

ALUOCHIER DISPUTE RESOLUTION
 AITAR DIGITAL GAZETTE
 AMENDMENT NOTICE — AITAR 2026 & AISTAR 2026

Notice Reference	ADR/GAZETTE/AN/2026/013
Operative Date	15 May 2026
Instruments Amended	AITAR 2026 (Fourth Edition) and AISTAR 2026 (3 May 2026 Edition)
Subject	SRT/High Court Jurisdictional Characterisation; Abatement Pathway; SRT Member Quality Assurance Retention (QAR); High Court Remittal Powers; Conforming Amendments to Rule 14 and First Schedule Part 7
Authority	Chief Adjudicator, Aluochier Dispute Resolution
Constitutional Basis	Articles 1(3)(c), 27, 47, 47(2), 159(2)(b), 165(6) and (7) of the Constitution of Kenya 2010; FAA Act sections 8, 9(2), 11; FAA Rules Rule 6

Scope of This Notice

This Amendment Notice effects amendments to AITAR 2026 (Fourth Edition) and AISTAR 2026 (3 May 2026 Edition) in five areas: (1) clarification of the SRT/High Court jurisdictional characterisation and the hierarchy of supervisory review; (2) the abatement pathway to the High Court and its jurisdictional consequence; (3) introduction of a Quality Assurance Retention on the SRT member's professional fee, on parity with the primary Tribunal member's QAR, grounded in Articles 1(3)(c), 27, 47 and 165(6) of the Constitution; (4) the High Court's remittal powers following supervisory review of an SRT determination; and (5) conforming amendments to Rule 14 and First Schedule Part 7. All amendments are operative from 15 May 2026 and apply to proceedings commenced or pending on or after that date.

PART A — JURISDICTIONAL ARCHITECTURE: THE SUPERVISORY HIERARCHY

A.1 The Corrected Supervisory Hierarchy

The following diagram sets out the corrected characterisation of the supervisory hierarchy applicable to all proceedings under AITAR 2026 and AISTAR 2026. All prior graphic directions in the Video Scripts calling for parallel arrows from both the SRT and the High Court pointing independently at the primary Tribunal are superseded by this Notice. The correct model is sequential, not parallel.

COURT OF APPEAL	Appellate jurisdiction under Article 164(3)(a) over the High Court's exercise of supervisory jurisdiction. Character of review is supervisory — cannot expand to merits rehearing.
HIGH COURT	Supervisory jurisdiction only under Articles 47(3) and 165(6) over the SRT. No appellate jurisdiction (no written law confers it; SRT is not a subordinate court under Article 169). Reviews the SRT's exercise of its supervisory powers; necessarily examines primary Tribunal conduct as subject matter

	of that review. Independent — not bound by SRT. May remit to fresh SRT, to primary Tribunal, or to freshly constituted primary Tribunal.
SRT	Purely internal supervisory review jurisdiction under Part VII. Not a court under Chapter Ten. Reviews procedural regularity and legal soundness of the primary Tribunal's action. Cannot rehear merits. Subject to High Court supervisory jurisdiction under Article 165(6). SRT member QAR applies.
PRIMARY TRIBUNAL	Exercises original quasi-judicial jurisdiction under Articles 1(3)(c), 47, 50(1), 159(2)(c). Issues Determinations and Awards constituting administrative action under Article 47. Subject to SRT internal review and High Court supervisory jurisdiction. Primary Tribunal member QAR applies.

The sequential model does not diminish the High Court's independence. The High Court is not bound by the SRT's determination. It may reach a different conclusion on the same supervisory questions. What the sequential model corrects is the false implication that the High Court reviews the primary Tribunal's action as if the SRT had never acted. Where the SRT has acted, the High Court reviews the SRT's exercise of its supervisory powers, within which the primary Tribunal's conduct is examined as the subject matter of that review.

