

THE JUDICIARY OF ZAMBIA



SUBORDINATE 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 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 Subordinate 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 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 Subordinate 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

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BACKGROUND INFORMATION

The Subordinate Courts (also called Magistrates Courts) are created by the Constitution of Zambia and established by the Subordinate Courts Act, Chapter 28 of the Laws of Zambia. They are found in each District of the Republic of Zambia. The classification, powers and procedures in the Subordinate Courts are derived from the Subordinate Courts Act, which largely deals with civil jurisdiction; the Criminal Procedure Code, Chapter 88 of the Laws of Zambia and the Penal Code, Chapter 87 of the Laws of Zambia which largely deal with criminal jurisdiction of the Court; other Statutes which may confer civil and criminal jurisdiction.

The Subordinate Courts are classified into three categories as follows:

- (a) **Subordinate Court of the First Class** which is presided over by a Chief Resident Magistrate (CRM); Principal Resident Magistrate (PRM); Senior Resident Magistrate (SRM); Resident Magistrate (RM) or a Magistrate Class I;
- (b) **Subordinate Court of the Second Class** presided over by a Magistrate Class II;
- (c) **Subordinate Court of the Third Class** presided over by a Magistrate Class III.

The Subordinate Courts ordinarily exercise civil and criminal jurisdiction (power) only within the limits of the District. They also hear appeals from the Local

Courts operating within their Districts. Appeals from the Subordinate Courts go to the High Court.

Services offered at the Subordinate Courts 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 16:00 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.

JURISDICTION OF MAGISTRATES IN CIVIL CASES (Statutory Instrument No. 4 of 2018)

The various categories of Magistrates have different powers (jurisdiction) as follows:

<i>Class/Grade of Magistrate Court</i>	<i>Maximum civil jurisdiction (monetary)</i>
Chief Resident Magistrate (CRM)	K100,000
Principal Resident Magistrate (PRM)	K90,000
Senior Resident Magistrate (SRM)	K70,000
Resident Magistrate (RM)	K50,000
Magistrate Class I	K30,000
Magistrate Class II	K25,000

Magistrate Class III	K20,000
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Civil cases that are heard in the Subordinate Court

- i) Cases arising from contracts (agreements) or torts (civil wrongs);
- ii) Cases for the recovery of land. Where the dispute relates to title to/or ownership of land, the parties must consent to the Magistrate hearing and determining the case. Otherwise the Magistrate must apply to the High Court to transfer the case to that Court.
- iii) Cases on affiliation and maintenance of children under The Affiliation and Maintenance of Children Act, Chapter 64 of the Laws of Zambia;
- iv) Adoption cases under The Adoption Act, Chapter 54 of the Laws of Zambia;
- v) Applications for money lending under the Money Lenders Act, Chapter 398 of the Laws of Zambia;
- vi) Cases for recovery of rentals;
- vii) Cases for custody of children; and
- viii) Cases under any other Statute that may confer jurisdiction on the Subordinate Court.

Civil Cases in which the Subordinate Court has no Jurisdiction

The Subordinate Court does not have jurisdiction in the following cases:

- a) Where title to any right, duty or office is in question – e.g. the Subordinate Court cannot determine cases involving succession to chieftainship or cases involving who should be legitimately in office.
- b) Genuineness or validity of any Will;
- c) Where the legitimacy of any person is in question; and
- d) The determination of the validity or dissolution of any marriage unless the case has come from the Local Court on appeal (for Subordinate Courts of the first and second Class only).

Commencement of Civil Cases in the Subordinate Court

Civil cases in the Subordinate Court are commenced by way of Writ of Summons; Default Writ of Summons (in ascertained amounts of money); Originating Summons; Originating Notice of Motion; Petition or such other form of commencement as the nature of the case will require.

The Clerk of Court should be able to advise on the appropriate mode and forms needed to be filed. Parties are also at liberty to seek legal counsel.

Service of Court Process

- Once Court documents are filed, copies must be served (given) to the other party.
- Service of documents can be done on the defendant by the plaintiff or any other adult person.
- The person serving the documents is required to explain the contents of the documents if requested to do so by the defendant.
- Where practicable, the person receiving service must acknowledge by signing a copy which is kept by the person effecting service.
- After service, an affidavit of service (a document containing a statement on oath stating that the documents have been/were served) must be filed.

Hearing of the case, judgment and appeal

- Parties must file all documents concerning the case as part of their evidence.
- The parties will present their evidence (called examination in chief).
- Parties are allowed to ask questions (called cross-examination).

- Parties may also ask questions to clarify issues raised during cross-examination (this is called re-examination).
- They may then call witnesses, if any, who are examined in chief, cross-examined and re-examined, if necessary.
- Parties are also allowed to file submissions in support of their respective cases at the close of the hearing.
- The Magistrate will then adjourn the case for judgment.
- Judgment will be delivered on a set date and parties have a right to obtain a copy (at a minimal fee with an official receipt issued).
- In the judgment, the Magistrate may award costs to a successful party.
- A party who is dissatisfied with the judgment of the Subordinate Court may file a notice of appeal to the High Court within 30 days from the date of judgment and can apply for a stay of execution, if necessary.

Enforcement of Judgments

After judgment is delivered in the Subordinate Court, enforcement does not ordinarily take place until after the lapse of three (3) days. Thereafter, the successful party is entitled to issue a writ of execution to enforce the judgment, such as writ of fieri facias (FiFa), writ of possession, or such other means of enforcement as the nature of the case will demand, unless the judgment or order has otherwise been satisfied.

