

THE JUDICIARY OF ZAMBIA



CONSTITUTIONAL COURT

SIMPLIFIED COURT PROCESSES AND PROCEDURES



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FOREWORD

The Judiciary is one of the three arms of Government mandated to interpret the law and administer justice. It is created under Part VIII of the Constitution of Zambia and it is headed by the Chief Justice. The Court system consists of four superior courts namely: the Supreme Court and the Constitutional Court which rank equivalently; the Court of Appeal and the High Court. The other Courts are the Subordinate Courts, the Small Claims Courts, the Local Courts and those that may be prescribed.

In a continued effort to improve service delivery and to effectively and efficiently administer justice in a timely and impartial manner, the Judiciary has developed simplified court procedures in this service charter for the benefit of its clients (court users and the general public). The Charter is not intended to be exhaustive but highlights the significant aspects in the practice and procedure of the Court.

The Service Charter has been made possible through the collaborative input of the Judiciary and Transparency International Zambia. It is hoped that the public will find this Charter helpful.

Hon. Mr. Justice Michael Musonda, SC
Acting Chief Justice of the Republic of Zambia

2021

ACKNOWLEDGEMENTS

In the preparation of the material contained in this Service Charter, care has been taken to present the information in accordance with the law and practice in the Court as at the time of publication. It gives an insight of the services the Court offers, as well as the practice and procedure. To enhance access to justice, the material in this Charter has been simplified for the benefit of Court users and especially members of the public.

We would like to take this opportunity to express our special gratitude to Transparency International Zambia for their technical and financial support in designing and printing this Charter. We are grateful for this collaboration and their commitment in the fight against corruption and promoting integrity in public institutions. We commend Transparency International Zambia for their efforts and urge them to continue.

Additionally, we would like to thank the Honourable Judges who took time from their busy schedule in reviewing and validating this Charter.

We wish to thank, in a special way, the untiring efforts and contributions made by the Committee constituted for the purpose of refining and scrutinizing this Charter which drew members from the Judiciary Integrity Committee, Advisory Committee on Public Relations and Information and others from within the Judiciary.

We must reiterate that this 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**

2021

BACKGROUND INFORMATION

The Constitutional Court was established under Article 127 of the Constitution of Zambia as amended by the Constitution of Zambia (Amendment) Act No. 2 of 2016. Following the establishment of the Court, the Constitutional Court Act No. 8 of 2016 was enacted and the Rules of the Court were also made to provide for the processes and procedures of the Court. The Court became operational in May, 2016. The Supreme Court and the Constitutional Court rank equivalently.

JURISDICTION OF THE COURT

The Constitutional Court is a superior court of record in Zambia with original and final jurisdiction in all Constitutional matters except for matters relating to the enforcement of the Bill of Rights contained in Part III of the Constitution over which the High Court has original jurisdiction, with appeals going to the Supreme Court. The Court exercises original jurisdiction with regard to the following:

- Matters relating to the interpretation of the Constitution;
- Matters relating to a violation or contravention of the Constitution;
- Matters relating to nomination of a candidate for election as Republican President;
- Matters relating to the Republican President, Vice President or the election of a Republican President;
- Applications to review a decision of the Electoral Commission of Zambia in the delimitation of Constituencies and Wards;
- Applications as to whether or not a matter falls within the jurisdiction of the Court; and

- Any other matter as may be conferred upon the Court by or under the Constitution or any other written law.

The Constitutional Court also sits as a final Court of Appeal to determine appeals in the following matters:

- appeals from the High Court on the nomination of candidates in parliamentary elections;
- appeals from the High court on the election of Members of Parliament; and
- appeals from the Local Government Elections Tribunal.

Further, the Constitutional Court sits to determine matters referred to it by:

- ✦ the Republican President under the Constitution; or
- ✦ any Court in Zambia where a constitutional question relating to the interpretation of the Constitution arises in any proceedings before that court.

