

## GOVERNMENT OF ZAMBIA

STATUTORY INSTRUMENT NO. 27 OF 2012

**The High Court Act**  
(Laws, Volume 3, Cap. 27)**The High Court (Amendment) Rules, 2012**

IN EXERCISE of the powers contained in sections *forty-four* and *forty-five* of the High Court Act, the following Rules are hereby made:

- |   |                              |
|---|------------------------------|
| 1. These Rules may be cited as the High Court (Amendment) Rules, 2012, and shall be read as one with the High Court Rules, in these Rules referred to as the principal Rules. | Title<br>Cap. 27             |
| 2. Order VII of the principal Rules is amended —  | Amendment<br>of<br>Order VII |
| (a) by the deletion of paragraph (a) of sub-rule (1) of rule 1 and the substitution therefor of the following:  |                              |
| (a) physical, postal and electronic address of the plaintiff;   |                              |
| (b) in paragraph (b) of sub-rule (1) of rule 1, by the insertion, immediately after the word “postal”, of a comma and the words “physical and electronic”;                    |                              |
| (c) in sub-rule (2) of rule 1 by the insertion, immediately after the word “business”, of the words “and electronic mail address”;  |                              |
| (d) in sub-rule (1) of rule 2 by the insertion, immediately after the word “postal”, of the words “and electronic mail”;  |                              |
| (e) by the insertion, immediately after the word “written”, of the words “or electronic”; and   |                              |
| (f) by the deletion of rule 3 and the substitution therefor of the following:   |                              |



(4) A Judge may, after a scheduling conference, summon parties to a compliance or status conference and make any order as to costs against any defaulting party.

7. Order XXXII of the principal Rules is amended—

Amendment  
of Order  
XXXII

(a) in rule 2, by the deletion of sub-rules (5), (6) and (7) and the substitution thereof of the following:

(6) Every record made by means of recording apparatus shall be kept both in electronic form and hard copy.

(7) In case of a hard copy, unless the presiding Judge or Registrar shall otherwise direct, every record of evidence made in shorthand shall be placed in the docket containing the papers relating to the case of which it is a record.

(8) The Court may receive oral evidence from a source within and outside Zambia via audio visual technology and such evidence shall be recorded in the same manner as if the witness was physically present in Court.

(9) Every record of evidence made by means of recording apparatus, together with any notes thereon, made by a recording apparatus operator shall be filed in accordance with directions given by the Registrar.

(10) The proceedings of the sittings of the Court may be kept in electronic form.

(11) Any person may conduct a search on a case record manually or electronically, upon payment of the prescribed fee.;

(b) by the deletion of rule 4 and the substitution thereof of the following:

Transcript  
of record of  
proceedings

4. (1) A transcript of the record of proceedings made in shorthand or by means of a recording apparatus shall be certified by the Court and made available to the parties upon payment of a prescribed fee.

(2) Every transcribed record of proceedings shall be certified by the Court and shall be deemed to be a true and correct record of the proceedings and shall constitute part of the record of the Court.;



(c) in rule 5, by the insertion, immediately after the words “in either case” of a comma and the words “in electronic form or hard copy,”; and

(d) in sub-rule (2) of rule 6, by the deletion immediately after the words “approved by the” of the words “presiding Judge or Registrar” and the substitution therefor of the words “Chief Administrator”.

Amendment  
of Order LIII

8. The principal Rules are amended by the deletion of Order LIII and the substitution therefor of the following:

ORDER LIII  
COMMERCIAL ACTIONS

Interpretation

1. In this Order, unless the context otherwise requires—

“ commercial action ” means any cause arising out of any transaction relating to commerce, trade, industry or any action of a business nature;

“ Commercial List ” means a list of commercial cases that are determined by a court using the prescribed procedure applicable to commercial actions;

“ Committee ” means the Commercial List Committee established under rule 12;

“ Court ” means a High Court Judge or Deputy Registrar dedicated to the commercial list and designated by the Chief Justice under rule 4;

“ Registrar ” means the person designated as Registrar of the Commercial List; and

“ Registry ” means the Commercial List Registry established under rule 3.

(2) In these Rules, reference to an application shall, where appropriate, apply to cause, matter or action, as the case may be.

Commercial  
List

2. (1) There shall be a Commercial List in which commercial actions in the Court shall be entered in accordance with these Rules.

