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Gazette Notices - Rules of Procedure (Notice 435)

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THE KENYA GAZETTE

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14 January, 2011

GAZETTE NOTICE NO. 435

THE TRUTH, JUSTICE AND RECONCILIATION ACT

(No. 6 of 2008)

TRIBUNAL APPOINTED TO INVESTIGATE THE CONDUCT

OF THE CHAIRMAN OF THE TRUTH, JUSTICE AND

RECONCILIATION COMMISSION, AMBASSADOR

BETHWELL KIPLAGAT

RULES OF PROCEDURE

WHEREAS in exercise of powers conferred by section 17 (2) of the Truth, Justice and Reconciliation Act, 2008, His Lordship the Chief Justice, through Gazette Notice No. 15894 of 2010, appointed a Tribunal to investigate the conduct of the Chairman of the Truth, Justice and Reconciliation Commission, Ambassador Bethwell Kiplagat; and through Gazette Notice No 15895 of 2010, appointed Counsel to assist the Tribunal, and also appointed joint secretaries to the Tribunal;

AND WHEREAS Gazette Notice No. 15894 mandates the Tribunal to regulate its own procedure;

NOW THEREFORE the Tribunal makes the following Rules of Procedure:

1. The Tribunal shall sit on such days and such times and venues as shall be determined by the Tribunal.
2. The Tribunal as duly constituted shall sit to carry out its proceedings, provided that the absence of a member shall not limit its competence to discharge its mandate.
3. The hearings of the Tribunal shall be held in public unless the Tribunal at its own discretion or upon a request by the subject of the investigation which request is subject to the approval of the Tribunal otherwise directs.
4. The Tribunal may exclude any person or class of persons from all or any part of the investigation if satisfied that it is desirable to do so for the following reasons:
 - (a) The preservation of order; or
 - (b) The due conduct of the investigation; or
5. The protection of a person, property or reputation of any witness in the investigation or any other person referred to in the investigation, and may, if satisfied that it is desirable to do so for any of the foregoing purposes, order that no person shall publish the name, address or photograph of any such witness or person or any evidence or information whereby she or he would likely be identified.
6. The subject of the investigation shall be present during the proceedings and may be represented by legal counsel.
7. The Counsel assisting the Tribunal shall draw up a list of the allegations against the subject of the investigation and shall serve the said list of the allegations on the subject of the investigation at least fourteen (14) days before the date of commencement of the Tribunal hearings.
8. The Tribunal shall serve on the subject of the investigation a hearing notice, at least seven (7) days before the date of the hearing as per Form 1 of the Schedule hereto.
9. (a) The Tribunal may summon any person or persons to testify before it on oath or affirmation or to produce such document(s) as the Tribunal may require, and the person so summoned shall be obliged to attend and testify or produce the required document(s).
 - (b) A witness summons under this rule shall be as per Form 2 of the Schedule hereto.
10. The Counsel assisting the Tribunal shall present the evidence relating to the conduct of the subject of the investigation and any matter relevant to the investigation.
11. The Tribunal shall be guided by the basic rules applicable to fair trial, including rules of natural justice and relevance, but shall not be bound by the provisions of the Evidence Act (Cap. 80) of the laws of Kenya.
12. Every testimony made before the Tribunal shall be given either under oath or affirmation.
13. The subject of the investigation shall have the right to cross examine any witnesses in the investigation:

Provided that cross-examination shall be conducted with a consciousness for time and relevance, and as may be directed by the Tribunal.
14. The subject of investigation shall be entitled to call evidence to rebut any allegations made against him.
15. (a) The Counsel assisting the Tribunal shall be entitled to cross-examine the subject of the investigation and his witnesses.
 - (b) Any party shall be entitled to re-examine any of its witnesses.
16. The Tribunal may call for further evidence on any relevant point or matter before it and may recall any witness for further examination.

17. Evidence may be presented orally or in the form of memoranda ,affidavits or other documentation and the Tribunal shall be entitled to receive such documents and use the contents thereof in forming its opinion:

Provided that the subject shall be furnished with copies of any such documentary evidence and may seek leave to address the Tribunal thereon.

18. At the close of all the evidence adduced before the Tribunal, Counsel assisting the Tribunal, and the subject of investigation, or if represented, his Counsel may make final submissions.

19. The Tribunal may, from time to time, by notice in the Gazette, amend any of these Rules.

20. Nothing contained in these Rules shall be deemed to limit or otherwise affect the powers of the Tribunal which are necessary for the proper execution of its mandate as set out in Gazette Notice. No15894 of 2010.

SCHEDULE

FORM 1

(r. 7)

HEARING NOTICE

To: (subject)

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

WHEREAS His Lordship, the Chief Justice of the Republic of Kenya has appointed a Tribunal to investigate your conduct as per the mandate of the Tribunal set out in Gazette Notice No. 15894 of 2010, annexed hereto:

TAKE NOTICE that we, the said Tribunal will, seven (7) days from today, assemble at

..... ata.m. on the.....day of 2011, to carry out the said investigation.

AND FURTHER, TAKE NOTICE that you..... must appear in person and may be accompanied by your advocate at the hearing of the evidence, to cross-examine any witness testifying thereto, and to adduce, without unreasonable delay, material evidence in your behalf in refutation of, or otherwise in relation to the evidence.

GIVEN under the hand of the Chairman for and on behalf of the said

Tribunal this.....day of2011.

.....

Chairman of the Tribunal

To be served upon

Please acknowledge this notice and the attached instrument by signing hereunder:

..... day of2011

FORM 2

(r. 8 (b))

WITNESS SUMMONS

To:.....

.....

WHEREAS His Lordship, the Chief Justice of the Republic of Kenya has appointed a Tribunal to investigate the conduct of the Chairman of the Truth, Justice and Reconciliation Commission Ambassador Bethwell Kiplagat, the mandate of which is set out in Gazette Notice No. 15894 of 2010:

AND WHEREAS your personal attendance is required as a witness to give evidence.

NOW THEREFORE you are ordered to attend the investigation at.....ata.m., on the day of.....2011, as a Witness in the said investigation and to remain in attendance until released by the Tribunal.

GIVEN under the hand of the Chairman for and on behalf of the said Tribunal this.....day of2011.

.....

Chairman of the Tribunal

To be served on:

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

Please acknowledge this witness summons by signing hereunder:

.....day of2011.

Dated the 5th January, 2011.

ONESMUS K. MUTUNGI,

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