

# THE JUDICIARY OF ZAMBIA



# SMALL CLAIMS COURTS

**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 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 Small Claims Courts' 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 Transparency International Zambia, the Anti-Corruption Commission and the Judiciary.

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

## **ACKNOWLEDGEMENTS**

This is the first ever service charter for the Small Claims Courts in 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**

**TABLE OF CONTENTS**

Foreword..... 2

Acknowledgements..... 3

Background Information ..... 5

Coverage ..... 5

    Services Offered at The Small Claims Court Registries ..... 5

Who May Institute a Claim?..... 7

Against Whom May a Claim be Instituted? ..... 7

Legal Representation and Assistance in The Preparation of a Claim ..... 7

Language to be Used in Court ..... 7

How are Claims Commenced? ..... 7

What to Take to The Clerk of Court When Filing a Claim..... 8

Duties of The Clerk of Court ..... 8

What to Do With The Notice of Claim ..... 8

What The Defendant Should do When Served With a Notice of Claim..... 9

What the Plaintiff Should do if the Defendant has Settled the Claim before the Hearing Date ..... 9

What is Expected from both Parties During the Hearing ..... 9

The Hearing..... 10

The Judgment..... 10

Review ..... 10

Appeals ..... 10

What To Do if the Judgment Debtor (the person found to be owing) Fails to Comply With the Judgment or Order of the Court..... 10

    Fees Payable in The Small Claims Court..... 12

    How Corruption Can be Avoided at The Small Claims Courts..... 13

## **BACKGROUND INFORMATION**

The Small Claims Court is established under the Constitution of Zambia and the Small Claims Court Act, Chapter 47 of the Laws of Zambia as amended by Act No. 14 of 2008. It is presided over by Commissioners who are qualified lawyers.

The Court hears and determines civil matters of liquidated claims (also called liquidated demands – these are claims which can be precisely ascertained or are already ascertained) up to K20,000.00. The Court is intended to be a fast-track Court to deal with small transactions. When adjudicating, a Small Claims Court aims at the reconciliation of the parties and its primary function is to do substantial justice between the parties. The Court is not bound by rules of evidence, but it is mandated to apply the law and equity.

Management of day to day affairs of the Court is by members of staff who include the Senior Clerk of Court, Clerk of Court and Registry Clerks who are supervised by the Registrar of the High Court.

## **COVERAGE**

At present, the Court is operating at Lusaka, Ndola and Kitwe. Court users from all parts of Zambia can go to any near Small Claims Court Registry in these three towns to commence their cases.

### **Services offered at the Small Claims Court Registries**

The Registries are open to members of the public from Monday to Friday from 09:00 hours to 13:00 hours and from 14:00 hours to 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.

## **CASES THAT CAN BE HEARD IN THE SMALL CLAIMS COURT**

(a) Claims for the delivery of movable or immovable property whose value does not

- exceed K20,000.00;
- (b) Claims for debts that are due and payable;
  - (c) Claims for rentals that are due and payable in respect of any premises;
  - (d) Claims for possession against the occupier of any premises where the right of occupation per month does not exceed the sum that the Chief Justice may, by statutory instrument, specify;
  - (e) Claims relating to or arising out of a cheque or an acknowledgement of debt signed by a debtor; and
  - (f) Counter-claims in respect of any proceedings mentioned above.

A claim for interest or costs is not to be taken into account in determining whether a claim falls within the jurisdiction of the Small Claims Court.

#### **CASES IN WHICH THE SMALL CLAIMS COURT HAS NO JURISDICTION**

- (a) An action which is beyond the jurisdiction of the Court, notwithstanding any agreement of the parties thereto;
- (b) Claims made under customary law;
- (c) Claims for divorce, custody or maintenance other than arrears in maintenance;
- (d) Claims involving the validity of a will;
- (e) Claims in which an injunction is sought;
- (f) Claims in which damages are sought for—
  - (i) defamation;
  - (ii) malicious prosecution or wrongful imprisonment or arrest; or
  - (iii) adultery or seduction;
- (g) Claims against a consular officer; or
- (h) Claims against a foreign State.
- (i) Employment cases unless the dispute is purely a money claim for a specified sum.
- (j) Claims under the Money Lenders Act, Chapter 398 of the Laws of Zambia.

## **WHO MAY INSTITUTE A CLAIM?**

- The person suing is known as the plaintiff. Claims can be instituted by any person aged 21 years and above excluding registered entities such as companies, corporations, municipalities, associations, etc.
- A person below the age of 21 must sue through a parent or a legal guardian.