A.2 New Rule: Nature of High Court Review (Rule 54A — AITAR; Rule 51A — AISTAR)

The following new rule is inserted in Part VII of AITAR 2026 immediately after Rule 54, and in the equivalent position in AISTAR 2026:

Rule 54A — Nature of High Court Jurisdiction over the SRT (AITAR 2026)

1. The High Court does not possess appellate jurisdiction over the SRT. No written law confers appellate jurisdiction on the High Court over the SRT. The SRT is not a subordinate court within the meaning of Article 169 of the Constitution of Kenya. Section 65(1) of the Civil Procedure Act does not apply to proceedings arising from SRT determinations.
2. The jurisdiction of the High Court over the SRT is supervisory jurisdiction only, under Articles 47(3) and 165(6) of the Constitution. Any application to the High Court arising from or following the conclusion of SRT proceedings is a judicial review application and must be framed and determined accordingly.
3. Where the SRT has issued a determination and a party proceeds to the High Court on judicial review, the High Court exercises its supervisory jurisdiction over the SRT's conduct of the internal supervisory review. In the course of that review, the High Court necessarily examines the primary Tribunal's conduct as the subject matter of the SRT's review. The High Court is not conducting a fresh independent review of the primary Tribunal's action as if the SRT had not acted; it is supervising the SRT, and the primary Tribunal's conduct enters the review as the subject of what the SRT was reviewing. The High Court is not bound by the SRT's conclusions.
4. The supervisory character of the High Court's jurisdiction over the SRT defines and limits what the High Court may do. It may not conduct a merits rehearing of the primary dispute. Its review is confined to the supervisory grounds available under section 7 of the Fair Administrative Action Act, applied to the SRT's conduct of the internal review and, through it, to the primary Tribunal's action.
5. The Court of Appeal, in exercising its appellate jurisdiction under Article 164(3)(a) over the High Court's exercise of supervisory jurisdiction under this Rule, is confined to reviewing the High Court's supervisory exercise. The character of what the High Court was doing — supervisory review of the SRT's supervisory review of the primary Tribunal — defines and limits what the Court of Appeal may examine. The Court of Appeal may not expand the proceedings into a merits rehearing of the primary dispute.

PART B — THE ABATEMENT PATHWAY TO THE HIGH COURT

B.1 Amendment to Rule 56 (AITAR) and Equivalent AISTAR Rule: Abatement Consequences

The following sub-rule is added to the existing Rule 56 (Deemed Dismissal and Certificate of Finality) in AITAR 2026, and to the equivalent rule in AISTAR 2026:

Rule 56 — New Sub-Rule: Jurisdictional Consequence of Abatement (AITAR 2026)

Where the SRT fails to determine a Review Application within the ninety-day period prescribed by section 8 of the Fair Administrative Action Act and the application is deemed dismissed by operation of law:

- (a) the internal remedy has been exhausted by abatement within the meaning of section 9(2) of the Fair Administrative Action Act, and the party is entitled to proceed to the High Court for judicial review without further obligation to exhaust any additional internal process;
- (b) because no SRT determination has been issued, there is no SRT supervisory exercise for the High Court to review at the SRT level; the High Court therefore exercises its supervisory jurisdiction under Articles 47(3) and 165(6) of the Constitution directly over the primary Tribunal's administrative action, applying the grounds available under section 7 of the Fair Administrative Action Act;
- (c) a judicial review application filed in the abatement pathway shall be framed as a direct supervisory challenge to the primary Tribunal's action, not as a challenge to any SRT determination; the SRT record — comprising the Review Application, the parties' submissions, and the registration documentation — shall be filed as part of the judicial review record to establish the exhaustion of internal remedies;
- (d) abatement is a system failure and not an alternative route that parties should regard as equivalent to or preferable to a timely SRT determination; a party that has suffered abatement proceeds to the High Court without the benefit of any prior supervisory analysis and without the institutional quality assurance function the SRT was established to provide;
- (e) the Certificate of Finality notification issued upon abatement shall inform the party of the jurisdictional consequence set out in this sub-rule and shall advise the party to seek legal advice without delay regarding the framing of any judicial review application.

PART C — SRT MEMBER QUALITY ASSURANCE RETENTION (QAR)

C.1 Constitutional Basis for Parity

Both the primary Tribunal and the SRT exercise delegated sovereign adjudicative authority under Article 1(3)(c) of the Constitution. Both exercise quasi-judicial functions within the meaning of Article 165(6). Both are subject to the constitutional quality obligation imposed by Article 47. The absence of a Quality Assurance Retention on the SRT member's professional fee — while the primary Tribunal member's fee is subject to a twenty percent QAR — constitutes differential treatment of persons who are constitutionally similarly situated. This differential treatment is not grounded in any principled constitutional distinction. It is an omission that this Notice corrects, pursuant to Article 27 of the Constitution (equality and non-discrimination), Articles 1(3)(c), 47, and 165(6), and the principle that all who exercise delegated sovereign quasi-judicial authority are accountable to the same quality standards.

