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LEGAL NOTICE NO. 41 OF 2022

Public Service Tribunal Rules, 2022

Pursuant to section 20(7) of the Public Service Act, 2005¹, I,

MOTEKA MOHALE

Chairperson of the Public Service Tribunal, make the following rules:

Citation and commencement

1. These Rules may be cited as the Public Service Tribunal Rules, 2022 and shall come into operation on the date of publication in the Gazette.

Interpretation

2. In these Rules, unless the context otherwise requires -

“Act” means the Public Service Act, 2005;

“agency” means an organisation defined in section 4 of the Act;

“Board” means the Conciliation Board referred to in section 17(7) of the Act;

“Code on Dispute Resolution” means the Code of Good Practice on Dispute Resolution provided for under the Part III of the Codes of Good Practice, 2008;

“Grievance Code” means the Code provided for under Part III of the Codes of Good Practice, 2008;

“Head of Department” means a public officer defined in section 4 of the Act;

“legal practitioner” means a person admitted to practice as an advocate or an attorney in the courts of Lesotho;

“opposition” means the process of opposing a referral brought for

determination by the arbitration or Board;

“party” means any party to the proceedings in the Tribunal and may be a public officer, a public officer’s association or an employer;

“presiding person” means a person or a panel of persons appointed to preside and determine matters referred to the Tribunal;

“public officer” means an officer defined in section 4 of the Act;

“registered public officer’s association” means an association established in terms of section 22 of the Act;

“referral” means a process of presenting a case for determination by the Tribunal;

“secretary” means a person in charge of the secretariat of the Tribunal;
and

“Tribunal” means the Public Service Tribunal referred to in section 20(1) of the Act.

Filing of documents and contact details of Tribunal

3. A party to a dispute involving appeal from disciplinary process, grievance process or an unresolved dispute of interest shall file documents in the Tribunal at the physical address or postal address or telefax number or email address referred to in Schedule I.

Office hours and calculation of time

4. (1) The secretary shall ensure that the office of secretary is open every day between 08h00 and 16h30, from Monday to Friday, except on public holidays.

(2) a party to a dispute referred to the Tribunal shall -

(a) address the documents presented for filing to the secretary; and

-
- (b) file the documents referred to in paragraph (a) with the secretary of the Tribunal within the hours referred to in subrule (1); or
 - (c) fax the documents referred to in paragraphs (a) and (b) at any time and in that case the documents shall be deemed to have been filed on the next working day.
- (3) For the purposes of calculating a period of time -
- (a) day means a working day, and
 - (b) subject to subrule (5), the first day and the last day are excluded.
- (4) If the last day of any period falls -
- (a) On Saturday, Sunday or a public holiday, the last day shall be the next working day; or
 - (b) On a day during the period between 20th December and 5th January, the last day shall be the 6th January; or the next working day after the 6th January, if the 6th January is not a working day.

Referral process

5. (1) A public officer, registered public officer's association or employer appealing against an order arising from -
- (a) a grievance process,
 - (b) a disciplinary process, or
 - (c) an unresolved dispute in terms of section 3(1) of the Code on Dispute Resolution,

may refer the appeal or the unresolved dispute of interest to the Tribunal in writing in the form set out in Schedule I.

- (2) The referring party shall -
 - (a) sign the referral document in a manner set out in Schedule I;
 - (b) attach to the referral document a written proof that the referral document was served on the other party to the dispute; and
 - (c) attach an application for condonation if the referral was filed out of time.

(3) A referral that does not comply with these Rules shall not constitute a referral for the purposes of the Act.

Opposition of the referral

6. (1) A public officer, registered public officer's association or employer against whom an appeal from an order arising from
- (a) a grievance process,
 - (b) from a disciplinary process, or
 - (c) referral of an unresolved dispute of interest in terms of section 3(1)(e) of the Code on Dispute Resolution,

is made, may file the opposition to the appeal or the referral on the unresolved dispute of interest to the Tribunal in writing in the form set out in Schedule 1A.

