

THE COURT OF APPEAL ACT, 2016

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY PROVISIONS

Section

1. Short title and commencement
2. Interpretation

PART II

CONSTITUTION, JURISDICTION AND GENERAL POWERS OF THE COURT

3. Composition of Court
4. Jurisdiction of Court
5. Sittings of Court
6. Restrictions regarding sitting on appeals
7. Seal
8. Practice and procedure
9. Powers of single judge
10. Determination of court
11. Delivery of judgment

PART III

APPEALS

General Provisions

12. Right to appeal
13. Leave to appeal

Criminal Appeals

14. First appeal
15. Second appeal
16. Determination of criminal appeals
17. Right of appellant to be present at hearing

- 18. Provisions on bail
- 19. Stay of execution of sentence of death
- 20. Supplementary powers of court
- 21. Time for appealing in criminal matters

Civil Appeals

- 22. Right of appeal in civil matters
- 23. Restrictions on civil appeals
- 24. Powers of Court on appeals in civil matters
- 25. Appealing in civil matters

PART IV

GENERAL PROVISIONS

- 26. Registrar and other officers
- 27. Costs and taxation of costs
- 28. Administration of oath
- 29. Warrant for production of appellant before Court
- 30. Rules of Court

GOVERNMENT OF ZAMBIA

ACT**No. 7 of 2016**

Date of Assent: 2nd May, 2016

An Act to provide for the jurisdiction and procedures of the Court of Appeal; the hearing of appeals from the High Court and quasi judicial bodies; and matters connected with, or incidental to, the foregoing.

[3rd May, 2016]

ENACTED by the Parliament of Zambia

Enactment

PART I

PRELIMINARY PROVISIONS

1. This Act may be cited as the Court of Appeal Act, 2016, and shall come into operation on such date as the Minister may appoint by statutory instrument.

Short title and commencement

2. In this Act, unless the context otherwise requires—

Interpretation

“appellant” means a party appealing to the Court from a judgment of the High Court or a quasi judicial body, except a local government elections tribunal;

“Constitutional Court” means the Constitutional Court established under Article 127 of the Constitution;

Cap. 1

“Court” means the Court of Appeal established under Article 130 of the Constitution;

Cap. 1

“Deputy Judge President” means the Deputy Judge President of the Court appointed under section *three*;

“Director of Public Prosecutions” means the person appointed as such under Article 180 of the Constitution;

Cap. 1

“High Court” means the High Court established under Article 133 of the Constitution;

Cap. 1

“Judge President” means the Judge President of the Court appointed in under section *three*;

	“ judgment ” includes decree, ruling, order, conviction, sentence and decision;
Cap. 1	“ judicial function ” has the meaning assigned to it in the Constitution;
Cap. 1	“ local government elections tribunal ” means a tribunal established in accordance with Article 159 of the Constitution;
Cap. 30	“ practitioner ” has the meaning assigned to it in the Legal Practitioners Act;
	“ quasi-judicial body ” means a body, other than a court, exercising a judicial function;
	“ Registrar ” means the Registrar of the Court appointed under section <i>twenty-six</i> ;
	“ rules ” means rules of the Court made pursuant to section <i>thirty</i> ; and
Cap. 1	“ Supreme Court ” means the Supreme Court established under Article 124 of the Constitution.

PART II

CONSTITUTION, JURISDICTION AND GENERAL POWERS
OF THE COURT

Composition of Court	<p>3. The Court consists of—</p> <p>(a) the Judge President;</p> <p>(b) the Deputy Judge President; and</p> <p>(c) such number of judges as may be prescribed.</p>
Jurisdiction of Court	<p>4. (1) The Court has jurisdiction to hear appeals from judgments of—</p> <p>(a) the High Court; and</p> <p>(b) a quasi judicial body, except a local government elections tribunal.</p>
Cap. 1	<p>(2) Despite subsection (1), where a question relating to the Constitution arises before the Court, the Court shall refer that question to the Constitutional Court.</p>

