

THE JUDICIARY OF ZAMBIA



HIGH COURT OF ZAMBIA

SIMPLIFIED COURT PROCESSES AND PROCEDURES



FOREWORD

The Judiciary is one of the three arms of Government comprising the Court system. It is created under Part VIII of the Constitution of Zambia. The Court system consists of Superior Courts and other Courts. The Superior Courts are: the Supreme Court, which is at the same level with the Constitutional Court; the Court of Appeal; and the High Court. The other Courts are the Subordinate Courts, the Small Claims Courts and the Local Courts. The Judiciary is headed by the Chief Justice.

The Judiciary of Zambia is on a quest to improve its service delivery in order to effectively and efficiently administer timely and impartial justice to all without fear or favour. In order to improve the quality of its service delivery to its clients (court users and other interested groups), the judiciary is endeavoring to be more transparent, accountable and engaging with the members of the public through open communication channels and through information dissemination of its operations.

This Service Charter is, therefore, designed as an information kit for the High Court users, particularly those who institute and pursue proceedings in person. It is not intended to be exhaustive but highlights the significant aspects in the practice and procedure of the Court as it relates to such Court users. We are, however, hopeful that other Court users will find the Charter useful.

The Service Charter has been made possible through the collaborative input of the Judiciary, Transparency International Zambia and the Anti-Corruption Commission.

Hon. Mrs. Justice Irene C. Mambilima
Chief Justice of the Republic of Zambia

ACKNOWLEDGEMENTS

This is the first ever service charter for the High Court of Zambia. It gives an insight of what services the Court offers. In enhancing access to justice, it has been decided that material in a simplified manner be made available to the members of the public in this format. In the preparation of the material contained in this handbook, care has been taken to present the information in accordance with the law and practice in the Court as at time of publication.

I am particularly, elated that the drafting process had input from Transparency International Zambia, the Anti-Corruption Commission and some representatives from the civil society. This Service Charter, therefore, is a result of the consultative process and is meant to be easily understood by the ordinary person. The financial support accorded by Transparency International Zambia in designing and printing this Charter cannot go unappreciated. We are grateful for this cooperation.

Finally, I wish to express my special gratitude to the Judiciary Integrity Committee for its input. I wish to thank, in a special way, the untiring efforts and contributions made by the Sub-committee constituted for the purpose of refining and scrutinizing this Charter, which comprised the following members:

- 1) Mr. Rodgers K. Kaoma
- 2) Mrs. Ruth M. Chilembo
- 3) Mrs. Kalumba C.V. Slavin
- 4) Mr. Jammy Mukumbi
- 5) Mr. Neto Zulu
- 6) Mr. Robert Kaunda

I must reiterate that this effort is one of the several efforts that the Judiciary has embarked on in its quest to administer transparent and accountable justice.

Hon. Mr. Justice Jones Chinyama
**Judge of the Supreme Court and Chairperson - Advisory Committee on Public
Relations and Information of the Judiciary of Zambia**

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BACKGROUND INFORMATION

The High Court of Zambia is established under the Constitution of Zambia and the High Court Act, Chapter 27 of the Laws of Zambia. It has original (cases can begin in the High Court) and unlimited (the Court can hear any type of case except those specifically excluded by the Constitution or Statute) jurisdiction (power).

The High Court consists of:

- The General List;
- The Industrial Relations Court Division;
- The Commercial Court Division;
- The Family and Children's Court Division; and
- Any other divisions that the Chief Justice may constitute.

The High Court is presided over by High Court Judges (also called Puisne Judges). In certain applications, the Court is assisted by Registrars, District Registrars and Assistant Registrars who hear and determine certain matters in chambers.

Services offered at the High Court Registries

The Registries are open to members of the public from Monday to Friday between 09:00 hours – 12:00 hours and 14:00 hours - 15:00 hours. The services offered include:

- Receiving and attending to Court users and guiding them on institution of claims and on other Court processes;
- Filling of documents;
- Issuing receipts once there is proof that payments have been deposited at the Bank for court fees;
- Keeping of Court files;
- Scanning of documents.

1.0 THE GENERAL LIST

The General List comprises the Civil and Criminal Registries. The General List hears cases that are primarily not covered by the other divisions of the High Court. In Districts where some Divisions of the Court are currently not operational, litigants can file their cases in the General List. The Court also hears cases from the Subordinate Court that come by way of appeal, referral and review. The Court also hears cases referred to it by the Local Court in administration of estates cases.

1.1 CIVIL JURISDICTION

Commencement of civil cases

A civil action (case) can be commenced by filing of Court process (documents), such as Writ of Summons, Originating Summons, Originating Notice of Motion, Petition, etc. at the Principal Registry at Lusaka or at any of the District Registries currently found at Kabwe, Ndola, Kitwe, Livingstone, Mazabuka, Mongu, Chipata, Mansa, Kasama, Solwezi and Chinsali. There are fees prescribed in order to file Court process (*see attached schedule of fees*).

