

5.2 Mediation

Mediation is a process by which a neutral third party called 'a mediator' helps the parties in a case to reach a mutually acceptable agreement. Under the CCJ Rules of the Court (2016), if a case has good potential for settlement, the Division concerned shall direct that the case to proceed to ADR and the case shall be completed within such time as may be fixed by the Court.

6.0 CaseLines Digital Evidence Management

The Court has implemented a paperless digital evidence management system - CaseLines Evidence Management System.

Aiding improvements in the Rule of Law, CaseLines is a critical tool that helps nations meet the UN's Sustainable Development Goal 16 by transforming the quality and efficiency of justice.

CaseLines software eliminates the need for paper in court by introducing an entirely digital platform with tools which allow the creation and presentation of a fully digital bundle including multi-media evidence.

CaseLines allow lawyers to file cases, applications and evidence in a secure environment from their own offices, saving costs of copying and transporting paper files and personnel, and at the same time cutting the risk of losing or misplacing files. The system supports efficient pre-trial preparation, especially for lawyers supporting clients in different countries. It enables Judges to work efficiently from their home offices, thereby improving preparation, cutting unnecessary travel and speeding the process of preparing judgments after a hearing.



For further information visit the CCJ website
<http://www.comesa.int> or <http://www.comesacourt.org>

or write to

The Registrar

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1.0 Introduction

Regional Economic Communities aim at deepening integration and often set up regional courts with the mandate to interpret the founding treaties. The COMESA Court of Justice (CCJ) is one such court with other examples in the region being the East Africa Court of Justice (EACJ) and Economic Community of West African States Community Court of Justice (ECOWASCJ).

The COMESA Court of Justice was established in 1994 under Article 7 of the COMESA Treaty as one of the Organs of the Common Market for Eastern and Southern Africa (COMESA).

The Court is comprised of two Divisions - an Appellate Division, which has five Judges; and a First Instance Division, which has seven Judges. The Judges are drawn from 12 different Member States of COMESA. The Judge President is the overall head of the Court and the head the Appellate Division. The First Instance Division is headed by the Principal Judge. The Registrar is the Chief Executive Officer of the Court.

The Seat of the COMESA Court of Justice is in Khartoum, Sudan.

2.0 Cases that may be brought to the COMESA Court of Justice

The COMESA Treaty provides the several types of cases that may be brought before the CCJ. They fall in the following categories;

- a) A case against a COMESA Member State;
- b) A case against the Common Market (COMESA) or any of its institutions;
- c) A case where the subject matter relates to the interpretation and application of the COMESA Treaty;
- d) A dispute which arises out of a contract which has an arbitration clause granting the Court jurisdiction to arbitrate in accordance with Article 28 of the Treaty;
- e) Any issue regarding the legality of an act, decision, regulation or directive of the COMESA Council of Ministers or of a Member State that constitutes an infringement of the provisions of the Treaty.

It should be noted that for a case to be taken to

the CCJ, all local remedies should have been exhausted, or there must be a good reason why exhaustion of local remedies was not possible. Exhaustion of local remedies means that the case has gone through the hierarchy of the legal system within the Member State.

3.0 Jurisdiction of the Court

The Jurisdiction for the CCJ stems from the COMESA Treaty.

3.1 General Jurisdiction of the Court

The Court shall have powers to adjudicate upon all matters brought before it pursuant to the Treaty. The First Instance Division, shall, subject to a right of appeal to the Appellate Division, have jurisdiction to hear and determine any matter brought before it in accordance with the Treaty.

3.2 Appellate Jurisdiction of the Court

An appeal will be handled by the Appellate Division of the Court on the following grounds;

- a) Point of law; where the appellant contends that the law in question has not been fully explained or interpreted;
- b) Grounds of lack of jurisdiction; where the appellant contends

that the lower court did not have the jurisdiction to listen to the case;

- c) Procedural irregularity; where the appellant believes that the right procedure was not followed in determining the case.