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- 5.** (1) The sittings of the Court shall, before its devolution to the provinces and districts, usually be held at Lusaka but may be held at such other place as may be specified in a circuit schedule issued by the Chief Justice. Sittings of Court
- (2) The Court shall, at a sitting, be constituted by an uneven number of judges not being less than three except when hearing an interlocutory application which may be heard by a single judge.
- 6.** A judge of the Court shall not sit on the hearing of an appeal or exercise a power in respect of an appeal from a judgment given by that judge or a judgement given by a court of which that judge sat as a member. Restriction regarding sitting on appeals
- 7.** The Court shall have a seal approved by the Chief Justice. Seal
- 8.** (1) The jurisdiction vested in the Court shall, as regards practice and procedure, be exercised in the manner provided by this Act and the rules. Practice and procedure
- (2) Despite subsection (1), where this Act or the rules do not provide for a particular point of practice or procedure, the practice of the Court shall be—
- (a) in relation to civil matters, in accordance with the Supreme Court Practice, 1999 (White Book) of England and the law and practice in the Court of Appeal in England in force up to 31st December, 1999; or
- (b) in relation to criminal matters, as nearly as may be in accordance with the law and practice for the time being observed in the Court of Criminal Appeal in England.
- 9.** A single judge of the Court may exercise a power vested in the Court not involving the decision of an appeal, except that— Powers of single judge
- (a) in criminal matters, if a judge of the Court refuses an application for the exercise of any such power, the person making the application is entitled to have that person's application determined by the Court; and
- (b) in civil matters, an order, direction or decision made or given in pursuance of the powers conferred by this section may be varied, discharged or reversed by the Court.
- 10.** The determination of a question before the Court shall be according to the opinion of the majority of the judges of the Court hearing the matter. Determination of Court

Delivery of
judgment

11. A judgment of the Court shall be delivered—

- (a) in the case of criminal matters, in open court immediately after the termination of the appeal or, without undue delay, at some subsequent time of which notice shall be given to the parties and the parties' practitioners, if any; or
- (b) in the case of civil matters, in such manner as the Court may determine.

PART III

APPEALS

General Provisions

Right of
appeal

12. (1) An appeal shall lie to the Court in accordance with the rules.

(2) A single judge of the Court may grant leave to appeal where an appellant is denied leave to appeal by the High Court or quasi-judicial body.

Leave to
appeal

13. (1) An appeal from a judgment of the Court shall lie to the Supreme Court with leave of the Court.

(2) An application for leave to appeal, under subsection (1), shall be made within fourteen days of the judgment.

(3) The Court may grant leave to appeal where it considers that—

- (a) the appeal raises a point of law of public importance;
- (b) it is desirable and in the public interest that an appeal by the person convicted should be determined by the Supreme Court;
- (c) the appeal would have a reasonable prospect of success;
or
- (d) there is some other compelling reason for the appeal to be heard.

(4) Leave to appeal shall not operate as a stay of execution of a judgment.

Criminal Appeals

14. (1) This section applies to the exercise of the jurisdiction of the Court to hear appeals in criminal matters from a judgment of the High Court sitting as a court of first instance. First appeal

(2) A person convicted by the High Court may appeal to the Court on a question of law, fact or mixed law and fact and shall be so informed by the judge at the conclusion of the trial.

(3) A person convicted by a subordinate court and committed to the High Court for sentence shall, upon being sentenced by the High Court, for all purposes connected with that person's rights of and procedural matters relating to the appeal, be considered to have been convicted and sentenced on trial by the High Court, and accordingly an appeal against such conviction and sentence shall lie to the Court.

(4) If the Director of Public Prosecutions is dissatisfied with a judgment of the High Court in the exercise of its original jurisdiction on a point of law, the Director of Public Prosecutions may appeal to the Court from such judgment.

(5) An appeal shall not lie against a sentence the imposition of which is fixed by law.