Steps to follow upon filing an action

- When an action has been instituted, the plaintiff (the person/party suing) is required to serve the originating process (Writ of Summons, Originating Summons, Petition, etc.) on the defendant (the person/party sued).
- After service, the plaintiff must file an affidavit of service as proof of service on the defendant(s).
- The defendant is expected to enter appearance and file a defence within 14 days from date of receipt of court process, if he/she/it, as the case may be, is based at a place which is less than 100 kilometres from the issuing High Court Registry. If the defendant is served at a place which is 100 kilometres but less than 500 kilometres from the Registry, appearance and defence must be entered within 21 days; if the distance is 500 kilometres or more, appearance must be within 30 days. Where the defendant is to be served out of jurisdiction (outside Zambia), appearance must be within 42 days. The periods for entry of appearance and defence must be indicated on the originating process.

- Upon application by the defendant, the Registrar or District Registrar of the High Court may, for good reasons shown, extend the period within which to enter appearance and defence in cases where particular hardship is likely to be caused to the defendant by strict adherence to the specified period.
- If a defence or counter-claim is not filed within the period stated above, judgment in default of appearance and defence may be entered, in appropriate cases.
- For cases against the state, leave (permission) must be obtained to file a default judgment.
- Once a default judgment is entered, where the claim is unliquidated (not ascertained), the case goes for assessment to the Registrar to determine the amount payable, upon application by the successful party.
- Where the defendant has filed a defence and/or counter-claim, the Judge will call for a scheduling conference at which the Judge will issue directions for trial which must be adhered to by all parties.

At the Hearing

- The hearing of the case takes place at the close of the pleadings as per orders for directions issued by the Judge. This means that a party who has not complied with the orders for directions will lose the opportunity to produce documentary evidence and the Court will proceed to trial.
- The hearing of the case will commence with the plaintiff opening his case by giving evidence (examination in chief) after which he/she will be asked questions by the defendant (cross-examination). The plaintiff will again be given an opportunity to clarify the evidence that may have been discredited during cross-examination (re-examination). The plaintiff's witnesses will be called one after the other to give evidence after which they are also cross-examined and re-examined.
- When the plaintiff concludes calling his/her witnesses, the defendant will also be accorded an opportunity to give evidence. The same process is repeated on the defendant's side.
- After the defendant concludes his/her side of the case, both parties are allowed to make oral submissions or to file written submissions (arguments presented to the Judge to persuade him/her to decide in a party's favour).
- The Judge will set the date for delivery of judgment.

- In the judgment, the Judge may specify what the losing party needs to do to make good the damage or loss the successful party suffered, or may refer the case to the Registrar for assessment of damages.

Counter-claim

- Refers to a claim for relief that is made against the plaintiff by the defendant in the same action commenced by the plaintiff.
- Where a defence is accompanied by a counter-claim, the plaintiff must also file a defence to the counter-claim.
- Where the plaintiff does not file a defence to the counter-claim, judgment in default of defence may be entered against the plaintiff.
- Where the plaintiff files a defence to a counter-claim the case proceeds for a hearing before a Judge in the normal way as explained above.

Note 1:

A default judgment (which is signed by the Registrar or District Registrar) may, for good reasons, be stayed and set aside upon application before the same Registrar.

Application for Assessment of Damages before the Registrar

- This is done by the successful party (applicant) filing summons supported by an affidavit.
- The losing party (respondent) files an affidavit in opposition.
- The applicant files an affidavit in reply if necessary.
- At the hearing of the application, the Court considers what has been said in the affidavit as well as the documentary evidence.
- The Registrar may allow parties to call witnesses if necessary.
- The Registrar then delivers judgment on assessment.

ARBITRATION

- This is a legal technique for the resolution of disputes outside the courts, wherein the parties to a dispute refer it to one or more persons (the "**arbitrators**", "arbiters" or "**arbitral tribunal**"), by whose decision (the "award") they agree to be bound and it is final.

- In a situation where the contract entered into by the parties provides for arbitration, the Judge must, upon application by a party, refer the parties for settlement through arbitration.

MEDIATION

This is an amicable means of settling disputes by the use of a neutral third party who is not a Magistrate or Judge but a Mediator. The Mediator intervenes between conflicting parties to promote reconciliation, settlement, or compromise. Mediation may arise in any of the following ways:

- (i) Upon the Judge's own motion – the Judge may decide to send the case for mediation before hearing commences. This is known as Court-annexed mediation and is the commonly used mediation process.
- (ii) Party driven – parties may request the Court to refer the case for mediation.
 - At mediation, parties have a right to consent or refuse to proceed with mediation.
 - Mediation attracts a one-off hearing fee from both parties (refer to the schedule on fees attached).
 - Parties are encouraged to discuss fully and reach an agreement that ensures a “win-win” situation. There is no loser in mediation as it is a process of “give and take”.
 - When mediation is successful, the case ends there with a mediation settlement order signed by both parties and the mediator.
 - There is no appeal against a mediation settlement order.
 - When mediation fails, the case is taken back to the Judge who sent it for mediation to be heard in the normal way as explained above, without referring to what went on during the mediation.

