

CIVIL PROCEDURE CODE OF THE STATE OF ERITREA

BOOK I - PRELIMINARY MATTERS

TITLE I - BASIC PROVISIONS

Art. 1. - Application.

- (1) This Code may be cited as the *Civil Procedure Code of the State of Eritrea* and shall come into force on the date of its publication in the Gazette of Eritrean Laws.
- (2) The *Civil Procedure Code of the State of Eritrea* shall apply to all proceedings in civil and commercial disputes within the jurisdiction of the Community Courts, Regional Courts, High Court, and Supreme Court.

Art. 2. - Interpretation.

- (1) In this Code, unless the context requires otherwise,
 - (a) “**affidavit**” means a statement of facts in writing lawfully sworn or affirmed as true by the affiant;
 - (b) “**concurring opinion**” means a separate opinion that expresses agreement with another opinion but for a different reason;
 - (c) “**court**” means a court established by law;
 - (d) “**decree**” means the formal expression of any preliminary or final adjudication that, so far as concerns the court expressing it, conclusively determines the rights of the parties concerning all or any of the matters in dispute in the suit;
 - (e) “**decree-holder**” means any person in whose favor a decree has been made or passed, or an order capable of execution has been made, and shall include the transferee of a decree;
 - (f) “**execution officer**” means any judge, officer of any court or any other person authorized by law to execute judgments;
 - (g) “**foreign court**” means a court outside Eritrea;
 - (h) “**foreign judgment**” means the judgment of a foreign court;
 - (i) “**government pleader**” includes:
 - (i) any officer appointed by the government to perform all or any of the functions imposed by this Code on the government pleader; and

- (ii) any pleader acting under the directions of the government pleader;
 - (j) “**judgment**” means the statement given by a court that expresses the court’s determination of an issue and, for greater certainty, includes any decision, decree or order of the court;
 - (k) “**judgment-debtor**” means any person against whom a judgment has been passed or an order capable of execution has been made;
 - (l) “**law**” includes proclamations, decrees, orders and any subsidiary legislation made thereunder;
 - (m) “**legal representative**” means any person who in law represents a person under disability or the estate of a deceased person;
 - (n) “**mesne profits**” of property means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but shall not include profits due to improvements made by such person;
 - (o) “**order**” means the formal expression of any decision of a court that is not a decree;
 - (p) “**person under disability**” means any person who is not capable under the law;
 - (q) “**pleader**” means an advocate and shall include any person authorized to appear and plead for someone else;
 - (r) “**prescribed**” means prescribed by regulations under this Code;
 - (s) “**process**” means any judicial writ or order issued at the beginning or during the course of the proceedings;
 - (t) “**registrar**” means the registrar or assistant registrar of a court and includes any clerk of court assigned by the registrar to carry out all or part of the duties of a registrar;
 - (u) “**share in a share company or corporation**” includes stock, debenture stock, debentures or bonds.
- (2) Unless otherwise required by context, terms in male gender include the female gender and *vice versa*.

Art. 3. - Objective.

The objective of this Code is to enable the court and the parties to advance substantive and procedural justice and to secure a just, speedy, and efficient determination of civil and commercial disputes.

Art. 4. - Access to Justice.

The provisions of this Code shall not detract from the right of every person to have access to a court for the protection and enforcement of his rights.

Art. 5. - Independence and Impartiality of the Judge.

Judges shall be independent and impartial in the exercise of their functions and shall submit to no authority other than that of the Constitution and the law.

Art. 6. - Equality before the Court.

Proceedings before the court shall be conducted on the basis of equality of the parties. The court shall secure that all parties equally enjoy the rights, and equally observe the duties, established in this Code, regardless of race, nationality, language, sex, ethnic origin, color, property, official position, social or economic status, place of residence, religion, political belief or opinions.

Art. 7. - Right to be Heard.

- (1) Each party shall have the right to be heard before a court of law.
- (2) The right to be heard includes:
 - (a) the right of each party to present and explain the case by the submission of admissible evidence and argument;
 - (b) the right of each party to have access to all statements, documents and other information submitted to the court regarding the case by the opposing parties or otherwise; and
 - (c) the right to contradict the statements, documents and other information submitted to the court by the opposing parties in the case or otherwise.
- (3) When evidence is to be given in a language other than Tigrigna, it shall be interpreted by an official interpreter or by any other person the court may appoint for that purpose, and any person so appointed shall before interpreting the evidence take the oath or affirmation in the form provided for by law.
- (4) The court shall ensure that no decision is taken until the requirements of the right of each party to be heard are fully met.

Art. 8. - Public Hearing.

- (1) The general rule is that all court hearings are held in public.
- (2) The public nature of the court hearings does not require the court to make special arrangements for accommodating the public.
- (3) The court, on its own motion or at the request of the parties, may order a

hearing, or any part of it, to be conducted *in camera* if it is satisfied that:

- (a) publicity would defeat the object of the hearing;
 - (b) the hearing concerns the national security of Eritrea;
 - (c) confidential information is involved and publicity would damage that confidentiality;
 - (d) a hearing *in camera* is necessary to protect the privacy of the parties or of other persons, such as children and patients;
 - (e) the court considers this to be necessary in the interests of public order or the administration of justice.
- (4) The hearing, or any part of it that is held *in camera*, shall be conducted in compliance with this Code.

Art. 9. - Settlements.

For the purpose of reaching a settlement between the parties, the court may require at any stage of the proceedings the personal appearance of the parties or, in case the party is the Government or a corporate body, the personal appearance of any person on the part of the Government or the corporate body who has the authority to bind the party to a settlement.

Art. 10. - Reasonable Time.

- (1) The court shall ensure that, so far as is practicable and in harmony with the requirement of doing justice, each case is dealt with expeditiously. Upon request or on its own motion the court shall order a party to abstain from causing unreasonable delay. A party who fails to comply with the orders of the court in this respect may be held in contempt of court or subject to other sanctions, such as the preclusion of the belated arguments.
- (2) The court shall give judgment within a reasonable time.

Art. 11. - Majority Vote in Full Court.

- (1) The issues in a case being considered in full court shall be resolved by a majority. No judge may abstain.
- (2) The judge who disagrees with the decision of another judge sitting in the same case may write and file a dissenting or concurring opinion and it shall be released at the same time as the reasons of the majority.

Art. 12. - Delegation.

Where this Code, a judgment, decree or order of the court requires or permits the court to perform an act of a formal or administrative character, the court may delegate to a court officer the authority to perform that act. The court officer may consult the presiding judge

before performing the act.

Art. 13. - Recusal.

- (1) Upon motion by any party involved in the case, or upon his own motion, any judge scheduled to hear matters at the pretrial, trial or appeal stages of a case shall recuse himself in any proceedings where:
 - (a) he has a personal interest;
 - (b) he is a relative of any person involved;
 - (c) he has had prior substantial involvement in the case; or
 - (d) for any other reason his independence or impartiality in the proceeding might reasonably be called into question.
- (2) If a judge decides not to recuse himself in accordance with this Article, that decision is subject to immediate appeal, before the continuation of the proceedings, to the court that would hear an appeal of the case after judgment. In the case where the judge is a Justice of the Supreme Court, the appeal shall be heard by other Justices of the Supreme Court.

Art. 14. - Attorney General.

When he has reason to believe that the public interest is affected, the Attorney General may intervene in any suit at any stage of the proceedings.