3.3 References by Member States – Art. 24

The Court has the power to hear references from Member States against another Member State or the Council of Ministers in the event there is failure to fulfill an obligation under the Treaty or in case of infringement of a Treaty provision by a Member State or Council. In the same spirit, a Member State can refer for the Court an application for determination of the legality of any act, decision regulation or directive of the Council of Ministers on grounds that such act, decision regulation or directive is unlawful or constitutes infringement of a Treaty provision or any rule or law relating to its application or is tantamount to a misuse or abuse of power.

3.4 Reference by Legal and Natural persons – Art. 26

The Court has power to hear references from a person (legal or natural) who is a resident in a Member State concerning the legality of act,

decision regulation or directive of the Council or of a Member State on grounds that such act, decision regulation or directive is unlawful or constitutes an infringement of the provisions of the Treaty. Article 26 however, imposes an obligation on such persons to exhaust all local remedies before a reference is made to the Court.

3.5 Jurisdiction over claims by COMESA Employees and Third Parties against COMESA or its Institutions – Art. 27

The Court has jurisdiction to hear disputes between the COMESA and its employees that arise in the application and interpretation of the Staff Rules and Regulations of the Secretariat or other institution regarding the terms and conditions of employment of the employees.

Similarly, the Court has jurisdiction to determine claims by any person brought against COMESA or its institutions for acts of their employees in the performance of their duties, and to award damages.

3.6 Jurisdiction under Arbitration Clauses and Special Agreements – Art. 28

The Court has jurisdiction to hear and

determine matters arising from an arbitration clause contained in a contract which confers such jurisdiction to which the Common Market or any of its institutions is a party or from a dispute between Member States regarding the Treaty if the dispute is submitted to it under a special agreement between the Member States concerned.

3.7 Preliminary Rulings – Art. 30

The Court has jurisdiction to issue Preliminary Rulings upon request of a court or tribunal in a Member State where a question concerning the application or interpretation of the Treaty or validity of regulations, directives and decisions of the Common Market has been raised in proceedings before that court or tribunal, if a ruling on the question is necessary to enable it to give judgment.

3.8 Advisory Opinions – Art. 32

The Court has jurisdiction to give Advisory Opinions on the written request of a Member State or the Secretary General of COMESA on a question of law arising from provisions of the Treaty.

3.9 Interveners

A Member State, the Secretary General or a

resident of a Member State who is not a party to a case before the Court may, with leave of the Court, intervene in that case, but the submissions of the intervening party shall be limited to evidence supporting or opposing the arguments of a party to the case.

4.0 Appearance and/or Representation before the Court

The ways in which a party may appear and be represented in the Court are provided for in the Treaty as well as in the CCJ Rules of Procedure, 2016 (Article 33 and Rule 18) as follows:

- i. Every party to a reference or in any proceedings before the Court shall be represented by Lawyer appointed by that party.
- ii. The Lawyer must be one that is certified to practice before a competent court of a Member State.
- iii. A Lawyer of the Common Market may appear and represent the Common Market in any proceedings where the Common Market is a party.
- iv. A director of a company or any other person appointed by resolution of the company may appear for the company but

must be represented by a lawyer.

It is important to note that in the CCJ, all persons bringing or defending a reference MUST be represented by an Advocate or an agent. However, this requirement does not apply to arbitral matters brought under Article 28.

5.0 Alternative Dispute Resolution (ADR)

Under the Court's Rules of Procedure (Rule 53), the CCJ may encourage Alternative Dispute Resolution (ADR) mechanisms for resolving disputes without going to trial. These ADR mechanisms have many advantages of saving time, reducing legal expenses, are less formal, more flexible and provide more confidentiality to the parties.

The ADR mechanisms may take the form of arbitration, mediation, conciliation and negotiation.

5.1 Arbitration

The foundation for arbitration specifically can be traced to Article 28 of the COMESA Treaty. It is a consensual process where parties to a dispute agree to present their grievances to a third party or parties called an "Arbitrator(s)" for resolution.