Note:

In the High Court, any case may be referred to mediation except cases involving constitutional issues, the liberty of an individual, injunctions or any other case the Judge may so determine.

Appeals

- Where a case is determined in a normal way before a Judge, a party who is not satisfied with the judgment may appeal to the Court of Appeal within 30 days.
- An appeal against the judgment of the Registrar on assessment lies to the Court of Appeal within 30 days from the date of judgment.
- An appeal against the ruling of the Registrar, which is not a judgment on assessment, lies to the Judge at Chambers and must be filed within seven (7) days from the date of the ruling.

Enforcement of judgments

- Enforcement of the judgment can only take place after at least three (3) days from the date of judgment unless the Court directs otherwise.
- Where there is no appeal or stay of execution of judgment, the following mechanisms may be used to enforce a judgment, among others:
 - Writ of Fieri Facias (FiFa) – an order to seize specified property with the intention to sell it to realise the judgment sum, interest and costs.
 - Writ of Possession – an order to seize landed property such as a house or a farm and hand it over to the person who is entitled to it as ordered in a judgment.
 - Writ of Elegit – an order that the defendant hands over landed property to the plaintiff to enable the plaintiff recover money owed through rent income over a specified period.
 - Attachment of Earnings Order – an order to an employer to deduct specified amounts of money from the earnings of the defendant to satisfy a debt.
 - Judgment Summons – a summons issued by a court requiring a judgment debtor to appear and show cause why he/she should not be imprisoned for failure to pay a debt.
 - Garnishee Order – an order directing a third party owing or in possession of a judgment debtor's money to pay a person who has obtained judgment against the judgment debtor.
 - Charging Order – a Court order imposing a charge (a form of security) on a debtor's property to secure payment of any money due or to become due by virtue of a Court order.

1.2. CRIMINAL JURISDICTION

Institution of Criminal Proceedings

- Criminal cases are cases instituted by the State (Government) against a person who has committed a crime (the accused). Such cases come to the High Court either at first instance (for offences triable only by the High Court) or as referrals and appeals from the Subordinate Court (such as those committed for sentencing, confirmation and reviews from the Subordinate Court).
- Prior to the trial of the case, the accused will appear before the Subordinate Court for explanation of the charge. Thereafter, the accused will continue to appear from time to time for mention awaiting trial in the High Court.

Trial

- When the accused appears in the High Court, a plea is taken (the charge is explained to the accused and he/she is called upon to respond whether he/she admits or denies the charge).
- Where the accused admits the charge, the statement of facts is read which the accused is required to confirm and thereafter, the Judge will convict the accused. The accused will be given an opportunity to say something in mitigation (a statement to the Court imploring it, for stated reasons, to exercise leniency) and the Judge will then pass sentence within the parameters of the law.
- Where the accused denies the charge or the Court is not satisfied that the charge is proved despite the plea of guilty, the case will proceed to trial during which the State (prosecution) will call witnesses who will be examined, cross-examined and re-examined.
- At the end of the case for the prosecution, the Court will render a ruling on whether the accused has a case to answer (decides whether to put the accused on his defence or not).
- The accused will be acquitted if found with no case to answer but if found with a case to answer, the accused will be required to testify and call witnesses.
- The case will then be closed for judgment.

- Before delivery of judgment, the Court will allow both parties to submit, if necessary.
- Judgment may be delivered soon after the close of the case or on a different date. In the judgment, the Court will arrive at one verdict only, which is either an acquittal or a conviction.
- Where an acquittal is reached, that marks the end of the case.
- Where the verdict is a conviction, the convict will be given an opportunity to mitigate. Thereafter, the Court will pass the sentence in accordance with the law.
- The convict is free to appeal against both conviction and/or sentence within 14 days and may apply for bail pending appeal if the offence is bailable.

Note 2:

Where the accused is convicted on his own admission and the facts prove the offence, the accused can appeal against sentence only.

Note 3:

Sometimes an accused is unable to plead to a charge due to unsoundness of mind or other infirmity. A request should be made to the Judge or the Judge may on his own motion direct that the accused be medically examined to establish his state of mind at the time of pleading. If a medical examination is not done, this may amount to a mistrial and on appeal the Superior Court may order that the case be sent for a retrial before a different Judge.

Note 4:

In the High Court, a Legal Aid Board lawyer is provided by the State in an event that the accused is unable to hire a lawyer of his/her own choice.

Caution

There are no payments in criminal proceedings unless the Judge orders otherwise (a fine, costs, compensation or cash bail) in open Court. No one should purport to have been sent by the Judge or any Court officer to collect any form of payment for delivery of judgment or for any process during a criminal trial.