(2) Every commercial action shall be prosecuted in accordance with these Rules.

(3) If there is any inconsistency between these Rules and the rules applicable to the general list in relation to commercial actions, these Rules shall, to the extent of the inconsistency, prevail in commercial actions.

3. (1) There shall be a Commercial List Registry which shall be administered by an officer designated as Registrar of the Commercial List.

Commercial  
List  
Registry

(2) The Registrar shall administer the day-to-day affairs of the Commercial List and superintend over the Deputy Registrar and Assistant Registrar of the Commercial List.

4. The Chief Justice shall designate a Judge-in-Charge of the Commercial List and such other Judges as the Chief Justice may determine.

Appointment  
of Judges to  
Commercial  
List

5. A commercial action shall be commenced and filed in the Registry.

Commence-  
ment of  
action

6. (1) A statement of claim or counter-claim, as the case may be, shall state in clear terms the material facts upon which a party relies and shall show a clear cause of action, failing which the statement of claim or counterclaim may be struck out or set aside or the action dismissed by the Court, on its own motion or on application by a party.

Pleadings

(2) The defence shall specifically traverse every allegation of fact made in the statement of claim or counter-claim, as the case may be.

(3) A general or bare denial of allegations of fact or a general statement of non admission of the allegations of fact shall not be a traverse thereof.

(4) A defence that fails to meet the requirements of this rule shall be deemed to have admitted the allegations not specifically traversed.

(5) Where a defence fails under sub-rule (4), the plaintiff or defendant, or the court on its own motion, may in an appropriate case, enter judgement on admission.

7. (1) A Judge shall, within fourteen days of the filing of the memorandum of appearance and defence, summon parties to a scheduling conference at which the Judge shall issue directions for trial which shall be adhered to strictly.

Scheduling  
conference  
and other  
conferences

(2) A Judge shall, at the conference referred to in subrule (1), and in consultation with the parties to the case, where an action has not been referred to mediation or arbitration in terms of rule 8, issue directions for the exchange of bundles of pleadings and documents, discovery and witness statements according to the scheduling conference.

(3) The witness statement shall be treated as the evidence-in-chief of the witness and shall contain all the facts relevant to the claim, defence or counter claim, as the case may be, and make reference to the documents relied upon in the bundle of documents.

(4) The parties shall, at the time of filing their witness statements, file skeleton arguments of their case and list of authorities.

(5) A Judge shall, after the exchange of the documents referred to in subrule (2), fix the date for the hearing.

(6) A Judge may, after a scheduling conference, summon parties to a compliance or status conference to review the status of the case and may make any order, including an order as to costs, against any party.

(7) A Judge shall dismiss an action if the parties fail to attend a scheduling or status conference on two occasions without justifiable cause.

(8) A Judge shall, during the scheduling conference, request the parties to give the Judge an estimate of the time the hearing will take and the Judge shall allocate time to the matter.

Arbitration  
and  
mediation

8. (1) A Judge may, at the scheduling conference, refer parties to mediation in accordance with Order XXXI, or where applicable, to arbitration.

(2) If a matter that is referred to mediation is not settled or mediated within thirty days from the date of reference, it shall be referred back to the trial Judge who shall, within fourteen days thereof, summon the parties to a scheduling conference to issue directions on the schedule of events in the matter.

(3) If the failure of mediation is due to nonattendance of the mediation by any of the parties to the dispute, the court may order the defaulting party to be liable for all the costs of the litigation regardless of the outcome.



9. (1) A Judge shall not grant an application for an adjournment except in compelling and exceptional circumstances.

Application  
for  
adjournment

(2) Where a party requests an adjournment and the Judge is of the view that the reasons for the adjournment are not firm, the Judge may, apart from awarding costs to the opponent, condemn the party requesting the adjournment to a hearing fee to be paid to the Court before the application proceeds:

Provided that where the party condemned to such hearing fee is not the applicant and that party fails or neglects to pay the fee by the next hearing day, the party shall lose the right to be heard and the Court shall proceed to hear the applicant's case.

(3) Where the condemned party is the applicant and the party fails or neglects to pay the hearing fee by the next hearing day, the application shall be dismissed.

10. (1) An interlocutory application shall be made to a Judge in chambers.