15. (1) A party to an appeal to the High Court may appeal to the Court against the judgment of the High Court with the leave of that court, if given at the time when judgment is pronounced, or with the leave of the Court. Second appeal

(2) For purposes of this section, an order made by the High Court in the exercise of its power of review, a decision of the High Court on a case stated or a decision of the High Court refusing an application for an appeal to be heard out of time, shall be considered to be a decision of the High Court in exercise of its appellate jurisdiction.

(3) Where under section *three hundred and twenty-four* of the Criminal Procedure Code an application for an appeal to be heard out of time has been refused by the High Court, the applicant may apply to the Court for the appeal to be heard by the Court, and if such application is granted, the appeal shall be heard by the Court as if it lay direct to it. Cap. 88

16. (1) The Court shall allow an appeal against conviction on the following grounds: Determination of criminal appeals

- (a) the conviction, in all the circumstances of the case, is unsafe or unsatisfactory;
- (b) the conviction is based on a wrong decision on a question of law; or
- (c) there was a material irregularity in the course of the trial.

(2) Despite subsection (1), where the Court is of the opinion that the point raised in the appeal might be decided in favour of the appellant, the Court may dismiss the appeal if it considers that no miscarriage of justice has actually occurred.

(3) The Court shall, if it allows an appeal against conviction, quash the conviction and direct a judgment and verdict of acquittal to be entered or, if the interest of justice so require, order a new trial.

(4) The Court may, on an appeal, whether against conviction or sentence, substitute a judgment of guilty for such other offence as the trial court could have entered and, in the case of an appeal from a judgment of the High Court in the High Court's exercise of appellate jurisdiction, the Court shall, in addition, have power to restore the conviction of the trial court.

(5) The Court may, on an appeal, whether against conviction or sentence, increase or reduce the sentence, impose such other sentence or make such other order as the trial court could have imposed or made, except that—

- (a) in no case shall a sentence be increased by reason of or in consideration of evidence that was not given at the trial; and
- (b) the court shall not interfere with a sentence just because if it were a trial court it would have imposed a different sentence, unless the sentence is wrong in principle or comes to the Court with a sense of shock.

Right of
appellant to be
present at
hearing

17. (1) An appellant is entitled to be present at the hearing of an appeal or any other application to the Court, if the appellant so desires.

(2) If an appellant does not desire to appear at the hearing of an appeal, a practitioner may, on the appellant's behalf, present the appeal and arguments, in writing, and an appeal or argument so presented shall be considered by the Court.

(3) The power of the Court to pass judgment under this Act may be exercised despite the appellant not being present.

18. (1) Where the High Court has, in exercise of its powers under section *three hundred and thirty six* of the Criminal Procedure Code, refused to admit an appellant to bail or to postpone the payment of a fine imposed on that appellant, the Court may, if it so considers, on the application of the appellant, and pending the determination of the appeal or application for leave to appeal to the Court in a criminal matter—

Provisions
on bail

Cap. 88

(a) admit the appellant to bail or, if not, on application by the appellant, direct that the appellant be treated as an unconvicted prisoner pending the determination of the appeal or application for leave to appeal, as the case may be; and

(b) postpone the payment of a fine imposed on the appellant.

(2) The time during which an appellant, pending the determination of the appeal, is admitted to bail and, subject to any directions which the Court may give to the contrary in an appeal, the time during which the appellant, if in custody, is treated as an unconvicted prisoner under this section, shall not count as part of a term of imprisonment under the sentence.

(3) An imprisonment of the appellant under a sentence, whether it is the sentence passed by the trial court or the High Court in exercise of its appellate jurisdiction or the sentence passed by the Court, shall, subject to any directions which the Court may give to the contrary, be deemed to be resumed or to begin to run, as the case requires—

(a) if the appellant is in custody, from the day on which the appellant was received into jail under the sentence; and

(b) if the appellant is not in custody, from the day on which the appeal is determined.