Note 5:**Police Bond/Bail**

The law in Zambia allows in some cases (offences) the conditional release of an accused person with the promise to appear in Court when required. This is what is referred to as bail or bail bond. When one is arrested by the police and charged, they may be released on police bond at the discretion of the police as long as the offence is bailable. When the accused appears before Court, the Court has discretion to alter or impose new conditions depending on the circumstances of each case and upon consideration of factors such as the danger of the accused interfering with State witnesses and the risk of him/her running away from the judicial process. Bail can still be applied for in Court even when police bond was denied at the police station. The Court has discretion to grant or refuse admitting an accused person to bail during the course of trial (bail pending trial). If the Judge grants bail pending trial, this bail, may be cash bail or in own recognizance (free bail) and lasts up to the end of the trial. If the accused is convicted and files an appeal in the Court of Appeal, the accused may still apply for bail pending appeal. This is also granted at the discretion of the Court if the offence is bailable. Bail pending appeal ends when the appeal is disposed of. The accused may sign the bail form alone or with sureties depending on the terms and conditions imposed by the Court.

Note 6:**Rights of the accused –**

- To be presumed innocent until proved guilty.

- The right to a fair trial within a reasonable time by an impartial court.
- The right to have proceedings interpreted in a language of own choice.
- The right to legal representation of own choice – where the accused cannot afford to hire a lawyer, the Government provides a Legal Aid Board lawyer.
- To be given adequate time and facilities to prepare a defence and to cross-examine State witnesses.
- Not to be compelled to give evidence at trial (can give sworn or unsworn testimony or remain silent).
- To call witnesses.
- Not to be tried in his/her absence except where the law permits it.
- Not to be tried for an offence which is not found in written laws.
- Not to be tried for an offence which at the time of committing it did not constitute an offence.
- Not to be punished more severer than the law provides for.
- To change plea at any stage of trial before judgment.
- To appeal.

FEES PAYABLE IN THE GENERAL LIST OF THE HIGH COURT

	Process/Document	Amount (K)
1	Filing Writ of Summons or Originating Process	167.00
2	Sealing a concurrent writ of summons or originating application	83.00
3	Sealing any amendment	25.00
4	Filing summons in chambers	25.00
5	Filing summons for restoration	83.00

6	Filing interlocutory notice of motion	83.00
7	Filing a third party notice	17.00
8	Sealing a commission or letter of examination or application not specifically provided for	34.00
9	On examination of a witness before an officer of the court (including an examination of a judgment debtor) for each half hour or part thereof - Away from his/her office reasonable travelling and other expenses are also payable	83.00
10	Filing depositions	34.00
11	Application for copies of the notes of the Judge (per page)	17.00
12	Filing a Praecipe for a writ of subpoena for each witness	25.00
13	Filing a Writ of Subpoena	25.00
14	Filing a commissioned affidavit	8.00
15	Filing a certificate of service	8.00
16	Personal general search for every name	8.00
17	General search for unspecified number of times in a calendar year	833.00
18	On a search for appearance of any other search (including an inspection) not otherwise provided	8.00
19	Memorandum of appearance	34.00
20	Certificate of Urgency	42.00
21	Filing an order made in chambers	17.00
22	On entering or sealing an order or reference under Order 20	17.00
23	On setting or approving an advertisement or any other document or deed (other than judgment or order)	25.00
24	On entering or setting any matter for hearing in court, except where otherwise provided	83.00
25	Filing a judgment decree or order given, directed or made in trial, hearing or further consideration of a cause or matter in court (other than matrimonial causes or judgment summons) per day or part thereof	34.00
26	On hearing Judgment Summons (the Order)	25.00
27	Filing any other judgment or order	25.00
28	Filing writ of execution (including writ of attachment)	34.00
29	Filing a Case Stated	50.00
30	Any notice not provided for	83.00
31	For copies of documents or proceedings (per page or part thereof)	17.00

32	For certifying a copy, an office copy and in addition if under seal	6.00
33	On Taxation of a Bill of Costs	34.00
34	Filing application to register a judgment when no fee is provided by the Act	83.00
35	Election Petition	833.00
36	On filing application for leave appeal to the Court (the Notice)	25.00
37	On leave being granted to appeal to the Court (the Order)	25.00
38	On every bond	34.00
39	On hearing an appeal (the judgment)	34.00
40	Petition on Admission to the Bar	334.00
41	Commissioning or Certification	25.00
42	Wills	22.00
43	Deed Polls	111.00
44	Notorisation (per page)	111.00
45	Application to be Notary Public	250.00
46	Application to be Commissioner for Oaths	FREE
47	Mediation hearing fee (per party)	375

NB: The fees payable in the General List of the High Court are stipulated in fee units. To arrive at the amount payable, a conversion rate of 30 ngwee (Statutory Instrument No. 41 of 2015) for each fee unit is used.

2.0. THE INDUSTRIAL RELATIONS COURT DIVISION

Establishment

The Industrial Relations Court (IRC) Division of the High Court is created by the Constitution of Zambia and provided for in the High Court Act, Chapter 27 of the Laws of Zambia as amended by Act No. 21 of 2016. It is established to hear and determine disputes generally between employers and employees.

- It is a Court of substantial justice, implying that the Court is not bound by the rules of evidence applicable in civil and criminal proceedings.
- The party commencing an action is referred to as a complainant while the party being sued is called a respondent.
- The action in the Industrial Relations Court Division is called a Complaint.