Interlocutory  
application

(2) A party whose application has been struck out for nonattendance may apply to restore it within thirty days from the date it is struck out failing which the application shall stand dismissed.

(3) The Court may, on the hearing of an application for the restoration of an application struck out for nonattendance by the applicant, where appropriate, order the payment of a higher hearing fee as a condition for the restoration.

(4) A Judge shall, if an application that has been struck out for nonattendance is restored and the applicant again fails to attend the hearing, dismiss the application.

(5) A party which makes an application for the restoration of a struck out matter shall serve, process thereof, and proof of such service shall be by filing an affidavit of service.

(6) Where at the hearing it is established that the applicant neglected to serve process and such neglect results in an adjournment of a matter, the applicant shall be condemned to pay a hearing fee.

(7) A respondent that causes an adjournment as a result of failure to serve the necessary documents shall pay a hearing fee before the application proceeds.

(8) An applicant in an interlocutory application shall file, together with the interlocutory application, skeleton arguments of the applicant's case, stating the facts, law and authorities relied upon with copies of such authorities, wherever possible.

(9) Sub-rule (8) shall apply to a respondent filing an affidavit in opposition and to applications for assessment of damages.

(10) A party to an action may, if sixty days elapse without any progress after the action is filed, apply to a Judge to dismiss the action.

Transfer of  
action

11. (1) A party to an action may, at any stage prior to the scheduling conference, apply to a Judge for the transfer of the action to, or out of, the Commercial List.

(2) A Judge shall determine whether the cause of action and issues of fact and law likely to arise or the procedures to be followed in an action make the action suitable for inclusion or exclusion in the Commercial List.

(3) Where an order is granted to include an action in the Commercial List, the action shall be commenced and filed in the Commercial List in accordance with this Order.

Notice to  
vary  
hearing date

12. A party that intends to vary a date of hearing shall make an application, by notice, at least ten days before the date of the hearing.

Users  
Committee

13. There is hereby established the Commercial List Users Committee which shall consist of—

- (a) the Judge in charge of the Commercial List, as Chairperson;
- (b) Judges of the Commercial List;
- (c) two representatives of the Law Association of Zambia;
- (d) one representative of the Zambia Association of Chambers of Commerce and Industry;
- (e) one representative of the Bankers Association of Zambia;
- (f) the Chief Administrator of the Judiciary;
- (g) the Registrar, as Secretary; and
- (h) members of the public appointed by the Chief Justice.

Function of  
Committee

14. The Committee shall be a forum for the exchange of ideas or views for making recommendations to improve the operations of the Commercial List.

Transitional  
provision

15. These Rules do not affect the jurisdiction of any Court over any matter pending before the Court prior to the commencement of these Rules.

Insertion of  
new Order  
LIV

9. The principal Rules are amended by the insertion, immediately after Order LIII of the following new Order:



ORDER LIV  
ELECTRONIC FILING

I. *Filing*

1. In this Order, unless the context otherwise requires —

Interpretation

- “case management system” means the system used by the Registrar and the Court to calendar, assign and track cases;
- “conventionally file” means the act of filing or serving of paper documents;
- “document management system” means the electronic document storage and imaging system maintained by the Registrar;
- “e-filing” means electronic transmission of an original document to the Court;
- “electronic service” means electronic transmission of a document to parties as required by a written law and rules of a court and as designated by the filing party;
- “electronic document” means an original document filed with the Registrar in electronic format;
- “filing” means the act of submitting documents, electronically or in paper form, to the Registrar for filing;
- “hyperlink” means an electronic connection or reference to another place in a document, such that when selected, the user is taken to the portion of the document to which the hyperlink refers;
- “ID” means a unique user identification;
- “parties” means the parties related to a case, including a plaintiff and defendant or an advocate representing a plaintiff or defendant;
- “PDF” means portable document format, a file format that preserves all fonts, formatting colours and graphics of any source document, regardless of the application platform used;
- “Registrar” means a Registrar or Deputy Registrar appointed under section *seven* of the Act;
- “TIFF” means a Tag Image File Format, a standardised file format used to store imaged documents;

“ scanned document ” means an electronic image created by scanning a paper document; and

“ source document ” means the document as originally submitted to the Registrar for filing.