C.2 Amendment to First Schedule Part 7 (AITAR and AISTAR)

First Schedule Part 7 is amended by substituting the following for the existing provision on SRT fee payability:

First Schedule Part 7 — SRT Costs (Amended) (AITAR 2026 and AISTAR 2026)

1. SRT professional fee: fifty percent of the primary Tribunal's professional fee, minimum KES 50,000 domestic or USD 750 international. Administrative costs: twenty percent of the SRT professional fee.

2. Upon delivery of a reasoned SRT determination within the mandatory ninety-day period under section 8 of the Fair Administrative Action Act:
 - (a) eighty percent of the SRT professional fee is released immediately to the SRT member; and
 - (b) twenty percent of the SRT professional fee is retained in the AQAF as the SRT Member Quality Assurance Retention (SRT QAR), pending the outcome of the forty-two-day judicial review application window under Rule 6 of the Fair Administrative Action Rules, 2024.
3. If no judicial review application is filed at the High Court within forty-two days of the date of the SRT determination, the SRT QAR is released in full to the SRT member.
4. If a judicial review application is filed within forty-two days, the SRT QAR is held in the AQAF pending the High Court's determination of the judicial review application.
5. Upon the High Court's determination of the judicial review application:
 - (a) if the High Court dismisses the judicial review application or confirms the SRT determination, the SRT QAR is released in full to the SRT member;
 - (b) if the High Court quashes the SRT determination on substantive supervisory grounds, the SRT QAR is transferred from the AQAF to the parties' fund and applied toward the costs of any fresh SRT proceedings or any reconstituted Tribunal proceedings ordered by the High Court, as directed by the institution.
6. The SRT QAR is deferred professional remuneration. It is not a disciplinary penalty. It becomes subject to adjustment for serious misconduct under Rule 14.5 only after the SRT member has been notified in writing and given a reasonable opportunity to respond, in compliance with Article 47 of the Constitution.
7. Where the SRT fails to determine a Review Application within the ninety-day period (abatement): the full SRT professional fee is refunded to the parties; the institutional administrative costs are retained by ADR; no SRT QAR arises; and the SRT member's personal liability for abortive costs under Rule 66.1 is not affected by this sub-rule.

The following table summarises the SRT member QAR outcomes:

Event	SRT Member QAR	Consequence
No judicial review filed within 42 days of SRT determination	Released in full to SRT member	Full deferred remuneration earned
Judicial review filed; High Court confirms SRT determination	Released in full to SRT member	Full deferred remuneration earned
High Court quashes SRT determination on substantive grounds	Transferred to AQAF parties' fund	Applied toward costs of fresh SRT or reconstituted Tribunal proceedings
SRT fails to determine within 90 days (abatement)	No QAR — full fee refunded	No quality consequence; abortive cost liability under Rule 66.1 applies instead

PART D — HIGH COURT REMITTAL POWERS FOLLOWING SRT SUPERVISORY REVIEW

D.1 New Sub-Rule in Rule 54A (AITAR) / Rule 51A (AISTAR)

The following sub-rule is added to Rule 54A (as inserted by Part A of this Notice):

Rule 54A — Sub-Rule 6: High Court Remittal Options (AITAR 2026)

6. Where the High Court, in the exercise of its supervisory jurisdiction under Articles 47(3) and 165(6) of the Constitution, quashes an SRT determination, it may, pursuant to section 11 of the Fair Administrative Action Act, exercise one of the following remittal powers:

(a) Remit to a freshly constituted SRT for a fresh internal supervisory review of the primary Tribunal's action, with or without directions. This order is appropriate where the defect in the SRT determination is of a character — procedural, jurisdictional, or legal — that a properly constituted SRT applying the correct standard could resolve without the parties requiring direct recourse to a reconstituted primary Tribunal.

(b) Remit directly to the primary Tribunal, or to a freshly constituted primary Tribunal, with directions. The primary Tribunal is the body with jurisdiction over the merits of the dispute. This order is appropriate where: the SRT determination was so fundamentally defective that a fresh SRT review would be pointless or disproportionate; or the High Court's supervisory review has disclosed a defect in the primary Tribunal's action that the SRT should have identified and remedied but did not, and that defect requires direct attention at the merits level.

(c) Quash both the SRT determination and the primary Tribunal's determination and remit to a freshly constituted primary Tribunal for a full rehearing. This order is appropriate where the High Court's supervisory review reveals that the primary Tribunal's determination was itself fundamentally defective in a manner that infected the SRT review and that cannot be corrected without a fresh hearing on the merits.