Note 7:

Although the IRC is established under the High Court Act, it still draws its functionality from the Industrial and Labour Relations Act, Chapter 269 of the laws of Zambia, which is yet to be harmonized with the High Court Act under which it is established.

Filing a Complaint

- A Notice of Complaint accompanied by an affidavit may be filed at any of the IRC Registries - currently located at Lusaka, Ndola, Solwezi and Livingstone.
- A complaint must be filed within ninety (90) days from date of the event giving rise to the complaint or after exhausting all the administrative channels in the employer's organisation which the complainant wishes to sue.
- Where a complainant is unable to file a complaint within ninety (90) days, he/she must apply for leave (permission) to file the complaint after the 90 days. The application is in the form of a summons for leave to file a complaint out of time accompanied by an affidavit containing the reasons for the failure to file within 90 days. If the application is allowed, a notice of complaint may then be filed. The application is heard by a Judge

and refusal to grant leave to file notice of complainant out of time is appealable to the Court of Appeal.

Steps to Follow after Complaint is Filed

- The respondent must file an answer within 21 days after receipt of the notice of complaint.
- If there is no dispute to the claim, judgment will be entered in favour of the complainant. This may be subject to assessment. Where there is an answer with an admission, the Court enters judgment again subject to the need for assessment.
- Where there is an answer disputing the complaint, the Court will proceed to hear the case.
- Where there is no answer, the complainant is entitled to apply to bar the respondent from filing the answer and the Court may proceed to hear the case.
- Where the respondent does not appear and there is proof of service, the Court will proceed to hear the case. There will be examination in chief, cross-examination and re-examination. Thereafter, the court will deliver judgment.

Execution

- After delivery of judgment, the judgment sum (if specified in the judgment or assessed by the Registrar) can be enforced in the like manner as occurs in the High Court General List.

Appeals

- An appeal against the judgment may be made to the Court of Appeal within 30 days.

Arbitration

- Where there is an arbitral clause in the agreement and one party applies, the Judge must refer the parties for settlement by arbitration.

Mediation

- Mediation is highly promoted in this Court. Any case in this Division may be referred to mediation except cases involving injunctions or any other case the Judge may so consider as not suitable for mediation.
- The procedure is the same as that in the General List explained above.

FEES PAYABLE IN THE INDUSTRIAL RELATIONS COURT DIVISION

	Process	Amount (K)
1	Notice of Complaint	44.40
2	Summons	44.40
3	Affidavits	33.40
4	Certificate of exhibit(s)	11.20
5	Certificate of Urgency	22.20
6	Order	11.20
7	Search	11.20
8	Bundle of documents/pleadings	22.20
9	Writ of FiFa	33.20
10	Notice of Appeal	22.20
11	Notice of taxation	5.60
12	Notice to discontinue	44.40
13	Notice of appointment of advocates	44.40
14	Notice to adjourn	44.40
15	Notice to produce	11.20
16	Certification of record of proceedings	22.20
17	Commissioning/Certification	11.20
18	Skeleton Arguments	44.40
19	Submissions	44.40
20	Authority to represent	44.40
21	Memorandum of Appeal	22.20
22	Affidavit of service	33.40
23	Set of forms (Complaint and Affidavit)	4.40
24	Respondent's Answer	33.20
25	Affidavit in Opposition	33.40

26	Summons and Affidavit for Assessment	77.80
27	Summons to a witness	11.20
28	Consent judgment	11.20
29	Notice of payment into court	22.20
30	List of documents	44.40
31	Application for withdrawal of money paid into court	44.20
32	Summons to pay debt in instalments	44.40
33	Mediation hearing Fee (per party)	375

NB: The fees payable in the Industrial Relations Court Division are stipulated in fee units. To arrive at the amount payable, a conversion rate of 30 ngwee (Statutory Instrument No. 41 of 2015) for each fee unit is used.

3.0 THE COMMERCIAL COURT DIVISION

Establishment

The Commercial Court is a Division of the High Court created by the Constitution of Zambia and Order 53 of the High Court Rules, Chapter 27 of the Laws of Zambia.

- Its main objective is to fast-track the resolution of commercial disputes.
- The Judges in the Commercial Division have discretion to choose matters which may be dealt with by the Court.

Commencement of Cases

Cases may be instituted amongst other modes by:

- Writ of Summons accompanied by a Statement of Claim.
- Originating Summons supported by an Affidavit.
- Petition.
- Originating Notice of Motion, etc.

Note 8:

Each statement of claim must state in clear terms the material facts upon which the plaintiff relies and must show a clear cause of action, failure to which the statement of claim may be struck out, set aside or the action may be dismissed.

Note 9:

The Assistant Registrars should be able to advise on the modes of commencement of action depending on the nature of the claim.

