

STATUTORY INSTRUMENTS SUPPLEMENT

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S T A T U T O R Y I N S T R U M E N T S

2022 No. 54.

THE JUDICATURE (AMICUS CURIAE) RULES, 2022

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STATUTORY INSTRUMENTS

2022 No. 54.

The Judicature (Amicus Curiae) Rules, 2022

(Under section 41(1) and 41(2)(e) of the Judicature Act, Cap. 13)

IN EXERCISE of the powers conferred upon the Rules Committee by section 41(1) and 42(2)(e) of the Judicature Act, these Rules are made this 16th day of June, 2022.

PART I—PRELIMINARY

1. Title

These Rules may be cited as the Judicature (Amicus Curiae) Rules, 2022.

2. Application

These Rules apply to civil proceedings in all Courts of Judicature.

3. Objectives of Rules

The objectives of these Rules are—

- (a) to provide for the principles and procedure to be applied by courts when considering applications for admission of persons as amicus curiae;
- (b) to promote uniformity, consistency and transparency in considering applications for admission of persons as amicus curiae; and
- (c) to promote the enforcement of article 126(1) of the Constitution by providing justified intervention by a person or organisation seeking to promote the public interest in conformity with the law and with the values, norms and aspirations of the people.

4. Interpretation

In these Rules, unless the context otherwise requires—

“amicus curiae” means a person or organisation that is not a party to a suit but who participates in the litigation by providing the court with important information intended to assist the court in making an informed decision;

“fidelity to the law” means faithfulness, trustworthiness, reliability, commitment, dependability or conformity to the law;

“novel” means the quality of being new, original, unfamiliar, unusual or unique;

“public interest” includes the interest of society or any segment of society in promoting human rights, democracy, rule of law, and good governance.

PART II—PROCEDURE FOR ADMISSION AS AMICUS CURIAE

5. Requirements for admission

The court may admit a person or organisation as amicus curiae who meets the following requirements—

- (a) the person or organisation is neutral and impartial;
- (b) the court is satisfied that the submission of the person or organisation will give assistance to the court that it would not otherwise have;
- (c) the points of law or facts submitted by the person or organisation are novel and will aid the development of jurisprudence;
- (d) the interest of the person or organisation constitutes fidelity to the law;

- (e) the submissions of the person or organisation draw attention to relevant matters of law that are useful, focused and principled;
- (f) the participation of the person or organisation is in the public interest; and
- (g) the person or organisation has demonstrable expertise or knowledge in the area under dispute.

6. Procedure for application

(1) A person or organisation who meets the requirements of rule 5 may—

- (a) apply by notice of motion to appear in court as *amicus curiae*; or
- (b) be invited by court by way of letter to appear as *amicus curiae*.

(2) An application under subrule (1)(a) shall be supported with a formal brief indicating the expertise or justification for consideration of the person or organisation to be admitted as *amicus curiae*.

(3) The brief under subrule (2) shall address the court on points of law not raised by the parties but which are of concern to the court and which may cause a wrong interpretation of the law to be made by the court, and shall comprise of —

- (a) a table of contents, properly paginated;
- (b) a statement of questions to be addressed, presented in a clear and succinct manner;
- (c) a table of authorities, alphabetically arranged and distinguished under different heads of cases, statutes and other authorities, with reference to the page in the brief where the authorities are used;
- (d) the identity and interest of the *amicus curiae*, clearly indicating the legal status of the *amicus curiae* and the

capacity in which the brief is being presented; where applicable;

- (e) a statement of the expertise of the amicus curiae;
- (f) a concise summary of the arguments; and
- (g) the arguments of the amicus curiae, properly itemised under distinct heads and chronologically arranged.

(4) The court may limit the length of the brief and shall, at the time of allowing the application for admission as amicus curiae, determine whether only a written brief should be allowed, or both a written brief and oral submissions.

(5) Where the court finds that there is need for clarification on the brief submitted by the applicant, the court shall summon the applicant to appear before the court within seven days, to give the required clarification.

(6) The letter and brief referred to in subrules (1)(b) and (2) shall be copied to the parties to the suit.

(7) An application for admission as amicus curiae may be made at any time after the date of closure of pleadings or during the course of trial.

7. Disqualification from admission

The court shall not admit a person or organisation as amicus curiae, where—

- (a) the application does not state what point of law is overlooked;
- (b) the application does not show the expertise in the matter and the assistance which the applicant is to give the court in resolving the dispute before it;
- (c) the application introduces new evidence; or
- (d) the hearing has already been closed and judgment reserved.

8. Objection to admission of amicus curiae

(1) A party to a suit may object to the admission of a person or organisation as amicus curiae where the party considers that—

- (a) the applicant does not have sufficient expertise;
- (b) the applicant is introducing new evidence;
- (c) the applicant is not impartial or is biased or hostile towards one or more of the parties; or
- (d) the applicant, through previous conduct, appears to be partisan on the issue before court.

(2) Where a party objects to the application of amicus curiae, the party shall notify the court within seven days, by affidavit in reply, and shall serve copies of the affidavit on the applicant and any other party to the suit, before the hearing.

(3) Except in exceptional circumstances as may be determined by the court, there shall be no objection to the admission of amicus curiae where the court has invited amicus curiae.

(4) Where no objection is raised within seven days, the court shall consider the application and notify the applicant of its decision within seven days.

9. Amicus hearing

(1) The court shall set a date for hearing the application for admission of amicus curiae and shall notify the parties to the suit and any person who has raised an objection under rule 8.

(2) The court shall, on the day of the hearing, consider the application and objection, if any, and allow or reject the application.

(3) The court shall, in determining an application for admission as amicus curiae—

- (a) consider the brief submitted under rule 6(2);
- (b) consider objections from any party to the admission of the amicus curiae under rule 8;
- (c) afford the applicant an opportunity to rebut any evidence submitted by an objecting party.

10. Presentation by amicus curiae

(1) Where a court admits amicus curiae under rule 5, the court may give the amicus curiae an opportunity to present the brief on the date fixed for hearing.

(2) The court shall take into account the opinion expressed by amicus curiae admitted under these Rules but shall not be bound by the opinion.

11. Application of Civil Procedure Act and Rules

Where a procedure is required for making an application or service of any process or other related matter under these Rules, the Civil Procedure Act and the Civil Procedure Rules shall apply, with necessary modifications.

ALFONSE CHIGAMOY OWINY- DOLLO
Chief Justice.

Cross References

Constitution

Civil Procedure Act, Cap. 71

Civil Procedure Rules, S.I. No. 71-1