COMPOSITION AND SITTINGS OF THE COURT

Under Article 127 of the Constitution as read with the Constitutional Court Act No. 8 of 2016, the Constitutional Court consists of;

- the President of the Court;
- the Deputy President; and
- 11 other Judges of the Court.

The Court is presided over by the President of the Court and in the absence of the President, the Deputy President and in the absence of the Deputy President, the most senior judge present.

When determining a matter, the Court is constituted by an uneven number of not less than 3 Judges. When hearing an interlocutory matter the Court is constituted by a single Judge. However, where the interlocutory application will result in determining the matter in its finality the single Judge will not

determine the matter but instead will refer the matter to the court (an uneven number of not less than three judges) for determination.

- The full bench of the Court is constituted by an uneven number of not less than five Judges.
- The sittings of the Court are held at Lusaka but may be held at such other place as may be designated by the Chief Justice in accordance with a document called a circuit schedule.

REGISTRY OF THE CONSTITUTIONAL COURT: OPERATING HOURS AND SERVICES OFFERED

The Registry of the Constitutional Court is situated at Lusaka and it is open to members of the public from Monday to Friday between 09:00 – 13:00 Hours and 14:00 – 15:00 Hours.

The services offered include:

- receiving and attending to court users and guiding them on institution of claims and other court processes;
- filing of documents;
- opening of court records/files for every new case filed;
- issuing of receipts once there is proof that payment has been made;
- keeping of court files and scanning of documents;
- commissioning of documents/affidavits, certification of documents;
- attending to/facilitating searches on court files/records; and
- notarisatation of documents.

COMMENCEMENT OF A MATTER IN THE CONSTITUTIONAL COURT

The following may commence an action in the Constitutional Court:

- a person acting on his/her own behalf or on behalf of another person who cannot act in his/her own name;

- a person acting as a member of or in the interest of a group or class of persons;
- a person acting in the public interest;
- an Association acting in the interest of one or more of its members; or
- the Public Protector.

LEGAL REPRESENTATION

Parties to a matter before the Constitutional Court may appear:

- in person; or
- represented by a Legal Practitioner.

MODE OF COMMENCEMENT OF PROCEEDINGS

A matter may be commenced in the Constitutional Court by any of the following ways:

- a) Petition (accompanied by an affidavit verifying facts)
 - For Presidential Election Petition and all matters relating to alleged breach or contravention of the Constitution.
- b) Originating Notice of Motion (accompanied by an affidavit in support)
 - For matters relating to the Republican President or Republican Vice President other than the nomination or the election of the Republican President or Republican Vice President; or
 - For an application to review a decision of the Electoral Commission of Zambia in the delimitation of Constituencies and Wards.
- c) Originating Summons (accompanied by affidavit in support)
 - For matters relating to the interpretation of the Constitution.
- d) Summons (accompanied by affidavit in support)
 - For referrals by any other Court in Zambia in any proceedings where a constitutional question arises.
 - For interlocutory applications

PROCEDURE ON COMMENCEMENT OF PROCEEDINGS

- A party (Petitioner or Applicant) commencing an action before the Court will be required to file the appropriate court process at the Court's Registry and serve a copy on the Respondent (the person or party sued).
- After service the party must file at the Court Registry an affidavit of service as proof of service on the Respondent(s).
- The Respondent after being served with a petition will respond by filing a response in the form of an answer and an affidavit in opposition within fourteen (14) days. Where the Respondent is served with an Originating Summons or Originating Notice of Motion, the Respondent must file an affidavit in opposition within fourteen (14) days of service of court process.
- The Petitioner/Applicant may reply to the answer and/or affidavit in opposition within seven (7) days of being served with the answer and/or affidavit in opposition.
- Where the case is commenced by way of Petition, the Respondent may, within fourteen (14) days after being served with a petition, file a cross petition which shall disclose the matters in dispute.