Steps to follow after commencing an action

- Where an action has been instituted, the plaintiff is required to serve the originating process (Writ of Summons, Originating Summons, Petition, etc.) on the defendant and thereafter file an affidavit of service.
- The defendant must file a defence or an affidavit in opposition, as the case may be, within the time indicated on the originating process, from the date of receipt of Court process (*see High Court General List on the specified periods for entry of appearance and defence*).
- Where the defendant does not file a defence or counter-claim within the time indicated on the originating process, the Court may enter judgment in default, in appropriate cases.
- Where the defendant has filed a defence, the Judge will call for a scheduling conference at which the Judge will issue directions for trial which must be adhered to by all parties.

Note 10:

The defendant's defence or counter-claim or Affidavit in Opposition, as the case may be, must specifically address every allegation raised by the plaintiff. Any omission, bare denial or general denial may be taken as an admission.

- Parties are expected to file witness statements and a list of witnesses and skeleton arguments as directed at the scheduling conference.

Note 11:

Interlocutory (preliminary) applications are heard by the Judge and not the Registrar.

- It is a requirement that every application is supported by a list of authorities and skeleton (brief) arguments.
- After the scheduling conference, the Judge calls for another conference called a status or compliance conference. This is meant for the Judge to check in the presence of both parties whether they have complied with the orders given at the scheduling conference.
- The Judge may dismiss the matter at the expiry of 60 days if no action to prosecute the case is taken by the plaintiff. The Judge may also dismiss the matter where the plaintiff fails to attend a scheduling or status conference twice.
- Where both parties have complied with all directives, the matter will proceed to hearing.
- The witness statements are treated as evidence in chief. Therefore, the Court does not re-hear what is already stated in those statements but the witness is cross-examined and re-examined.

Adjournments

- Adjournments will be granted for good reasons only.
- Where the Judge is not satisfied with the reasons advanced, apart from condemning the party applying to pay costs to the other party, the Judge may also condemn the applicant to pay a hearing fee before the next hearing date.
- Where a respondent fails to pay a hearing fee when ordered to pay, he/she loses the right to be heard and the Judge will proceed to hear the applicant's case.

- Where it is the applicant who fails to pay costs and the hearing fee when ordered to do so, the application is dismissed.

Mediation and Arbitration

- At the scheduling conference, a Judge may refer parties to mediation or, where applicable, to arbitration.
- If a case that is referred to mediation is not settled or mediated within thirty (30) days from the date of reference, it is referred back to the trial Judge who shall within fourteen (14) days summon the parties to a scheduling conference to issue directions on the schedule of events in the case.
- If the failure of mediation is due to the non-attendance at 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.
- What is noted about the benefits of mediation in the other Divisions of the Court, applies to this Division.

Note 12:

Enforcement of judgments and the appeal procedure in the Commercial Court Division is the same as that found in the General List.

FEES PAYABLE IN THE COMMERCIAL COURT DIVISION

Filing Writ of Summons	K333.00
Filing Originating Summons	K500.00

In addition, the following fees shall be paid depending on the claim:

From K51,000.00 to K100,000.00	K1,667.00
Above K100,000.00 but not exceeding K200,000.00	K1,833.00
Above K100,000.00 but not exceeding K500,000.00	K2,000.00

Above K500,000.00 but not exceeding K1,000,000.00	K2,500.00
Above K1,000,000.00	K3,333.00
Where a claim is for unspecified amount arising out of a commercial transaction	K1,333.00
On filing summons other than Originating Summons	K100.00
<i>Amendment of any document:</i>	
1 st Amendment	K167.00
2 nd Amendment	K333.00
3 rd Amendment and subsequent amendment	K667.00
Skeleton Arguments	K50.00
List of Authorities	K83.00
Certificate of Urgency	K167.00
On sealing a summon in Chambers (including a summons for further directions)	K134.00
On filing Summons to restore	K167.00
On filing 2 nd Summons to restore	K833.00
On filing any Petition	K500.00
On filing an interlocutory notice of motion or application not specifically provided for	K25.00
On sealing third party notice	K25.00
On sealing a commission or letter of the examination of witness abroad	K25.00
On the examination of a witness before an officer of the Court (including the examination of a judgment debtor) for each half hour or part thereof	K42.00
NB: <i>where the officer is required to take the examination away from the office, the officer's reasonable travelling and other expenses are also payable.</i>	
On filing a Deposition	K17.00
On application for copies of the notes of Judge for use of the Supreme Court of Zambia (per page or part thereof)	K17.00
On sealing a Praecipe for a Writ of Subpoena for each witness	K17.00