## **AGAINST WHOM MAY A CLAIM BE INSTITUTED?**

- The person being sued is known as the defendant.
- A claim can be instituted against any person including legal entities such as companies, corporations, municipalities, associations, etc.

## **LEGAL REPRESENTATION AND ASSISTANCE IN THE PREPARATION OF A CLAIM**

- Representation by a lawyer is not allowed in this Court. The litigants may, however, at their own cost obtain prior advice or help from a lawyer.
- The Clerk of Court assists to prepare the claims free of charge.

## **LANGUAGE TO BE USED IN COURT**

- The language to be used in Court is English.
- Any Zambian language or indeed any other foreign language may also be used in Court but arrangements for an interpreter must be made with the Clerk of Court before the date of hearing.

## **HOW ARE CLAIMS COMMENCED?**

- Any aggrieved person can approach the registry where he/she will explain the nature of the claim.
- If the registry personnel are satisfied that the claim falls within the monetary jurisdiction of the Court, they will advise the complainant to issue a Letter of Demand which they will stamp for him/her with the Court date stamp at a fee (refer to schedule of fees attached).
- The letter of demand is addressed to the defendant setting out the sum of money being claimed by the plaintiff and an explanation on how the claim arose.

- The Clerk of Court will assist the plaintiff to prepare both the Letter of Demand and the Notice of Claim and will advise on how best to effect service.
- The plaintiff will then serve the letter of demand on the defendant and at the expiry of 14 days from the date of service, the plaintiff will be entitled to issue a Notice of Claim if the defendant does not immediately settle the claim.

#### **WHAT TO TAKE TO THE CLERK OF COURT WHEN FILING A CLAIM**

- The plaintiff must carry with them any contract, letter, document or other proof upon which his/her claim is based or that has a connection to the claim.
- The defendant's full names and address (home and business address, if available) and phone numbers.

#### **DUTIES OF THE CLERK OF COURT**

- To examine the parties' documents and assist them in drawing up the required documents.
- To issue and stamp all documents filed in Court.
- To inform the parties of the date and time for the hearing of the case.
- To verify all Court fees payable on all documents filed in Court.
- To issue and stamp Notices of Review, Writs of Execution and Summons to Witnesses.
- To seal all judgments.
- To prepare and remit records of Review to the Registrar of the High Court.

#### **WHAT TO DO WITH THE NOTICE OF CLAIM**

- The plaintiff will file a Notice of Claim (which is issued by the Court at a fee) at the Small Claims Court's Registry. (*Refer to the schedule of fees attached*).
- It is the duty of the plaintiff to serve the Notice of Claim on the defendant in person. The plaintiff must always try to get an acknowledgment of receipt by having the defendant sign and date a copy of the Notice of Claim.
- The plaintiff may request the Clerk of Court to instruct the Sheriff to effect service on his/her behalf at a fee.
- If the defendant does not sign an acknowledgment of receipt of Notice of Claim, the plaintiff will be asked to file an affidavit of service (a formal sworn statement that someone has

either personally or by other acceptable means served the Notice of Claim on the defendant). The affidavit of service is filed at a fee (refer to schedule of fees attached).

#### **WHAT THE DEFENDANT SHOULD DO WHEN SERVED WITH A NOTICE OF CLAIM**

- If the defendant has not already settled the claim after being served the Notice of Claim, he/she must immediately see the Clerk of Court at the Small Claims Court for assistance in responding to the claim.
- The Clerk of Court will assist the defendant to complete the Notice of Admission or Defence and/or Counter-claim (a written statement containing the nature of the defence and counter-claim with particulars of the grounds on which it is based) free of charge.
- The Clerk of Court will examine the documents which the defendant intends to rely upon for his/her defence or counter-claim and will advise him/her on which ones to come with to court.
- The filed defence or counter-claim once prepared and filed in court should be served on the plaintiff.
- The defendant will be advised of the hearing date

#### **WHAT THE PLAINTIFF SHOULD DO IF THE DEFENDANT SETTLES THE CLAIM BEFORE THE HEARING DATE**

- If the defendant settles the claim before the hearing date, the plaintiff is required to supply him/her with a written receipt as acknowledgment of payment.
- The plaintiff must immediately inform the Clerk of Court that his/her claim has been satisfied and that he/she will no longer proceed with the case.