PROCEDURE AFTER COMMENCEMENT OF PROCEEDINGS

- The matter is allocated to a single Judge for a sitting where orders for directions are given for each party to file certain documents or undertake certain actions within a specified period (scheduling conference).
- Parties who intend to call witnesses in support of their case are expected to file witness statements and skeleton arguments as directed by the orders for directions issued at the scheduling conference.

- After the scheduling conference the Judge calls for another meeting called a status conference. This is meant for the Judge to check in the presence of both parties whether they have complied with the orders for directions given at the scheduling conference
- If the parties have complied, the matter will proceed for hearing before the court.
- At the hearing, the witness statements are treated as a particular party's own evidence (examination in chief), therefore, the court does not rehear what is already stated in those statements, but the witness is asked questions by the opposing party (cross-examined) and the other party will again be given an opportunity to clarify the evidence that may have been discredited during cross-examination (re-examination).
- After the hearing, judgment is rendered on a date communicated or to be communicated to the parties.
- The decision of the Constitutional Court is final and cannot be appealed against.

INTERLOCUTORY APPLICATIONS AND MOTIONS

- Interlocutory applications (applications pending the main matter or appeal) before the Constitutional Court are made to a single judge in chambers (Judge's office).
- Where an application is refused by a single judge, that application can be renewed before the Court.
- The application to the Court will be made by filing notice of motion or summons, together with an affidavit and arguments (detailed typed arguments).

PRESIDENTIAL ELECTION PETITIONS (STATUTORY INSTRUMENT No. 29 OF 2021)

- A petition challenging the election of the President-elect is filed before the Constitutional Court. It must state the name and address of the petitioner, facts relied on, provisions of the Constitution or any other law relating to elections allegedly not complied with and the relief(s) sought;
- A presidential petition is filed together with an affidavit verifying facts, skeleton arguments and a list of authorities and copies of the authorities cited;
- A petition is required to be served on the respondent(s) within twenty-four (24) hours of filing it. Where personal service is not possible, the court can order for substituted service if the petitioner applies;
- Proof that a petitioner has served a respondent a petition is required;
- Within four (4) days of receiving a petition, a respondent is required to file an answer, together with an opposing affidavit, skeleton arguments, list of authorities and copies of authorities cited;
- The respondent is also required to serve the petitioner his documents within twenty-four (24) hours of filing;
- The petitioner may, if necessary, reply to the respondent's answer within twenty-four (24) hours of receiving the respondent's answer. The reply must be accompanied with skeleton arguments;
- Immediately after the filing of an answer, the Court shall call the parties to a scheduling conference at which the Court gives directions for the expeditious hearing of the petition which must be strictly adhered to. At this sitting, the Court may give directions or orders in relation to any interlocutory matters
- Parties are allowed to make interlocutory applications within the time frame given by the Court at a scheduling conference before starting to hear the petition. The interlocutory application(s) will be heard on the basis of written submissions not exceeding ten (10) pages;

- Where the Electoral Commission of Zambia (ECZ) is not a party, the Registrar should notify the ECZ of the petition within three (3) days of a petition being filed;
- Determination of a presidential petition is on affidavit evidence, and on oral and written submissions;
- The Registry of the Court for purposes of election petitions is open at 08:30hours and closes at 15:00hours, from the day of filing the petition to the last day of hearing the petition.

APPEALS TO THE CONSTITUTIONAL COURT

- A party who is dissatisfied with the judgment of the High Court, with regard to the nomination or election of a Member of Parliament, or the decision of the Local Government Elections Tribunal may appeal against the whole or part of the judgment to the Constitutional Court.
- Leave (permission) to appeal must be obtained from the High Court or the Local Government Elections Tribunal. Where leave is denied an application for leave may be made before a single Judge of the Constitutional Court. The application for leave is by way of summons or notice of motion and must be accompanied by an affidavit to which the order refusing leave to appeal must be attached.
- Where leave to appeal is refused by the single Judge of the Court, the application may be renewed before the Court.