On sealing a Writ of Subpoena for each witness	K17.00
On filing an affidavit	K50.00
On commissioning an affidavit	K50.00
Notice to appoint or change of advocates	K40.00
Notice of Taxation	K100.00
Notice of payment into or out of Court	K100.00
Consent of taxation	5%
Default judgment	K125.00
On filing a certificate of service	K17.00
On personal individual in the Judgments Registers or in the Judgments Section of the Civil cases Register to every name	K17.00
On personal general searches in the Judgments Registers for unspecified numbers of Calendar year, on any Registry of the High Court	K334.00
On a search for appearance of any other search (including an inspection) not otherwise provided for	K14.00
For a certificate of appearance of a pleading, affidavit or proceedings having been entered, filed or taken or the negative thereof, unless otherwise provided	K40.00
On entering or sealing an order made in chambers	K25.00
On entering or sealing an order of reference under Order XX	K25.00
On settling or approving an advertisement, or any other documents or deed (other than by judgment or orders)	K25.00
On entering or settling down any cause or matter for hearing in Court, except where otherwise provided	K83.00
On hearing Judgment Summons	K34.00
On entering or sealing any other Judgment or Order	K25.00
On sealing or filing a Writ of Execution (including a writ of attachment)	K25.00
On filing a case stated	K25.00
On taking an account of monies received by a person liable to account for the same for every K1,500,000.00 or fraction of K1,500,000.00 of the amount received	K14.00
On taking an account of monies due to any person for every K1,500.00 of the amount found to be due if taking such account nothing is due	K14.00

On an enquiry as to damages for every K1,500,000.00 of the fraction of K1,500,000.00 of the amount certified	K14.00
For copies of documents or proceedings per page or part thereof	K14.00
For certifying a copy as an office copy and in addition if under seal	K14.00
On filing any notice not specifically provided for	K14.00
Taxing bill of costs	10%
Application (including registration) to register a Judgment when no fee is provided by the Act providing for registration	K25.00
Hearing fees for causing an adjournment	K833.00
Notice of discontinuous	K60.00
Mediation Fee (per party)	K375.00
<u>Judgment:</u>	
a) Hard copy (per page)	K25.00
b) Soft copy (whole judgment)	K50.00

NB: *The fees payable in the Commercial Court Division are stipulated in fee units. To arrive at the amount payable, a conversion rate of 30 ngwee (Statutory Instrument No. 41 of 2015) for each fee unit is used.*

4.0 THE FAMILY & CHILDREN'S COURT DIVISION

Establishment

The Family and Children's Court Division is created by the Constitution of Zambia. This Division is found at the Principal Registry at Lusaka and all District Registries of the High Court.

Jurisdiction

It has jurisdiction over:

- Matrimonial cases (cases arising from the Matrimonial Causes Act and the Marriage Act, i.e. divorces, judicial separation, applications for nullity of marriages, child custody, maintenance (of children and spouses) and property settlement).
- Applications under the Legitimacy Act.
- Probate matters – grant of probate or letters of administration whether one died testate (leaving behind a Will) or where one died intestate (without leaving a Will).
- Disputes arising from the general administration of estates (what is left behind by the deceased person) and property sharing to beneficiaries.
- Child Adoption, etc.

Commencement of cases

Typically, cases commence by way of Petition, Originating Summons or Originating Notice of Motion.

Steps to follow after instituting an action

- The petitioner/applicant (the party suing) is allowed to file the court process and proceed with the case in person (without legal representation) or can do so through lawyers.

- The respondent (the party sued) files an answer or affidavit in opposition (as the case may be) as required by the law and is also at liberty to appear in person or by legal representative.
- Once the Court process is filed, the petitioner/applicant has a duty to serve copies of filed documents on the respondent as soon as possible.
- Where the claim is disputed, the parties are then allowed to file any supporting documents and the hearing date is set.

The Hearing

- On the hearing date, parties will present their evidence and are allowed to give evidence in chief, cross-examine and re-examine witnesses.
- At the conclusion of the hearing, the Judge will allow the parties to submit orally or to file their written submissions and the case is adjourned for judgment.
- Judgment is delivered and the Judge may refer certain issues such as property settlement and maintenance to the Registrar for determination.

Appeals

- There is a right of appeal to the Court of Appeal within 30 days from the date of judgment.

Common Orders by the Court

- Decrees of divorce
- Judicial Separation
- Child custody orders
- Maintenance orders
- Property settlement orders
- Attachment of earnings orders
- Legitimacy orders
- Adoption orders
- Grant of letters of administration
- Confirmation of Probate, etc.

Reference to Arbitration and Mediation

- In appropriate cases, matters in this Division may be settled by mediation and where applicable, by arbitration.

Note 13:

Enforcement of orders in the Family and Children's Court Division is largely by way of compliance with the order, in default contempt proceedings may be instituted against the defaulter.

Other appropriate modes of enforcement as in other Divisions of the Court also apply.

Note 14: Divorce

3.1 Who can file a Divorce Petition?

- Parties to a statutory marriage (those married under the Marriage Act, Chapter 50 of the Laws of Zambia).

3.2 Grounds for granting Divorce

- A petition for divorce can only be presented in the High Court after at least one year of Marriage.
- There is only one ground for the dissolution of a marriage, that is, that the marriage has broken down irretrievably (section 8 of the Matrimonial Causes Act, No. 20 of 2007). This ground must be supported by any one or more of the following five facts:
 - *Adultery* - if one party to the marriage has committed adultery and the other party finds it intolerable. If you have lived together for 6 months after it happened then it was tolerated and the court may not accept.
 - *Unreasonable behaviour* - which the petitioner finds intolerable, e.g. Gender Based Violence. If you have lived together for 6 months after it happened then it was tolerated and the court may not accept.
 - *Desertion* for a continuous period of two years.
 - *Two years separation* with consent by both parties.
 - *Living apart for five (5) years* continuously – this does not require consent of the other party.

