

GOVERNMENT OF ZAMBIA

STATUTORY INSTRUMENT NO. 26 OF 2012

The Supreme Court of Zambia Act
(Laws, Volume 3, Cap. 25)

The Supreme Court (Amendment) Rules, 2012

IN EXERCISE of the powers contained in section *twenty-eight* of the Supreme Court Act, the following Rules are hereby made:

1. These Rules may be cited as the Supreme Court (Amendment) Rules, 2012, and shall be read as one with the Supreme Court Rules, in these Rules referred to as the principal Rules.

Title
Cap. 25

2. Rule 2 of the principal Rules is amended by—

Amendment
of rule 2

(a) the deletion of the definition of—

“register” and the substitution therefor of the following definition:

“register”, in relation to the registration of any proceedings in the Court, means the appropriate register, in electronic and hard copy form, kept by the Master for the registration of the proceedings; and

(b) by the insertion in the appropriate places of the following new definitions:

“case management system” means the system used by the Master 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 Master;

“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 Master in electronic format;

“filing” means the act of submitting documents, electronically or in paper form to the Master 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;

“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 Master for filing.

Amendment
of rule 4

3. Rule 4 of the principal Rules is amended by the insertion immediately after sub-rule (3) of the following sub-rules:

(4) The Registry shall, in addition to the hard copies of all the documents and proceedings filed in the Registry, maintain a register.

(5) A person may conduct an electronic or manual search of the register upon payment of the prescribed fee.

Insertion of
new rule 5A

4. The principal Rules are amended by the insertion, immediately after rule 5, of the following new rule:

5A. (1) Subject to section *five* of the Electronic Communications and Transactions Act, 2009, where under these Rules any notice, record or other document is required to be in writing, such document may be in electronic or hard copy format, as applicable.

Electronic document Act No. 21 of 2009

(2) Where a document is required to be served under these Rules, it may be served in electronic or hard copy format.

5. The principal Rules are amended by the insertion, immediately after rule 5, of the following new rules:

Insertion of new rules 9A, 9B, 9C, 9D, 9E, 9F, 9G, 9H, 9I

9A. 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:

Documents not permitted to be e-filed 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.

9B. (1) Where a matter requires the filing of a document, that document may be filed electronically.

General e-filing guidelines

(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.

9C. All pleadings, motions, memoranda, orders and other documents electronically filed in a matter shall be maintained in electronic format by the Master and shall be maintained as the original and official record of the Court.

E-filing implementation

9D. (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:

Format of e-filed documents

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

(2) The Master 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

9E. (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.

Hyperlinks,
bookmarks
and other
electronic
navigational
aids

9F. (1) An electronically filed document may include hyperlinks, bookmarks and other electronic navigational aids for the convenience of the Court.

(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 Master's electronic document management system.

User ID and
electronic
signatures

9G. (1) The Master shall ensure that every party and practitioner is registered and provide each with a personally selected user name (ID) and password.

(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 Master 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.

(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.

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

File
transmission
confirmation,
acceptance
and rejection

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

(8) The Master 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 Master shall be electronically file stamped with the time and date of filing and the name of the Master 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

91. 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.

Amendment
of rule 12

6. Rule 12 of the principal Rules is amended by—

(a) the insertion immediately after sub-rule (1) of the following sub-rule:

(2) An application to the Court for an extension of time in relation to a judgment or the date of expiration of the time within which the application ought to have been made shall be filed at the registry within twenty-one days of the judgment or such time within which the application ought to have been made unless leave of the Court is obtained to file the application out of time; and

(b) the re-numbering of sub-rules (2), (3) and (4) as sub-rules (3), (4) and (5) respectively.