PROCEDURE WHEN LEAVE IS GRANTED

- A person wishing to appeal must file into the Constitutional Court a notice of appeal together with a document which contains reasons for appeal (memorandum of appeal) within 30 days from the date of the judgment appealed against.

- The Petitioner/Applicant must file 20 copies of the record of appeal and detailed typed arguments in support of the appeal (heads of argument) by the person seeking to appeal must be filed within 30 days from the date of filing the notice of appeal.
- Where good reasons are given for failure to file the record of appeal within the stipulated time, a party may ask the Court to extend the time before the expiry of the 30 days period.
- Where the appeal relates to the nomination of a candidate for election as Member of Parliament or Councillor, the notice of appeal, memorandum of appeal and the record of appeal must be filed within five days of the ruling appealed against and the Court should hear and determine the appeal within 14 days.
- The appellant should produce proof of payment of the prescribed court fees on filing documents and a GRZ receipt will be issued by the cashier at the Court Registry.
- The appellant will give the respondent copies of the appeal documents (service of process) at each stage of the filing process and there should be proof of service in form of an affidavit of service.
- The respondent will file written heads of argument in response/opposition to the appeal and a notice of address of service of documents.
- The court will set a hearing date and the parties will be informed accordingly.

HEARING OF APPEALS

- The Constitutional Court does not hear fresh evidence from witnesses on appeal but only hears arguments based on the trial record and detailed typed arguments filed by the parties. However, the Court may call a witness to appear before it to give testimony or produce a document relevant to the proper determination of the appeal.

- Where a party does not wish to attend the hearing and has filed heads of argument (detailed typed arguments), he/she may file a notice of nonappearance and the Court will proceed to determine the appeal and deliver its judgment based on the arguments filed before the Court.

DELIVERY OF JUDGMENT

- After the Constitutional Court has heard the appeal, the parties are informed of the date when the judgment of the Court will be given. The date of judgment may also be communicated at a later stage by way of a notice of date of judgment sent to the parties.
- The decision of the court may be given immediately after the hearing and the reasons may be given later in a detailed judgment.
- Where the Court reserves its reasons for its decision in a Presidential Election Petition, the Court shall give a summary of the decision and the period within which it shall give its reasons, provided that the period for giving its reasons does not exceed sixty (60) days from the last date of hearing the petition.
- The Court may give permission to the Master of the Court to read a judgment on its behalf in some cases.

REMEDIES AVAILABLE IN THE COURT

- The Constitutional Court may grant any one or more of the following remedies namely:
 - ❖ Pronouncement on individual rights (Declaration);
 - ❖ Order or direct a certain action to be done (Mandamus);
 - ❖ To quash any decision previously made (Certiorari);
 - ❖ To stop a party from doing something (Prohibition);
 - ❖ Compensate for loss or injury (Restitution);

- ❖ Order money to be paid for loss or injury (Damages); or
- ❖ Any other remedy/solution the Court may consider just.

ENFORCEMENT OF JUDGMENTS/RULINGS

- The following mechanisms may be, where applicable, used to enforce a judgment, among others:
 - ❖ Writ of Fieri Facias (FiFa) – an order to seize specified property with the intention to sell it in order 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 – an 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.
 - ❖ Taxation of Costs - where the court has awarded costs and the parties do not agree on the amount/quantum of the costs an

application can be made for taxation of costs before the taxing officer of the Court.

NOTE 1:

Enforcement of judgment/Ruling of the Court can only take place after at least three (3) days from the date of judgment/ruling unless the Court directs otherwise.

NOTE 2:

The Court may exercise its contempt of court powers by exercising its inherent powers or as provided for by written law.