- (2) The opposing party shall -
 - (a) sign the opposing document in a manner set out in Schedule 1A;
 - (b) attach to the opposing document written proof that the opposing document was served on the other party or parties to the dispute.
- (3) The opposition that does not comply with these Rules shall not

constitute an opposition for the purpose of the Act.

(4) Where the opposing party does not file the opposing document within seven days of receipt of the referral that party shall be barred from filing the opposing documents and the matter shall proceed unopposed.

Modes of service

7. (1) A party shall serve a referral or opposing document on the other party by -
- (a) handing a copy of the document to -
 - (i) the Head of Department of the Ministry or agency at the workplace of the employee involved in the dispute, or
 - (ii) a representative of the Head of Department authorised to accept service, or to a person who appears to be in charge of the office of the Head of Department at the time of service of the document;
 - (b) leaving a copy of the referral document, if the referring party is an employer,-
 - (i) at an address chosen by the employee party to receive service, or
 - (ii) at his or her last known premises or at the office of the association of which he or she is a member;
 - (c) faxing a copy of the document to -
 - (i) the last known fax number of the party, or
 - (ii) a number chosen by the person against whom the referral or opposition is made to receive service;

- (d) sending a copy of the document by registered post to –
 - (i) the last known postal address of the party, or
 - (ii) an address chosen by the party against whom the referral or opposition is made;
 - (e) sending a copy of the document by email to the last known email address of the party or an email address chosen by the party against whom the referral or opposition is made to receive service.
- (2) The service may be effected, if a party is refusing to accept service, by -
- (a) affixing a copy of the referral or opposition document to the main door of the premises, or
 - (b) on a main table within the office or place at which the service is effected.
- (3) A copy of the referral or opposing document may be served to a legal representative, if one party to the dispute informed the other party that it is represented by a legal practitioner and has provided to the other party a written notice of the name, address and fax number of the legal representative.
- (4) The secretary may order service of the referral or opposing document in any manner the secretary considers acceptable in terms of these Rules.

Proof of service

8. (1) A party shall provide proof of service of the referral or opposing document to the secretary in the form of -
- (a) a copy of a slip indicating delivery of the document by registered post to the other party;
 - (b) a copy of the fax transmission report indicating the transmission to the other party of the whole document.
 - (c) a copy of the document signed by or on behalf of the

other party indicating the name and designation of the recipient and the place, time and date of service if the service was made by hand;

- (d) a statement confirming service signed by the person who delivered a copy of the document to the other party or left it at the other party's workplace or premises; or
- (e) a copy of the email notification that the email had been delivered to the recipient indicating the time and date of the message accompanied by a copy of the email or fax message from the recipient acknowledging receipt of a statement confirming receipt of the email by or on behalf of the party signed also by the person who had telephoned the recipient to confirm receipt of the email.

(2) The secretary may accept any other proof of service if it is sufficient.

(3) The document sent by registered post by a party is presumed to have been received by the recipient ten days after it was posted.

(4) The document sent by fax is presumed to have been received at the time of transmission of the last piece of each document.

(5) The document sent by fax or email to the other party after working hours shall be presumed to have been received at the next working day.

Filing of documents

9. (1) A party shall file the referral or opposing document in the Tribunal by -

- (a) handing the document to the secretary;
- (b) sending a copy of the document by registered post to the secretary; or
- (c) faxing the document to the secretary.

(2) A referral or opposing document shall be considered to have been filed in the Tribunal if one original of the document and three copies are -

- (a) handed to the secretary;
- (b) sent by the registered post and received by the secretary;
or
- (c) transmitted by fax and full sets of the documents have been transmitted;

(3) A party shall file an original of a document filed by fax, within five days, only if requested by the secretary to do so.

Referral may be filed within one year

(1) A referral may be filed in the Tribunal if the matter arose within one year after the opening of the Tribunal.

(2) In respect of referral filed in terms of subrule (1) -

- (a) a referral shall not be considered as a late referral, and
- (b) the referring party shall not be required to file an application for condonation of the late filing of the referral.

Time limits for appeals from the grievance and disciplinary process

10. (1) An appeal from the grievance or disciplinary process shall be filed in the Tribunal within five days after the receipt of a written outcome of the process.