Documents  
not permitted  
to be e-filed

2. Notwithstanding any other rules of court, the following types of documents shall be filed conventionally, unless expressly required to be filed electronically by the Court:

Cap. 88

(a) any document required to be filed under the Criminal Procedure Code Act;

(b) documents filed under seal;

(c) audio recordings not expressly authorised by the Court, in writing, for filing electronically; and

(d) affidavits of service for conventionally served or filed documents.

General  
e-filing  
guidelines

3. (1) Where a matter requires the filing of a document, that document may be filed electronically.

(2) Any case participant with standing to file conventionally with the Court may file electronically in accordance with these Rules and all applicable laws and rules of Court.

(3) A party appearing in person may file documents using e-filing or conventional filing.

E-filing  
implementation

4. All pleadings, motions, memoranda, orders and other documents electronically filed in a matter shall be maintained in electronic format by the Registrar and shall be maintained as the original and official record of the Court.

Format of  
e-filed  
documents

5. (1) A filing party shall ensure that an electronically filed document is formatted in accordance with the applicable rules governing formatting of paper documents, rules of procedure and such other formats as the Court may require:

Provided that those formats shall not cause participants to a matter to invest significant resources in making changes to the document.

(2) The Registrar shall not reject a document solely for the reason that it is not in substantial conformity with a specific rule of procedure or written law.

Accepted file  
formats

6. (1) A participant may electronically transmit a document in Microsoft Word, Microsoft Works, Microsoft Excel, Rich Text Format, WordPerfect, Portable Document Format and any standard nonproprietary graphic formats.

(2) All documents electronically filed shall, upon acceptance and filing by the Registrar, be converted to Portable Document Format in compliance with the requirements set out in these Rules.

(3) The Court may require a participant to produce the original of a scanned exhibit that has been filed electronically by the participant.

(4) Parties and other case participants shall ensure that all proposed forms of order are submitted electronically in a Microsoft Word file format.

7. (1) An electronically filed document may include hyperlinks, bookmarks and other electronic navigational aids for the convenience of the Court.

Hyperlinks,  
bookmarks  
and other  
electronic  
navigational  
aids

(2) A hyperlink shall not form part of the filed document.

(3) Each hyperlink shall contain a text reference to the target of the link.

(4) Notwithstanding anything contained in these Rules, a hyperlink shall not form part of the official court record and shall not be preserved in electronically filed documents submitted and stored on the Registrar's electronic document management system.

8. (1) The Registrar shall register every party and practitioner and provide each with a personally selected user name (ID) and password.

User ID and  
electronic  
signatures

(2) The user name referred to in sub-rule (1) shall, when used in conjunction with the personally selected password, constitute a signature of the registered participant on documents submitted to the Court or by the Court.

(3) Notwithstanding sub-rule (2), a participant may apply an electronic signature to a document to be submitted to the Court.

(4) In order to ensure the intent of the filing participant, the signature line on an electronically filed document shall bear the printed name of the filing participant preceded by the symbol "/s/".

(5) An electronic document may be signed by the Registrar through the use of a printed signature preceded by the "/s/" symbol or through the use of the Court's e-filing Manager (EFM) application judicial signature stamp.

(6) The e-filing Manager (EFM) application judicial signature stamp shall be merged with the electronic document and shall be visible when the document is printed and viewed electronically.



File  
transmission,  
confirmation,  
acceptance  
and rejection

(7) A document requiring the signature of a party or participant or other identifying indicators shall be filed with the court in paper format and scanned and maintained consistent with applicable record retention schedules and archival rules.

9. (1) The Registrar shall, upon completion of the transmission of an electronic document for filing, immediately scan the document for viruses.

(2) Where the document transmitted under sub-rule (1) is free from infection, the document shall be deemed submitted and the

Registrar shall send an acknowledgment of receipt of the document to the filing participant.

(3) A document which has been successfully received shall be reviewed for compliance with all standard filing practices and, if it complies with the standards, shall be accepted and deemed filed as of the date and time it was received by the Registrar's e-filing system.

(4) Where a document is infected, the Registrar shall discard and send the document with a notice to the filing participant that the document was infected and has not been filed.

(5) A notice under sub-rule (4) shall be sent to a filing participant or any authorised thirdparty facilitating entity and shall set forth the grounds for rejection.