In all cases, the High Court does not substitute its own determination on the merits of the primary dispute. The choice of remittal destination is a matter of judicial discretion exercised in accordance with the constitutional architecture and the interests of the parties.

7. The QAR consequences of each High Court remittal order are as follows:

(a) Order under sub-rule 6(a) — remit to fresh SRT: the SRT member's QAR is transferred to fund the costs of the fresh SRT proceedings; the primary Tribunal member's QAR remains held pending the fresh SRT outcome.

(b) Order under sub-rule 6(b) — remit to primary Tribunal or freshly constituted primary Tribunal: the SRT member's QAR is transferred to the parties' fund; the primary Tribunal member's QAR consequences are determined by the reconstituted or fresh Tribunal's outcome.

(c) Order under sub-rule 6(c) — quash both and remit to freshly constituted primary Tribunal: both the SRT member's QAR and the primary Tribunal member's QAR are transferred to the parties' fund toward the costs of the fresh primary Tribunal proceedings.

PART E — CONFORMING AMENDMENTS TO RULE 14 (AITAR AND AISTAR)

E.1 Amendment to Rule 14.1 — Constitutional Basis (AITAR and AISTAR)

Rule 14.1 is amended by inserting the following sentence at the end of the existing provision:

Rule 14.1 — Addition (AITAR 2026 and AISTAR 2026)

The AQAF quality assurance architecture applies equally to SRT members exercising internal supervisory review jurisdiction under Part VII of these Rules, *mutatis mutandis*. Both primary Tribunal members and SRT members exercise delegated sovereign quasi-judicial authority under Article 1(3)(c) of the Constitution and are subject to the same constitutional quality obligation under Article 47. The differential treatment of SRT members that would result from the absence of a Quality Assurance Retention on the SRT professional fee is constitutionally impermissible under Article 27 (equality and non-discrimination). The SRT Member Quality Assurance Retention (SRT QAR) is introduced by this Notice as a necessary corrective, operative from 15 May 2026.

E.2 Amendment to Rule 14 — New Sub-Rule: SRT QAR Architecture

The following new sub-rule is inserted in Rule 14 of AITAR 2026 and AISTAR 2026:

Rule 14 — New Sub-Rule: SRT Member Quality Assurance Retention (AITAR 2026 and AISTAR 2026)

14A. SRT Member Quality Assurance Retention (SRT QAR).

- (1) The Quality Assurance Retention mechanism under Rule 14 and First Schedule Part 7 (as amended by Amendment Notice ADR/GAZETTE/AN/2026/013) applies to SRT members exercising review jurisdiction under Part VII of these Rules, on the same constitutional basis as it applies to primary Tribunal members.
- (2) The SRT QAR is twenty percent of the SRT professional fee. It is held in the AQAF pending the forty-two-day judicial review application window under FAA Rule 6 following the date of the SRT determination.
- (3) The three outcomes applicable to the SRT QAR are:
 - (i) No judicial review within 42 days: SRT QAR released in full.
 - (ii) Judicial review filed; High Court confirms SRT determination: SRT QAR released in full.
 - (iii) High Court quashes SRT determination on substantive grounds: SRT QAR transferred to the parties' fund as directed by Rule 54A(7).
- (4) The process of adjusting or withholding the SRT QAR following any finding must comply with Article 47's procedural fairness requirement. The SRT member must be notified in writing and given a reasonable opportunity to respond before any adjustment is made.
- (5) The SRT QAR does not apply in the abatement scenario (SRT failure to determine within 90 days). In the abatement scenario, the existing fee refund and personal liability provisions under Rule 56 and Rule 66.1 apply.

PART F — CONFORMING AMENDMENTS TO RULE 57 (SRT POWERS)

Rule 57 is amended by adding the following sub-rule on QAR consequences, extending the existing QAR consequences statement to address both the primary Tribunal member and the SRT member:

Rule 57 — New Sub-Rule: Dual QAR Consequences of SRT Orders (AITAR 2026)

Rule 57 — QAR Consequences (amended).