Time limits for referral of unresolved disputes of interest

11. A dispute of interest, which was referred for resolution by the Board and remains unresolved, shall be filed in the Tribunal within five days after the receipt of the certificate stating that the dispute is unresolved.

Application for condonation for late filing

13. (1) The presiding person in the matter filed in the Tribunal may, on application, condone a late referral if satisfied that sufficient grounds exist.

(2) The application for condonation shall set out the grounds and the details of the following -

- (a) degree of lateness,
- (b) reasons for lateness:
- (c) the referring party's prospects of succeeding if the referral is heard; and
- (d) any other factor that is relevant to the application.

(3) Notwithstanding the provision of subrule (1) and (2), the presiding person in the Tribunal may condone a late referral of a matter if satisfied that it is in the interest of justice to do so.

General applications

14. (1) a party may make an application to the Tribunal -

- (a) seeking condonation, change to citation, joinder of parties, substitution of disputes, rescission and postponement.
- (b) challenging jurisdiction of the Tribunal or consolidation of disputes; or
- (c) make any other preliminary or interlocutory application.

(2) The party that institutes the application shall file the notice of application which has the following particulars:

- (a) the title of the matter;
- (b) the case number assigned to the matter by the secretary;

- (c) the relief sought;
- (d) the address at which the party serving the documents will accept service of all documents and processes;
- (e) in a case of opposition, the opposing party shall file a notice of opposition and answering affidavit within seven days after the application has been served; and
- (f) a notice that the application may be heard in the absence of the other party to the dispute if that party did not comply with subrule (2)(e).

(3) The application shall be supported by an affidavit which sets out the following:

- (a) the names, description and address of the other party;
- (b) a statement of the material facts on which the application is based;
- (c) a statement of the legal issues; and
- (d) grounds for condonation if the application is filed out of the prescribed time.

(4) A party opposing the application may deliver a notice of opposition and an answering affidavit within seven days from the date that the application was served.

(5) The notice of opposition and answering affidavit shall contain the information required by subrule (2) and (3).

(6) The party that initiated the proceedings shall file and serve that other party with the replying affidavit within five days from the date that the answering affidavit was served.

(7) The replying affidavit shall address only issues raised in the answering affidavit and shall not introduce new issues of fact or law.

(8) An application brought on urgent basis shall set out -

- (a) the urgency of the matter; and
- (b) the reasons why the application cannot be dealt with according to the prescribed time frame.

(9) The secretary shall allocate a date for the hearing of the application when -

- (a) the replying affidavit has been filed; or
- (b) the time prescribed for filing a replying affidavit has lapsed.

(10) The secretary shall notify the parties of the date, time and place of the hearing of the application.

Change of citation

15. A presiding person shall, on application and on notice to the parties, correct and error where a party to the proceedings is incorrectly cited.

Joinder

16. (1) A presiding person may make an order joining any number of persons as parties in the proceedings if the relief depends on substantially the same question of law or fact and the party to be joined has a substantial interest in the proceedings.

(2) The presiding person shall make an order in terms of subrule (1) on -

- (a) own account;
- (b) application by a party on notice to the other party; or
- (c) application by a person entitled to join the proceedings at any time during the proceedings.

(3) The presiding person may, when making an order in terms of subrule (1), give directions as to the further procedure in the proceedings.

Substitution

17. (1) A party to the proceedings or a person may, on notice to the other parties apply for an order substituting a party for an existing party.

(2) A presiding person may make an order or give appropriate direction as to further procedure in the proceedings.

(3) when a presiding person has ordered substitution of another party the secretary shall be informed of the ruling and shall enter the name of the new party in the register replacing the substituted party.

Postponement

18. (1) A scheduled hearing may be postponed -

(a) at the instance of a presiding person and the alternative date shall be given in the hearing or through the secretary immediately after the postponement has been granted; and

(b) by application and on notice the other party.

(2) The secretary may postpone a hearing without the parties appearing if -

(a) all the parties to the dispute agree in writing to the postponement and suggest an alternative date to the secretary; and

(b) the written agreement for the postponement is received by the secretary at least three days before the scheduled date of hearing.