19. A sentence of death shall not be executed until—

Stay of
execution of
sentence of
death

(a) after the expiration of the time within which a notice of intention to appeal may be given or, as the case may be, an application for leave to appeal may be submitted;

(b) where a notice of intention to appeal is given, the appeal has been determined or abandoned; and

- (c) where an application for leave to appeal is submitted, the application, which shall be determined as soon as practicable, has been refused or the appeal has been determined or abandoned, as the case may be.

Supplementary
powers of
court

20. (1) The Court may, if it considers it necessary or expedient in the interest of justice—

- (a) order the production of a document, exhibit or other thing connected with the proceedings, the production of which appears to it necessary for the determination of the case;
- (b) order a witness who would have been a competent and compellable witness at the hearing before the High Court to attend and be examined further before the Court, or order the examination of the witness to be conducted in a manner provided by the rules before a judge of the Court or other person appointed by the Court for that purpose, and allow the admission of a deposition so taken as evidence before the Court;
- (c) receive the evidence, if tendered, of a witness, including the appellant, who is a competent but not compellable witness, and if the appellant makes an application for the purpose, of the spouse of the appellant in cases where the evidence of the spouse could not have been given at the trial except on such application to the trial court;
- (d) remit the case for further hearing to the High Court from which the appeal was brought, with such instructions as regards the taking of further evidence or otherwise as may appear to it necessary;
- (e) where a question arising at the appeal involves prolonged examination of documents or accounts or a scientific or local investigation which cannot, in the opinion of the Court, conveniently be conducted before the Court, order the reference of the question in the manner provided by the rules for inquiry and report to a special commissioner appointed by the Court, and act upon the report of such commissioner so far as it thinks fit to adopt the report;
- (f) appoint a person with special expert knowledge to act as an assessor in an advisory capacity in an appeal where it appears to the Court that such knowledge is required for the proper determination of the appeal;

- (g) issue a warrant necessary for enforcing an order or sentence of the Court; and
- (h) on the application of an appellant and pending the determination of the appeal or application for leave to appeal to the Court, admit the appellant to bail and, in the event of an appellant having been admitted to bail, give any directions which it may consider necessary concerning the time at which the sentence of the appellant shall be resumed or begin to run.

(2) Whenever the Court receives further evidence or gives instructions for the taking of further evidence, it shall make such order as will secure an opportunity to the parties to the proceedings to examine a witness whose evidence is so taken.

21. (1) A person who intends to appeal against a judgment of the High Court in a criminal matter shall, within thirty days of the date of the judgment against which that person intends to appeal—

Time for
appealing in
criminal
matters

- (a) give notice of the intention to appeal; or
- (b) if leave to appeal is required, submit an application for such leave;

to the Registrar in such manner and form as may be prescribed by the rules.

(2) If the intending appellant is in prison, the notice or application under subsection (1), as the case may be, may be given to the officer-in-charge of the prison, who shall forward it to the Registrar.

(3) The Court may extend the time for giving notice of intention to appeal or of submitting an application for leave to appeal notwithstanding that the time for giving that notice or submitting the application has already expired, except that where a sentence of death has been passed, no extension of time shall be granted after the sentence has been confirmed by the President.

Civil Appeals

22. Subject to section *twenty-three*, an appeal in a civil matter shall lie to the Court from a judgment of the High Court or a quasi judicial body.

Right of
appeal in civil
matters

23. (1) An appeal shall not lie—

- (a) from an order allowing an extension of time for appealing from a judgment;