Upon issuing an order under Rule 57, the SRT determination shall state the QAR consequences for both the primary Tribunal member and the SRT member as follows:

- (a) Affirmation of the primary Determination: the primary Tribunal member's QAR is released; the SRT member's SRT QAR is held pending the 42-day judicial review window.
- (b) Remittal with directions to the original or a reconstituted primary Tribunal: the primary Tribunal member's QAR is held pending the reconstituted Tribunal's outcome; the SRT member's SRT QAR is held pending the 42-day judicial review window.
- (c) Correction of a technical defect under Rule 35: the primary Tribunal member's QAR is released; the SRT member's SRT QAR is held pending the 42-day judicial review window.
- (d) Full set-aside and remittal to a freshly constituted primary Tribunal: the primary Tribunal member's QAR is transferred to the parties' fund toward costs of the reconstituted Tribunal; the SRT member's SRT QAR is held pending the 42-day judicial review window — and is subject to transfer if the High Court subsequently quashes the SRT determination.

PART G — TRAINING PROGRAMME AND VIDEO SCRIPT AMENDMENTS

The following amendments to the Training Programme and Video Scripts are directed to the programme team for implementation in the next revision cycle:

G.1 Module 1 Block C and Module 11 — Graphic Direction

All existing graphic directions calling for parallel arrows from both the SRT and the High Court pointing independently at the primary Tribunal box are superseded and withdrawn. The corrected graphic must show a sequential chain: Primary Tribunal at the base; SRT above it with a supervisory arrow labelled 'internal supervisory review — procedural regularity and legal soundness'; High Court above the SRT with a supervisory arrow labelled 'supervisory jurisdiction under Art 165(6) — reviews SRT's exercise of its supervisory powers; primary Tribunal conduct examined as subject matter'; Court of Appeal at the apex with an appellate arrow labelled 'appellate jurisdiction under Art 164(3)(a) — confined to supervisory character of HC review'. A notation adjacent to the High Court box should read: 'No appellate jurisdiction over SRT — SRT is not a subordinate court under Art 169 — no written law confers it'.

G.2 Module 3 — AQAF Architecture

Module 3 Block B must be updated to introduce the SRT Member QAR as part of the AQAF architecture. The AQAF flow diagram must show two parallel QAR tracks: the primary Tribunal member QAR (existing) and the SRT member QAR (new). The constitutional basis under Article 27 (equality) must be explained. The three SRT QAR outcomes must be taught alongside the three primary Tribunal QAR outcomes.

G.3 Module 11 — SRT Accountability Framework

Module 11 Block C (90-Day Discipline) must be expanded to include the SRT QAR as a second dimension of SRT member accountability, alongside the delivery obligation. The message to trainees must be clear: SRT accountability is dual — deliver on time, and deliver to a quality standard that survives High Court supervisory review. The 42-day holding period, the judicial review trigger, and the transfer consequence must all be taught as personal financial consequences of defective SRT work.

G.4 Module 11 — Five-Part SRT Determination Structure

The five-part structure of the SRT determination must be updated to reflect the dual QAR consequences. Part Five of every SRT determination must now state: (a) the QAR consequences for the primary Tribunal member (existing); and (b) the SRT member's own SRT QAR status — noting that it is held for 42 days pending the judicial review window and is subject to transfer if the High Court quashes the determination.

G.5 Module 10 — Constitutional Architecture

Module 10 must be updated to reflect the corrected jurisdictional characterisation in Part A of this Notice, including the unavailability of appellate jurisdiction over the SRT, the correct description of the Court of Appeal's confined appellate role, and the two pathways (normal post-SRT judicial review, and abatement pathway) as described in Part B.

PART H — OPERATIVE PROVISIONS

H.1 This Notice is operative from 15 May 2026.

H.2 All amendments in this Notice apply to SRT proceedings commenced or pending on or after 15 May 2026. SRT proceedings in which a determination was issued before 15 May 2026 and in respect of which the 42-day judicial review window had already commenced before that date are not affected by the SRT QAR provisions in Parts C and F of this Notice.

H.3 Rule 54A (AITAR) and Rule 51A (AISTAR) as inserted by Part A of this Notice supersede and replace all prior descriptions of the SRT/High Court interface in the Rules, the Video Scripts, and the Training Programme to the extent of any inconsistency.

H.4 The AISTAR equivalent provisions — Rules 52, 53, and the First Schedule — are amended mutatis mutandis in accordance with Parts B, C, D, E, and F of this Notice. References to AITAR rule numbers in this Notice shall be read in AISTAR as references to the equivalent AISTAR provisions.

H.5 This Notice is issued under the authority of the Chief Adjudicator and shall be published in the AITAR Digital Gazette.

Issued by:

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Aluochier Dispute Resolution
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