#### **WHAT IS EXPECTED FROM BOTH PARTIES DURING THE HEARING**

If the claim is not settled, the case goes for a trial (hearing). During the hearing, each of the parties must do the following:

- The plaintiff must ensure that he/she has written proof that the Notice of Claim was served on the defendant.
- They must both appear in court in person at the appointed time.
- Ensure they have all the documents upon which the claim, defence or counter-claim is based.

- Ensure that all the witnesses are present.

## THE HEARING

- The case is heard and determined by a Small Claims Court Commissioner.
- The Court proceedings are informal and simple but a record of proceedings is kept.
- A Court interpreter will be present where parties cannot use the English language.
- The plaintiff will present his case first followed by his/her witness(es). The defendant will also be given chance to present his/her case followed by his/her witness(es).

## THE JUDGMENT

- After the Commissioner has heard both sides, he/she will pass judgment (called an award) in a simplified form.
- Reasons for the judgment must be given.

## REVIEW

- The awards of a Small Claims Court are final.
- An aggrieved party may, however, request for a review of the judgment before a panel of 3 Commissioners on any of the following grounds:
  - (a) that the Court had no jurisdiction;*
  - (b) where the party was not given an opportunity to make representations in court;*
  - (c) corruption, fraud, malice or interest in the case on the part of the Court and*
  - (d) gross irregularity in the proceedings.*
- An application for review must be done within 30 days from the date of judgment.

## APPEALS

- The awards of a small Claims Court are final. However, an appeal can be allowed to the High Court on **points of law only**.

## WHAT TO DO IF THE JUDGMENT DEBTOR (THE PERSON FOUND TO BE OWING) FAILS TO COMPLY WITH THE JUDGMENT OR ORDER OF THE COURT

- The successful party (judgment creditor) will be at liberty to have the Court issue a writ of execution instructing the Sheriff to seize the losing party's (judgment debtor's) property.
- Where there is no property to be seized, the Court may, at any time, on application by a party, issue a Judgment Summons (a summons to the judgment debtor calling on the judgment debtor to appear and be examined respecting the judgment debtor's ability to

satisfy the judgment, as to the existence and value of the judgment debtor's property and of any debts owing to the judgment debtor and the judgment debtor may be examined as to the same upon oath).

- Where the judgment debtor is absconding from Court and shows no signs of satisfying the judgment debt, a Warrant of Arrest may be issued against him/her by the Court.

#### **CONTEMPT OF THE SMALL CLAIMS COURTS**

**(section 25 of the Small Claims Court Act, Chapter of the Laws of Zambia as amended by Act No. 13 of 1994, and Act No. 14 of 2008)**

**Any person who is subject to the jurisdiction of a Small Claims Court and who, without reasonable excuse-**

- (a) threatens, intimidates or insults that court while sitting in that capacity;**
  - (b) intentionally interrupts the proceedings of that court or otherwise behaves in a disorderly manner before that Court;**
  - (c) deliberately omits to deliver up any document or thing in accordance with an order of the court;**
  - (d) refuses to answer any question asked by the Court;**
  - (e) while any proceedings are in progress in the Court, makes use of any speech or writing misrepresenting any proceedings of that Court in such a way as to prejudice the commissioner in favour of, or against, any party to those proceedings;**
  - (f) wilfully disobeys or fails to comply with any other lawful order of that court;**
- shall be guilty of an offence and shall be liable, upon conviction to a fine not exceeding four hundred penalty units (K120.00 according to current conversion rate) or to a term of imprisonment not exceeding six months, or to both.**

## FEES PAYABLE IN THE SMALL CLAIMS COURT

Description/Document	Amount in Kwacha
Notice of Claim	67
Admission and Defence	44
Counter-claim	67
Application to Restore a Claim	33
Application to Set Aside Default Judgment	33
Notice of Review	83
Notice of Withdrawal of Application for Review	33
Writ of Execution	25
Any Order or Process not otherwise provided for	25
Stamping letter of demand	5

**NOTE:** *The fees payable in the Small Claims 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.*

### **HOW CORRUPTION CAN BE AVOIDED AT THE SMALL CLAIMS COURTS**

- 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.

## **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

Fax: +260 211 252815

Email: [info @ judiciaryzambia.com](mailto:info@judiciaryzambia.com)

Website: [www.judiciaryzambia.com](http://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](mailto:info@acc.gov.zm)

Website: [www.acc.gov.zm](http://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

Plot No. 8, Raphael Kombe Road, Civic Centre

10101

Lusaka, Zambia

Tel: +260 211 293 649

Email: [info@tizambia.org.zm](mailto:info@tizambia.org.zm)

Website: [www.tizambia.org.zm](http://www.tizambia.org.zm)