FEES PAYABLE IN THE CONSTITUTIONAL COURT

S/N	DOCUMENT	AMOUNT (KWACHA)
1.	(a) On sealing a Petition (b) On sealing an Originating Summons or originating notice of motion.	K168.00
2.	On sealing a Concurrent or Renewed Writ of Summons or Concurrent Originating Summons.	K84.00
3.	On filing a Presidential Petition	K834.00
4.	On filing a Presidential Petition record	K501.00

5.	On Commissioning an Affidavit	K33.60
6.	On filing an Affidavit of Service	K9.00
7.	On filing a Cross- Petition	K168.00
8.	On filing an Answer to the Petition or Cross- Petition	K84.00
9.	On filing an affidavit in opposition to Originating Summons or Originating Notice of Motion	K84.00
10.	On sealing a Third-Party Notice	K18.00
11.	On filing Summons for joinder, addition, substitution and striking out of parties	K83.40
12.	On sealing exparte order or any order made in chambers	K18.00
13.	On filing any Notice not specifically provided for	K83.40
14.	On sealing a writ of Subpoena for each witness	K27.00
15.	On filing an Affidavit	K 9.00
16.	(a) On personal general searches in the Judgment section of civil case register for every name	K9.00

	(b) On personal general search in the Judgment register unspecified number of names in anyone calendar year in any registry of the Constitutional Court	K833.40
	(c) On a search for appearance or any other search (including an inspection not provided for)	K9.00
17	On filing Summons to witness for each witness	27.00
18	On filing bundles or supplementary bundles	K144.00
19.	On certification of documents per page	K30.00
20.	On filing an amended petition, originating notice of motion or origination summons	K84.00
21.	On filing an application for restoration of a matter which has been struck out for non-attendance or any other reason	K84.00
22.	On filing a consent judgment or consent order	K25.80
23.	On filing an Interlocutory Notice of motion or application not specifically provided	K84.00
24.	On sealing of summons in chambers (including a summon for further directions)	K25.50

25.	Notary public per document	K150.00
26.	On sealing a writ of execution including a writ of attachment	K34.50
27.	Transcript of the record of proceedings per page or part thereof	K3.00
28.	On application for leave to appeal to the Court	K54.00
29.	On examination of a witness before an officer of the Court for each half or part thereof away from his/her office, his/her reasonable travelling and other expenses are also payable	K84.00
30.	On filing witness statement	K34.50
31.	On filing depositions	K34.50
32.	On sealing any amendment	K25.50
33.	On filling a notice of appeal	K255.00
34.	On filing a record of appeal	K69.00
35.	On filing a memorandum of appeal	K34.50
36.	On filing a supplementary record of appeal	K70.80
37.	On filing a notice of non-appearance	K83.40
38.	On filing a cross appeal	K255.00
39.	On filing a notice of taxation	K69.00

40.	On filing application for review of taxation	K25.50
41.	On leave being granted to review taxation	K25.50
42.	On filing consent to costs	K25.80
43.	On filing a certificate of urgency	K84.00
44	On filing Bill of Costs for Taxation	K69
45	On filing Allocatur or a Certificate of Taxation	10% of the taxed bill

NOTE: The fees payable in the Constitutional 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 CONSTITUTIONAL 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 Master of the Constitutional Court should be immediately contacted.
- 7) Court officials should at all times work professionally in accordance with the Code of Conduct and Ethics.

COMPOSITION OF THE AD HOC COMMITTEE MEMBERS

The ad hoc committee that compiled this Charter comprised the following members:

- 1) Mr. Rodgers K. Kaoma – Registrar, Supreme Court
- 2) Mr. Prince B. Mwiinga – Registrar, Commercial Division
- 3) Mr. Vincent Siloka – Registrar, Local Courts
- 4) Ms. Gwen Mumba – Deputy Director, Human Resources Information Planning
- 5) Mrs. Ruth Mbambi Chilembo - Senior Research Advocate
- 6) Mr. Sangwani Nyimbiri - Senior Research Advocate
- 7) Mrs. Anastasia Lungu Elbert – Master, Supreme Court
- 8) Mrs. Mable Njekwa Mwaba – Master, Constitutional Court
- 9) Mr. Emmanuel Lubeta – Senior Local Courts Officer
- 10) Mrs. Kalumba V.C. Slavin – Public Relations Officer

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.

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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.

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