7. Rule 15 of the principal Rules is amended in sub-rule (1) by the deletion of the word "Master" and the substitution therefor of the words "Deputy Registrar." Amendment of rule 15
8. Rule 16 of the principal Rules is amended by— Amendment of rule 16
- (a) the insertion, immediately after sub-rule (2), of the following sub-rule:
- (3) The court may issue a notice of hearing to parties in any appeal listed before it.; and
- (b) the re-numbering of sub-rule (3) as sub-rule (4).
9. Rule 18 of the principal Rules is amended by— Amendment of rule 18
- (a) the insertion immediately after sub-rule (1) of the following sub-rule:
- (2) An application made under sub-rule (1) shall be filed within twenty-one days of the judgment in respect of which the application relates unless leave of the Court is obtained to file it out of time.; and
- (b) the re-numbering of sub-rules (2), (3), (4), (5) and (6) as sub-rules (3), (4), (5), (6) and (7) respectively.
10. The principal Rules are amended by the deletion of rule 19 and the substitution therefor of the following: Repeal and replacement of rule 19
19. (1) A respondent shall, where the respondent intends to take a preliminary objection to any appeal, not less than seven days prior to the hearing of the appeal, give notice thereof to the Court and to the other party to the appeal. Preliminary objection
- (2) The Court may, where the notice referred to in sub-rule (1) is not given, refuse to entertain the objection or adjourn the hearing and make such order as it may consider just.
- (3) This rule shall apply to a cross-appeal.
11. Rule 23 of the principal Rules is amended— Amendment of rule 23
- (a) in sub-rule (1), by the deletion of the word "triplicate" and the substitution therefor of the word "quintuplicate"; and
- (b) in sub-rule (2), by the insertion immediately after the words "sufficient address" of a comma and the words "including an electronic mail address, where applicable."
12. Rule 24 of the principal Rules is amended in sub-rule (1), by the deletion of the word "triplicate" and the substitution therefor of the word "quintuplicate". Amendment of rule 24

Amendment
of rule 25

13. Rule 25 of the principal Rules is amended in sub-rule (1), by the deletion of the words "appellant may" and the substitution therefor of the words "appellant shall".

Amendment
of rule 29

14. Rule 29 of the principal Rules is amended by—

(a) the insertion immediately after sub-rule (1) of the following sub-rules:

(2) A renewal application for stay of execution shall be made within three days of the decision of the lower court:

Provided that the Court may grant leave to hear the renewal application out of time on such grounds as it may consider fit and upon payment of the prescribed fee.

(3) Where an application for the stay of execution is in respect of a criminal matter, the application shall be made within seven days of the decision of the High Court:

Provided that the Court may, where it is satisfied that the delay in executing the judgment was not deliberate, permit the applicant to file the application out of time.; and

(b) the re-numbering of sub-rule (2) as sub-rule (4).

Repeal and
replacement
of rule 34

15. The principal Rules are amended by the deletion of rule 34 and the substitution therefor of the following:

Presentation
of
appellant's
case in
writing

34. An appellant shall, where the appellant wishes to present the appellant's case in writing, in accordance with the provisions of subsection (2) of section *nineteen* of the Act, within fourteen days of the appellant's receipt of the copy of the record, lodge thirteen copies of the written statement of the appellant's case, which shall include heads of argument, with the Master and serve them on the respondent.

Repeal and
replacement
of rule 35

16. The principal Rules are amended by the deletion of rule 35 and the substitution therefor of the following:

Heads of
argument

34. (1) The Court may require an appellant or respondent who will be represented by a practitioner at the hearing of the appeal, to prepare a document setting out the main heads of the appellant's or respondent's argument together with the authorities to be cited in support of each head, and to submit electronically or deliver thirteen copies of the heads of argument to the Master and one copy thereof to each of the other parties to the appeal within fourteen days prior to the day fixed for the hearing of the appeal.

(2) The respondent may, upon receipt of the heads of argument referred to in sub-rule (1), within seven days prior to the day fixed for hearing of the appeal, reply to the heads of argument.

17. Rule 36 of the principal Rules is amended by the insertion, immediately after sub-rule (3), of the following sub-rule:

Amendment
of rule 36

(4) An application for restoration shall be made within thirty days from the date of dismissal of the appeal.

18. Rule 48 of the principal Rules is amended—

Amendment
of rule 48

(a) in sub-rule (1), by the insertion immediately after the words “or summons” of the words “within fourteen days of the decision complained of”; and

(b) in sub-rule (5), by the deletion of the word “quintuplicate” and the substitution therefor of the words “thirteen hard copies and an electronic copy”.

19. Rule 49 of the principal Rules is amended by—

Amendment
of rule 49

(a) the deletion of sub-rule (5) and the substitution therefor of the following sub-rule:

(5) A notice of appeal, together with the memorandum of appeal, shall be lodged and served, within a period of fourteen days, on all parties directly affected by the appeal or on their practitioner.;

(b) the insertion, immediately after sub-rule (5), of the following new sub-rules:

(6) The names and addresses of all persons intended to be served with a notice of appeal shall be stated in the notice of appeal.