(3) If a party fails to comply with the time referred to in subrule (2)(b) the hearing shall take place on the scheduled date, unless the presiding person, on good cause shown, grants postponement.

-
- (4) Where a presiding person adjourns the hearing to a later date, he shall -
- (a) specify a new date of hearing; and
 - (b) inform the secretary of a new date and the secretary shall communicate that date to parties by notice.

Rescission

19. (1) An application for rescission of the judgment of the Tribunal shall be made within five days from the date on which the applicant becomes aware of the judgment.

(2) A presiding person shall give written reasons for the refusal or granting of the rescission.

Challenge to jurisdiction

20. (1) If during the proceedings any of the parties raises an issue relating to jurisdiction, the presiding person shall require the party that raised the issue to prove that the Tribunal does not have jurisdiction to deal with the dispute.

(2) The presiding person shall give written reasons for a ruling that the Tribunal does or does not have jurisdiction.

Consolidation of disputes

21. The presiding person may, on own accord or on application by any party, with notice to the parties, consolidate more than one dispute in the same proceedings.

Notice of hearing

22. The secretary shall, at any point in the proceedings when the case is due to be heard -

- (a) set the case down for hearing, and

- (b) give the parties at least seven days notice, in writing, of the hearing unless the parties agree to a shorter period.

Pre-hearing conference

23. (1) The parties to the proceedings may hold a pre-hearing conference before the hearing of the dispute and attempt to reach consensus on the following -

- (a) any means by which the dispute may be settled;
- (b) facts that are agreed between the parties;
- (c) facts that are in dispute;
- (d) the issues that the presiding person is required to decide;
- (e) the precise relief sought including the particulars of the relief;
- (f) the discovery of documents and their preparation in chronological order;
- (g) the manner in which documentary evidence is to be dealt with;
- (h) the necessity for any inspection in loco;
- (i) calling of witnesses and the exchanging of witness statements;
- (j) the resolution of any preliminary points that are intended to be taken;
- (k) any other means by which the proceedings may be shortened;
- (l) issues of representation; and
- (m) whether an interpreter is required.

(2) Unless the dispute is settled, the parties shall draw up and sign a minute setting out the facts on which the parties agree or disagree or any matter listed in subrule (1).

(3) The referring party shall deliver a copy of the minutes of the pre-hearing conference to the secretary within five days of the conclusion of the pre-hearing conference.

24. (1) A party to the proceedings may appear in person or be represented by -

- (a) a legal practitioner;
- (b) a member or an office bearer or official of the registered public officers' association; or
- (c) by an employee of the ministry or agency where the dispute originated.

Failure to attend proceedings

25. (1) If a party or the representative of the other party fails to attend the proceedings, the presiding person may -

- (a) Dismiss the matter;
- (b) Grant judgment by default;
- (c) Postpone the matter; or
- (d) Continue with the proceedings in the absence of the other party and make an appropriate ruling in the case of unresolved dispute of interest proceedings.

(2) The presiding person shall be satisfied that the party has been properly notified of the date, time and place of the proceedings, before making any decision in terms of subrule (1)(a),(c) and (c).

(3) The secretary shall send a copy of the decision to the parties including the party that had failed to attend if the matter is dismissed or award is

issued by default or a ruling is made.

Conduct of proceedings of Tribunal

26. (1) The appeal proceedings of the shall be conducted by -
- (a) Representation by the appealing party or the party referring an unresolved dispute of interest of the grounds on which the appeal on disciplinary or grievance process or the referral of the unresolved dispute of interest is based, as outlined in the referral document;
 - (b) Presentation by the defending party of the grounds on which the appeal on the disciplinary or grievance process or referral of an unresolved dispute of interest is opposed;
 - (c) Reference to the record of the disciplinary and grievance process or the certificate stating that the dispute of interest is unresolved and any documentary evidence that was used in the processes, in support of the grounds, laid before the Tribunal; or
 - (d) Presentation of the heads of arguments where appropriate.
- (2) A party may -
- (a) present preliminary issues for determination by the presiding person before the merits of the appeal or referral are proceeded with; or
 - (b) request for submission of verbal or documentary evidence in addition to the proceedings the record of the disciplinary or grievance proceedings on good cause shown.
- (3) Where additional evidence is requested in terms of subrule (2)(b), the other party to the proceedings shall be given opportunity to respond on the request before it is determined.

