, time and venue of the hearing in Form CA 2 as set out in the Schedule.

(4) The hearing notice under subregulation (3) shall be served on the parties to the appeal at least seven days before the date of the hearing.

(5) Where the Commission requires written submissions in respect of an appeal, it shall require the parties to the appeal to make their written submissions in the following manner—

- (a) the appellant shall first file and serve written submissions within fourteen days after the directions of the Commission; and
- (b) the respondent shall file and serve written submissions within fourteen days after receipt of the appellant's submissions or upon expiry of the time granted to the appellant.

(6) The appellant may, with the leave of the Commission, file supplementary submissions within seven days after receipt of the respondent's submissions under subregulation (5) (b).

19. Where a party to an appeal is a person with disability and requires special arrangements for purposes of a hearing, that party shall notify the Commission of that party's requirements at least three days before the date of the hearing.

Parties with special needs.

20. Where a party to an appeal, after being duly notified of the hearing in accordance with regulation 18, fails to attend the hearing, the Commission may—

Absence of parties.

- (a) adjourn the hearing to a another date, which date shall be notified to the parties in accordance with regulation 18; or
- (b) if the circumstances of the case warrant it, conduct the hearing in the absence of the absent party.

21. The Commission may, in relation to an appeal—

Decisions of the Commission on appeal.

- (a) uphold the decision being challenged;
- (b) set aside the decision being challenged;
- (c) vary the decision as may be just in the circumstances; or
- (d) give such other directions as may be appropriate in the circumstances.

22. (1) The Commission shall, within thirty days after the conclusion of a hearing or after receiving written submissions in respect of an appeal, make a decision on the appeal.

Decision to be made after hearing or receipt of written submissions.

(2) Where a decision is not made within the period under subregulation (1), the Commission shall notify the parties to the appeal in writing of the delay and the reasons for the delay.

23. The Commission shall communicate its decision regarding an appeal to the parties in writing within seven days after making the decision.

Communication of decisions.

24. (1) A person who is dissatisfied or affected by the Commission's decision regarding an appeal may apply in writing to the Commission for a review of that decision.

Review of decisions.

(2) The Commission may consider the application under subregulation (1) where—

- (a) the applicant presents new information that could not be presented at the time the decision was made by the Commission; or
- (b) there is an error apparent on the record of the decision for which a review has been applied.

(3) An application for review shall be made within six months from the date after the decision of the Commission for which a review has been applied.

(4) The Commission may consider an application for review out of time if, in the opinion of the Commission, the circumstances warrant the consideration.

(5) The applicant shall serve the respondent with the application under subregulation (1) within seven days after filing the application with the Commission.

(6) The respondent shall file a response to the application for review with the Commission and serve the applicant with a copy thereof within seven days after receipt of the application.

(7) Where the Commission determines that there is need for the parties to the appeal to file written representations, the provisions of regulation 18 (5) shall apply thereto with the necessary modifications.

(8) The Commission may, in respect of an application for review of a decision of the Commission—

- (a) uphold the decision;
- (b) set aside the decision;
- (c) vary the decision as may be just in the circumstances; or
- (d) give such directions as may be appropriate in the circumstances.

(9) The Commission's decision regarding an application for review shall be made within thirty days after the hearing of the application or receipt of written submissions regarding the application.

(10) Where a decision is not made within the time prescribed under subregulation (9), the Commission shall notify the parties to the appeal in writing of the delay and the reasons for the delay.

25. The Commission shall communicate its decision to the parties within seven days after making a decision on the application for review.

Communication of the decision on review.

PART VI—MISCELLANEOUS PROVISIONS

26. (1) Each party to an appeal shall file with the Commission its pleadings by delivering five copies of the pleadings to the Commission.

Filing of pleadings.

(2) In addition to the copies of the pleadings filed under subregulation (1), each party to an appeal shall electronically file its pleadings through the Commission's official email address.

(3) Each party shall file its pleadings with the Commission within the period prescribed by these Regulations or as may be permitted by the Commission by order in writing.

27. (1) Pleadings or notices may be served by—

Service of pleadings and notices.