(7) A notice of appeal, together with the memorandum of appeal, may be lodged and filed in electronic form.

(8) A memorandum of appeal shall be in Form CIV/3 set out in the Third Schedule.;

(c) the re-numbering of sub-rule (6) as sub-rule (9).

20. Rule 52 of the principal Rules is amended in sub-rule (2) by the deletion of the words “Registrar of the High Court” and the substitution therefor of the words “Master of the Court”.

Amendment
of rule 52

21. Rule 53 of the principal Rules is amended by—

Amendment
of rule 53

(a) the deletion of sub-rule (2) and the substitution therefor of the following sub-rules:

(2) A person who by virtue of service on that person of a notice of appeal becomes a respondent to any intended appeal shall, within seven days after service on that person of the notice of appeal, file with the Registrar of the High Court and serve on the appellant notice of a full and sufficient address for service, including, where available, an electronic mail address, and shall also within a further seven days, serve a copy of the notice of address for service on every other respondent named in the notice of appeal who has filed a notice of an address for service.

(3) A person shall, where the person has filed a notice of appeal with the Registrar of the High Court, as soon as practicable, file a copy thereof in the Registry.; and

(b) the re-numbering of sub-rules (3), (4) and (5) as sub-rules (4), (5) and (6) respectively.

Amendment
of rule 58

22. Rule 58 of the principal Rules is amended—

(a) in sub-rule (1), by the deletion of the words “a memorandum of appeal and”; and

(b) by the deletion of sub-rules (5), (6), (7) and (8) and the substitution therefor of the following sub-rules:

(5) The appellant shall file in the Registry thirteen hard copies of the record of appeal, including an electronic copy thereof, together with the heads of argument.

(6) The appellant shall, at the same time of filing the record of appeal under sub-rule (5), serve a copy thereof on each party who has been served with the notice of the appeal and has filed a notice of address for service:

Provided that if there is more than one respondent represented by one practitioner, it shall be sufficient to serve one copy on that practitioner.

(7) The document setting out the heads of argument shall clearly set out the main heads of the appellant’s arguments together with the authorities to be cited in support of each head of argument.

(8) The record shall be prepared by the appellant:

Provided that

(i) if the appellant is not represented by a practitioner, the Registrar of the High Court, upon request by such appellant and on payment of the prescribed charges, shall prepare the record and necessary copies and for that purpose shall be deemed to act as agent of the appellant and not as an officer of the High Court;

(ii) in all cases the Registrar of the High Court shall prepare the copy of the notes of hearing at first instance in the court below or, if the hearing was recorded by shorthand or by means of a recording apparatus, the transcript thereof, and the appellant shall pay the prescribed charges thereof.

(9) Each copy of the record shall be certified by the appellant or his practitioner, or, if prepared by the Registrar of the High Court, by him.

(10) For the purposes of subrules (8) and (9), "Registrar of the High Court" includes any officer of such court who may be appointed by the Registrar thereof for the purpose of the preparation of the record.

(11) The respondent shall, not later than seven days before the date fixed for the hearing of the appeal, deliver thirteen hard copies and an electronic copy of the respondent's heads of argument to the Master and one copy thereof to a party to the appeal.

23. Rule 59 of the principal Rules is amended—

Amendment
of rule 59

- (a) in sub-rule (1), by the deletion of the words "five copies" and the substitution therefor of the words "thirteen hard copies and an electronic copy"; and
- (b) in sub-rule (2), by the insertion, immediately after the words "record of appeal", of the words "and shall be filed within fourteen days of the receipt of the main record of appeal."

Amendment
of rule 71

24. Rule 71 of the principal Rules is amended in sub-rule (2) by the insertion, immediately after the words “to the Court”, of a comma and the words “within seven days of the dismissal, allowing or striking out of the appeal,”.

Amendment
of rule 73

25. Rule 73 of the principal Rules is amended—

(a) in sub-rule 3, by the insertion, immediately after the words “their practitioner”, of the words “in hard copy or electronic form.”; and

(b) by the insertion, immediately after the sub-rule (3) of the following sub-rule:

(4) An interested party may obtain a copy of the judgment in hard copy or electronic form upon payment of the prescribed fee.

LUSAKA

27th April, 2012

E. L. SAKALA,
Chief Justice