(6) A party whose document has been rejected may re-submit any rejected document with appropriate corrections.

(7) A document received under sub-rule (4) shall be received subject to such review, payment of applicable fees and acceptance by the Registrar.

(8) The Registrar shall, upon completion of the electronic filing review process, send notification of the filing's status and, if accepted, the official file date and time of the filing.

(9) A document accepted for filing by the Registrar shall be electronically file stamped with the time and date of filing and the name of the Registrar accepting the filing, and the words "ELECTRONICALLY FILED."

(10) The file stamp referred to in sub-rule (9) shall be merged with the electronic document and shall be visible when the document is printed and viewed online.

(11) An electronically filed document that does not bear an

electronic file stamp shall be deemed to be incomplete.

(12) An e-filing file stamped in accordance with these Rules shall have the same force and effect as documents filed in the conventional manner.

Responsibility  
for filing

10. A participant who files a document electronically shall have the same responsibility as a person filing a document in paper format for ensuring that the document is properly filed, complete and legible and that the appropriate copies have been provided to other parties in the case.

Original  
documents  
to be  
maintained  
by filing  
party

11. (1) Notwithstanding any other rules of court, a party who files any document electronically with the Registrar shall not submit a courtesy paper copy of the document to the Court unless ordered by the Court to do so.

(2) Where the Act requires a pleading or affidavit to be attested or sworn to, the original signed affidavit or pleading shall be maintained by the advocate or selfrepresented litigant and produced in its original form within five days at the demand of another party or the Court:

Provided that the original hard copy shall be maintained by the filing party.

(3) An affidavit may be e-filed but the filing party shall maintain the signed original.

## II. Service

Electronic  
service to  
other parties

12. (1) Where electronic service is available through the provided e-filing system, electronic service shall comply with all applicable court rules.

(2) Where the e-filing system does not provide a means for electronic service, the filing party shall serve other parties with any filed process or document as would be done when filing a document conventionally.

Proof of  
service

13. (1) Where a document has been served electronically, the document shall be deemed to have been received when it has arrived at the server for incoming communications in connection with which the user ID or signature is associated.

(2) Where a document has been served electronically, the burden of disproving the service shall be with the served party.

*III. General Provisions*

- Public access      14. (1) The Registrar shall make electronically filed and scanned documents available to case participants, the Court and the public.
- (2) The public may access electronically filed and scanned documents of public record in the manner stipulated by the Registrar.
- (3) The Registrar shall cause to be maintained, for the purpose of facilitating retrieval of electronically maintained documents by the public, access to an electronic document management system.
- Lodgement documents      15. A document required to be lodged with the Court and any draft order shall be transmitted electronically to the Court and other parties through the provided electronic filing system.
- Printing of e-filed documents      16. An electronically filed document shall be maintained in a printable format with the same content and formatting as if printed from its authoring program.
- Certified copies      17. A certified copy of an electronically filed document shall not be obtained electronically and
- be issued in the conventional manner by the Registrar.
- Payment of filing fees      18. Where an e-filing requires a filing fee, the Registrar shall, prior to accepting an e-filed document, assess the fee and notify the filing party to make the appropriate payment.
- Interruption in service      19. (1) The Court and Registrar shall not be liable for any malfunction or error occurring in electronic transmission or receipt of electronically filed documents.
- (2) Notwithstanding any other Rule, where an e-filing is not filed with the Registrar by reason of an error in the transmission of the document that was unknown to the sending participant or a failure to process an electronic filing after receipt, the Court may enter an order permitting the document to be filed retrospectively to the date it was sent electronically.
- Court orders and judgments      20. (1) Subject to the provisions of these Rules, the Court may issue, file and serve notices, orders and other documents electronically in an e-file case.
- (2) Where a Registrar is required to endorse a document, the typed name of the Registrar shall be deemed to be the Registrar's signature on an electronic document.



21. (1) The Court or the Registrar may determine, if necessary, special instructions connected with e-filing cases in the Court and shall notify the parties involved in the case through an electronic entry of any special circumstances surrounding their case.

Special instructions where rules not complied with

(2) The Registrar or the Court shall determine if any filing deadlines may be extended as a result of the rejection of the e-filed documents.

(3) The Registrar may order the filing party to electronically refile any document that is not in compliance with these rules or may order the document to be filed conventionally.