- (a) hand delivery;
- (b) sending it to the last known address of the recipient by registered post or by courier service;
- (c) email to the recipient's last known email address;
- (d) advertisement in a daily newspaper with nationwide circulation as may be approved by the Commission in writing; or
- (e) Short Messages Services and Mobile Application Service as may be approved by the Commission in writing.

(2) Pleadings or notices shall be deemed to have been delivered or served on the date they are received or stamped by the Commission or recipient as the case may be.

(3) Where pleadings or notices are delivered in person, the same shall be deemed to have been duly served if acknowledged by signing and dating and, where applicable, stamping.

(4) Where pleadings or notices are delivered by registered post or courier service, they shall be deemed to have been received on the seventh day after dispatch.

(5) Where pleadings or notices are delivered by email, they shall be deemed to have been duly received on the twenty-fourth hour after dispatch.

(6) An affidavit of service shall be filed by the person sending or serving pleadings or notices accompanied by evidence of service in the prescribed modes.

28. Nothing in these Regulations shall affect the power of the Commission, if the circumstances so permit and in the interests of justice, to—

- (a) authorize the service of pleadings in a manner that is not expressly provided for in these Regulations; or
- (b) find that pleadings served in a manner not expressly provided for in these Regulations have been properly served.

Powers of the Commission in relation to service.

29. A party to an appeal filed with the Commission shall have the right to—

- (a) be heard in person;
- (b) be represented by an advocate of the party's choice and the party's expense;
- (c) be accompanied by a representative of the relevant trade union or any other person of the party's choice;
- (d) be assisted by an interpreter if the party does not understand the language being used during the proceedings; and
- (e) access information held by the Commission or a county government that may be relevant to the determination of the appeal.

Rights of the parties to an appeal.

30. The Commission shall keep and maintain an accurate record of its proceedings relating to an appeal including typed transcripts and, where applicable, audio and video recordings.

Record of proceedings.

31. The Public Service Commission (County Government Public Services Appeals Procedures) Regulations, 2016 are revoked.

Revocation.
L.N. 70/2016.

SCHEDULE

Forms

FORM CA 1

r.10(3)

PUBLIC SERVICE COMMISSION

THE PUBLIC SERVICE COMMISSION (COUNTY APPEALS PROCEDURES) REGULATIONS, 2022

County Appeal No. of 20.....

BETWEEN

.....APPELLANT

AND

.....RESPONDENT

APPEAL

The Secretary
Public Service Commission
P.O. Box 30095-00100
NAIROBI

The humble appeal of

(name of appellant)

of P.O. Box in the Republic of Kenya is as follows:

- (a) Name of the appellant:
- (b) Job description:
- (c) Personal number:
- (d) Job group:
- (e) Date of birth:
- (f) Designation:
- (g) Terms of service:

(h) Name of the respondent:

(i) Facts giving rise to the appeal:

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.....
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(j) Grounds in support of the appeal:

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.....
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(k) Documents to be relied upon in support of the appeal:

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.....
.....

(l) Declaration on whether there are/or have been any proceedings or decisions by or before any court or tribunal on the same subject matter:

.....
.....
.....
.....

(m) Reliefs sought:

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.....
.....
.....

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

Signed.....

Appellant/Advocate for the Appellant

Drawn and filed by:

.....
.....

To be served upon:

.....
.....

FORM CA 2

r. 18(2)

PUBLIC SERVICE COMMISSION

THE PUBLIC SERVICE COMMISSION (COUNTY APPEALS PROCEDURES) REGULATIONS, 2022

County Appeal No. of 20.....

BETWEEN

.....APPELLANT

AND

.....RESPONDENT

HEARING NOTICE

TAKE NOTICE THAT your appeal will be heard on theday of20.....at.....o'clock in the forenoon/afternoon.

The hearing shall be held at

.....
.....
.....

TAKE NOTICE THAT should you or someone duly authorized by law fail to appear on your behalf at the time and place above mentioned, the Commission may proceed to hear the appeal and make such determination as it shall deem fit and just, your absence notwithstanding.

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

Signed.....
For the Commission

Made on the 3rd June, 2022.

ANTHONY M. MUCHIRI,
Chairperson, Public Service Commission.