3.3 Property settlement comes after divorce has been granted.

3.4 Maintenance and custody can be applied for at any stage of the proceedings.

Note 15:

When filing the Court documents, parties who are not conversant with the process can seek legal counsel from knowledgeable persons such as lawyers and the Assistant Registrars or organizations such as the Legal Aid Board, the Law Association of Zambia's Legal Aid Clinic for Women.

FEES PAYABLE IN THE FAMILY AND CHILDREN'S COURT DIVISION

	Process	Amount (K)
1	Divorce Petition	167.00
2	Amending a Petition	83.00
3	Filing Answer or Reply	34.00
4	Application for Ancillary Relief	34.00
5	On filing affidavit in answer to application for ancillary relief or affidavit in reply thereto on filing application	8.00
6	Setting down matter for trial	50.00
7	Notice of application to make decree nisi absolute	25.00
8	On sealing decree nisi absolute	25.00
9	Commissioning an Affidavit	25.00
10	Certifying a document	8.00

11	Wills	22.00
12	Mediation Fee (per party)	375

NB: The fees payable in the Family and Children's Court Division are stipulated in fee units. To arrive at the amount payable, a conversion rate of 30 ngwee (Statutory Instrument No. 41 of 2015) for each fee unit is used.

Note 16:

CONTEMPT OF COURT IN THE HIGH COURT

Contempt of Court refers to behaviour that does not obey or respect court. Contempt can be classified as either:

(1) *criminal contempt* - consisting of words or acts which impede or interfere with the administration of justice, or which create a substantial risk that the course of justice will be seriously impeded or prejudiced. Criminal contempt typically occurs in the face of the court and examples include: assaults committed in court; insults to the court; interruption of court proceedings; photographing or sketching in court (without permission); refusing to be sworn or take an affirmation; language or behaviour by litigants or counsel which is outrageous or scandalous or deliberately insulting to the court, etc.

(2) *civil contempt* (contempt in procedure) – consists of disobedience to the judgments, orders or other process of the court and involving a private injury. Although a civil contempt is essentially a wrong done to the person who is entitled to the benefit of the order or judgment concerned, it also involves an obstruction of the fair administration of justice, and may accordingly, be punished in the same manner as a criminal contempt. It is civil contempt of court to refuse or neglect to do an act required by a judgment or order of the court within the time specified in the judgment or order or to disobey a judgment or order requiring a person to abstain from doing a specified act. It is also a civil contempt to act in breach of an undertaking given to the court by a person, on the faith of which the court sanctions a particular course of action or inaction.

Contempt is punishable by fine, imprisonment or any other lawful way.

HOW CORRUPTION CAN BE AVOIDED AT THE HIGH COURT

- 1) Members of the public should follow the law and court procedures and rules to obtain a service and should desist from offering bribes in order to speed up their cases or acquire an order, ruling or judgment in their favour.
- 2) Members of the public should seek services only from prescribed officers and offices and not in the streets, court corridors, car parks, etc.
- 3) Members of the public should familiarize themselves with the prescribed fees and should demand official Government receipts for any payments at Court.
- 4) Any suspected exorbitant fees should be reported to supervising officers at the court.
- 5) All cases of suspected corruption should be reported to relevant authorities.
- 6) When in doubt as to any Court order or procedure, the Clerk of Court should be immediately contacted.
- 7) Court officials should at all times work professionally in accordance with the Code of Conduct and Ethics.

THE JUDICIARY OF ZAMBIA

Vision: To provide timely and accessible justice to all.

Mission: To adjudicate civil, criminal and constitutional matters in an independent, impartial and timely manner without fear or favour.

Contact Details

Plot # 438, Independence Avenue, Lusaka

P.O. Box 50067

Lusaka, ZAMBIA.

Tel: +260211 251330, 251964, 252016, 251884

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Website: www.judiciaryzambia.com

ANTI-CORRUPTION COMMISSION

Vision: A proactive, impartial and professional anti-corruption agency that promotes the attainment of a corruption free Zambia.

Mission: To effectively prevent and combat corruption in order to promote integrity, transparency and accountability for sustainable development in Zambia.

Contact Details

Anti-Corruption House

Cha cha cha Road, South End

P.O. Box 50486

LUSAKA.

Tel: (+260-211) 237914/237916/234238/231368/234240/234250/231627/232875

Fax: 237828/237797

E-mail: info@acc.gov.zm

Website: www.acc.gov.zm

TRANSPARENCY INTERNATIONAL ZAMBIA

Vision: A Zambia anchored on citizens and institutions of integrity.

Mission: A leading anticorruption crusader contributing to the development of a Zambian society based on a culture of transparency and accountability through the promotion of good governance and zero tolerance to corruption.

Contact Details:

Transparency International Zambia

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