22. Where a Court transfers a case previously assigned to a Court participating in e-filing to a Court that is not participating in e-filing, filing parties shall no longer be required to electronically file documents and shall file the document conventionally.

Judicial transfers outside an e-filing court

23. (1) The filing fees applicable to a conventional document shall apply to an electronic document.

Fees

(2) A document that has been electronically filed which requires to be accompanied by a fee may be rejected within two days from the date of submission of the document if payment has not been rendered.

10. The First Schedule to the principal Rules is amended by the deletion of Form 28C and the substitution therefor of Form 28C set out in Appendix I to these Rules.

Amendment of First Schedule

11. The Second Schedule to the principal Rules is amended by the deletion of Part VII and the substitution therefor of Part VII set out in Appendix II to these Rules.

Amendment of Second Schedule

## APPENDIX I

*(Rule 9)*

## Form 28C

Cause No. / /

IN THE HIGH COURT FOR ZAMBIA

Holds at.....

BETWEEN:

PLAINTIFF (S)

DEFENDANT (S)

MEDIATOR'S REPORT—0.XXXI rII

To: THE MEDIATION OFFICER

I.....

.....

\* Delete as applicable

- (a) Having been designated as mediator in this action and having conducted mediation between the parties do hereby report that the parties have failed to reach a settlement
- (b) Have not conducted mediation due to the absence of the Plaintiff/Defendant

In terms of the above rule, you are required within 7 days of your receiving this report to remit the record herewith to the trial Judge.

Dated the.....day of.....20.....

.....

*Mediator's Signature*



## APPENDIX II

## (Rule 10)

## PART VII

## Commercial List Fees

<i>No.</i>	<i>Process</i>	<i>Fee Units</i>
117	(a) Filing Writ of Summons	1,111.1
	(b) Filing Originating Summons	1,666.6
	(c) In addition, the following fees shall be paid depending on the amount of claim:	
	(i) From K51 million to K100 million	5,555.5
	(ii) Above K100 million but not exceeding K200 million	6,111.1
	(iii) Above K100 million but not exceeding K500 million	6,666.6
	(iv) Above K500 million but not exceeding K100,000,000.00 million	8,333.3
	(v) Above K100,000,000.00	11,111.1
	(vi) Where a claim is for unspecified amount arising out of a commercial transaction	4,444.4
118	On filing Summons other than originating summons	333.3
119	Amendment of any document	
	1st Amendment	555.5
	2nd Amendment	1,111.1
	3rd and subsequent amendment	2,222.2
New	Skeleton arguments	166.6
New	List of authorities	277.7
New	Certificate of urgency	555.5
120	On sealing a Summon in Chambers (including a summon for further directions)	446.7
121	On filing Summons to restore	555.5
New	On filing 2nd Summons to restore	2777.7
New	On filing any Petition	1666.6
122	On filing an interlocutory notice of Motion or Application not specifically provided for	84
123	On sealing Third party Notice	84

<i>No.</i>	<i>Process</i>	<i>Fee Units</i>
138	On entering or settling down any cause or matter for hearing in Court, except where otherwise provided	278
139	On hearing Judgement Summons	112
140	On entering or sealing any other Judgement or Order	84
141	On sealing or filing a Writ of Execution (including a writ of attachment)	84
142	On filing a case stated	84
143	On taking an account of monies received by a person liable to account for the same for every K1,500,00.00 or fraction of K1,500,000.00 of the amount received	45
144	On taking an account of monies due to any person for every K1,500,000.00 of the amount found to be due: If taking such account nothing is due:	45 45
145	On an inquiry as to damages for every K1,500,000.00 or fraction of K1,500,000.00 of the amount certified	45
146	For copies of documents or proceedings per page or part thereof	45
147	For certifying a copy as an office copy and in addition if under seal	45
148	On filing any notice not specifically provided for	45
149	Taxing Bill of cost	10%
150	Application (including registration) to register a Judgement when no fee is provided by the Act providing for registration	84
151	Hearing fees for causing an adjournment	2777.7
New	Notice of Discontinuous	333.3
New	Judgement	
	(a) Hard copy per page	83.3
New	(b) Soft copy whole judgment	166.6

LUSAKA

27th April, 2012

[J/101/7/2]

E. L. SAKALA,  
*Chief Justice*