Conduct of proceedings of unresolved dispute of interest

27. (1) The presiding person may attempt to resolve the dispute involving an unresolved dispute of interest through conciliation process and if the dispute remains unresolved it shall be resolved through any means that may be found appropriate.

(2) The conciliation process may take the form of -

- (a) mediation;
- (b) fact-finding exercise;
- (c) reality testing;
- (d) advisory award;
- (e) brainstorming, problem solving or building on areas of agreement or disagreement; consensus building; or
- (f) any other form that may be relevant to the process.

(3) The conciliation proceedings are private and confidential and shall be concluded on without prejudice basis.

(4) The presiding person shall not be called as witness during any subsequent court unless the parties agreed otherwise in writing.

(5) The presiding person shall attempt to resolve the dispute through conciliation within thirty days of receipt of the referral.

Judgement of the Tribunal

28. (1) The presiding person may enter judgment on the matter to give effect to -

- (a) Any agreement between the parties including a collective agreement; and
- (b) The provisions of the Act and any policy statement that

was brought into the proceedings as part of evidence or became subject of argument between the parties in the proceedings.

(2) The judgment may include or be in the form of a declaratory order.

(3) The judgment shall be released within thirty days of the completion of the proceedings.

(4) The presiding person may apply to the secretary for extension of time for a period not exceeding fifteen days.

Certificate and ruling on unresolved dispute of interest

29. (1) The presiding person shall issue a certificate, within five days of the completion of the unresolved dispute of interest proceedings, which -

- (a) State the nature of the dispute as described in the referral document or as identified by the presiding person and agreed to by the parties during conciliation proceedings;
- (b) outline in precise terms the issue agreed on by the parties or those which remain unresolved;
- (c) include a statement confirming that the certificate is made in full and final settlement of the matter and that there shall be no variation of the certificate unless done in writing by the parties in the presence of the presiding person; and
- (d) in a statement on how the matter will be dealt with to have it resolved.

(2) The ruling in the unresolved dispute of interest proceedings shall be issued to decide on -

- (a) any point of law raised as preliminary issue;
- (b) the continuation or adjournment of the proceedings

where the other party to the proceedings was absent; or

- (c) The dismissal of the proceedings where the applicant is absent or a default judgment where the respondent is absent.

Record of proceedings

30. (1) The presiding person shall keep a record of -
- (a) evidence or sworn testimony given in the proceedings;
 - (b) judgment or ruling made in the proceedings;
 - (c) legal points and issues of fact taken in the proceedings; and
 - (d) other relevant process or happening that occurred in the proceedings.

(2) The record of the oral proceedings shall be kept by any appropriate means, including legible hand-written notes, electronic notes or by means of a mechanical or electronic recording of sound.

(3) The party referring the matter on appeal to the Labour Court shall, prior to the Labour Court hearing -

- (a) transcribe or have the record transcribed, and
- (b) correctly package and number the record.

(4) The transcribed record shall be filed with the secretary for certification by the presiding person before submission to the Labour Court.

(5) The secretary shall hand over the certified transcribed record to the appealing party for filing in the Labour Court according to the relevant rules.

(6) The certified record shall be presumed correct unless the Court decides otherwise.

**MOTEKA MOHALE
CHAIRPERSON OF THE TRIBUNAL**

NOTE

1. Act No. 1 of 2005
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LEGAL NOTICE NO. 42 OF 2022

**Lesotho Passports and Travel Documents (Designation of Office Holders
to be issued with Diplomatic Passport) Notice, 2022**

Pursuant to section 7(4)(c) read with (xix) of the Schedule to the Lesotho Passports and Travel Documents Act, 2018¹, I,

MOTLALENTOA LETSOSA

Minister responsible for home affairs, designate the following offices whose holders may be issued with diplomatic passports:

- (1) SACU; and
- (2) SADC

DATED:

**MOTLALENTOA LETSOSA
MINISTER OF HOME AFFAIRS**

NOTE

1. Act No. 5 of 2018