Restrictions
on civil
appeals

- (b) from an order of a judge of the Court giving unconditional leave to defend an action;
- (c) from a judgment given by the High Court in the exercise of its appellate or review jurisdiction, without the leave of the High Court or, if that has been refused, without the leave of a judge of the Court;
- (d) from an order made with the consent of the parties or from an order as to costs only, which by law is left to the discretion of the court or quasi-judicial body, without the leave of the court or of the judge who, or quasi-judicial body which, made the order or, if that has been refused, without the leave of a judge of the Court;
- (e) from an order made in chambers by a judge of the High Court or by a quasi-judicial body or from an interlocutory order or interlocutory judgment made or given by a judge of the High Court or by a quasi-judicial body, without the leave of that judge or quasi-judicial body or, if that has been refused, without the leave of a judge of the Court, except in the following cases:
 - (i) where the liberty of the subject or the custody of infants is concerned;
 - (ii) where an injunction or the appointment of a receiver is granted or refused;
 - (iii) in the case of a decision determining the claim of a creditor or the liability of any contributory, director or other officer under the Companies Act;
 - (iv) in the case of a *decree nisi* in a matrimonial cause, judgment or order in an Admiralty action determining liability; or
 - (v) in the case of an order on a special case stated under any law relating to arbitration; and
- (f) from an order absolute for the dissolution or nullity of marriage made by a judge of the High Court in favour of a party who, having had time and opportunity to appeal from the *decree nisi* on which the order was founded, has not appealed from that decree.

(2) An order refusing unconditional leave to defend an action is not an interlocutory order or interlocutory judgment within the meaning of paragraph (e) of subsection (1).

24. (1) The Court may, on the hearing of an appeal in a civil matter—

Powers of Court on appeals in civil matters

- (a) confirm, vary, amend, or set aside the judgment appealed against or give judgment as the case may require;
- (b) where necessary or expedient in the interest of justice—
 - (i) order the production of a document, exhibit or other thing connected with the proceedings, the production of which may be necessary for the determination of the matter;
 - (ii) order a witness who would have been a competent and compellable witness at the trial to attend and be examined before the Court, whether that witness was or was not called at the trial, or order the examination of the witness to be conducted in the manner provided by the rules and allow the admission of a deposition so taken before the Court;
 - (iii) receive the evidence, if tendered, of a witness or party, who is a competent but not compellable witness, and if a party makes an application for the purpose, of the spouse of that party in cases where the evidence of the spouse could not have been given at the trial except on application to the trial court; or
 - (iv) remit the case to the High Court or quasi-judicial body for further hearing, with such instructions as regards the taking of further evidence or otherwise as appears to the Court necessary; and
- (c) if it appears to the Court that a new trial should be held, set aside the judgment appealed against and order that a new trial be held.

(2) Whenever the Court gives instructions for the taking of further evidence, the Court shall make such order as shall secure an opportunity to the parties to the proceedings to examine a witness whose evidence is taken.

Appealing in civil matters **25.** Subject to section *twenty-three*, a person who intends to appeal to the Court from a judgment shall do so within thirty days of the judgment.

PART IV

GENERAL PROVISIONS

Registrar and other officers **26.** (1) The Judicial Service Commission shall appoint a Registrar and other officers as may be necessary to give effect to the provisions of this Act.

(2) The Registrar shall perform such functions as may be prescribed by the rules.

Costs and taxation of costs **27.** Taxation of a bill of costs shall be undertaken by the Registrar as prescribed in the rules.

Administration of oath **28.** (1) The Court or a judge of the Court may require and administer an oath for purposes of this Act.

(2) The form of an oath shall be prescribed in the rules.

Warrant for production of appellant before Court **29.** A judge of the Court may issue a warrant for the production of the appellant at an appeal where—

(a) the presence of the appellant who is in custody is necessary or desirable at the hearing of the appeal; or

(b) the appellant desires to exercise the right conferred upon the appellant by section seventeen to be present at the hearing of the appeal.

Rules of Court **30.** (1) The Chief Justice may, by statutory instrument, make rules for regulating generally the practice and procedure of the Court and with respect to appeals to the Court.

(2) Despite the generality of subsection (1), the rules may relate to—

(a) the time within which the rules are to be complied with;

(b) the costs of, and incidental to, the proceedings in the Court;

(c) the fees to be charged in respect of proceedings; and

(d) any other matter which necessary for the efficient and effective running of the Court.