The Clerk of Court should be able to advise on the appropriate mode of execution. Parties are also at liberty to seek legal counsel.
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REFERENCE TO ARBITRATION OR MEDIATION

- (a) **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 (known as 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 Magistrate must refer the matter for settlement through arbitration, if one of the parties so requests.

(b) **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 Magistrate's own motion – the Magistrate may decide to send the case for mediation upon considering the nature of the case.
 - (ii) Party driven – parties may request the Court to refer the case for mediation for settlement outside Court.
- 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 of 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”.
 - Where mediation is successful, the case comes to an end and a mediation settlement order is signed by both parties and the mediator (a neutral person who helps parties resolve their dispute amicably).
 - There is no appeal against the mediation settlement order.
 - Where mediation fails, the case is taken back to the Magistrate who sent it for mediation to be heard in the normal way as explained above and whatever was said during mediation cannot be referred to in Court.

JURISDICTION OF MAGISTRATES IN CRIMINAL CASES

The Subordinate Courts derive power from the Penal Code, Chapter 87 of the Laws of Zambia; the Criminal Procedure Code, Chapter 88 of the Laws of Zambia and any other written laws in force in the Republic of Zambia.

Matters which cannot be tried by the Subordinate Court

The Subordinate Court has power to try all sorts of criminal cases except those specifically excluded by the written law, such as treason, bigamy, manslaughter, infanticide, murder, attempted murder, aggravated robbery, causing death by dangerous driving, etc., which are reserved for the High Court.

Note 1:

Even where an offence is not triable before the Subordinate Court, the person may be required to make preliminary appearances in the Subordinate Court until the case is committed for trial by the High Court.

Note 2:

The Subordinate court conducts inquests to inquire into how a person died if the cause of death is not natural and suspicious.

Sentencing Powers of Magistrates

The sentencing powers of Magistrates are as follows:

Class of Magistrate	Maximum Sentencing power
Chief Resident Magistrate Principal Resident Magistrate Senior Resident Magistrate	9 Years
Resident Magistrate	7 Years
Magistrate Class I	5 Years
Magistrate Class II & III	3 Years

How a criminal trial is conducted in the Subordinate Court

- Criminal prosecution begins with the arrest of a suspect on a specified charge (an allegation against a person that he/she has committed a crime).
- The suspect is brought before the Court and is now called an accused person.
- The charge is read out to the accused person in open court and he/she is asked if he/she understands the charge and whether he/she admits (pleads guilty to) or denies (pleads not guilty to) the charge.
- The Magistrate records the accused person's response (this is called taking down a plea).

Procedure when accused admits the charge (pleads guilty)

- Where the charge is admitted, a statement of facts is read out to the accused for him/her to confirm the alleged circumstances which gave rise to the charge.
- When the accused admits the facts to be true and correct as to what happened, the Magistrate pronounces a conviction after satisfying

himself/herself that indeed the offence has been proved as alleged in the facts.

- The accused now called a convict, will be called upon to mitigate (to ask for the court's leniency before passing sentence).
- The Magistrate will then pronounce a sentence within the confines of the law.

Procedure when accused denies the charge (pleads not guilty)

- Where the accused denies the charge, the State (prosecution) will call its witnesses.
- Each prosecution witness may be asked questions by the accused person (cross-examination) followed by questions by the prosecutor to clarify on some issues raised during cross-examination (this is called re-examination).
- When the prosecutor concludes calling the witnesses, the Magistrate will deliver a ruling whether the accused has a case to answer (i.e. there is evidence to implicate the accused).
- The accused will be acquitted if the Magistrate finds that there is no case to answer (meaning there is no evidence to implicate the accused).
- Where the accused is found with a case to answer, the accused will be put on defence.
- The accused is free to choose to give evidence on oath (sworn evidence), not to give evidence on oath (unsworn evidence) or to remain silent. Irrespective of the choice made, the accused person may call witnesses.
- Thereafter, the prosecution and the accused or his/her lawyer, if represented, is given an opportunity to file submissions (arguments to persuade the Magistrate to make a decision in their favour) in support of their case.
- The Magistrate will then deliver judgment in which the accused may either be convicted or acquitted.

- Where the accused is convicted, he/she will be given an opportunity to mitigate.
- The Magistrate will then sentence the convict in accordance with the law.
- The convict has a right to appeal to the High Court within 14 days against the conviction and/or sentence.
- In some cases, such as rape, defilement, incest, indecent assault, etc., which a Subordinate Court has power to try but has no power to sentence because the law imposes a mandatory minimum sentence beyond the Magistrate's powers, the case is committed to the High Court for sentencing 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 Magistrate or the Magistrate may on his/her 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 High Court may order that the case be sent for a retrial before a different Magistrate.

Caution

There are no payments in criminal proceedings unless the Magistrate orders otherwise (this can be a fine, costs, compensation or cash bail) and this is pronounced to the accused or his legal representative directly by the Magistrate in open court (with the exception of bail heard and granted in chambers). No one should purport to have been sent by the Magistrate or any Court officer to collect any form of payment for delivery of judgment or for any process during a criminal trial.

Note 4:

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 for as long as the offence is bailable. When the accused appears before court, police bond is converted to bail pending trial. 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 Magistrate 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 High Court, the accused may still apply for bail pending appeal. This is also granted at the discretion of the court where 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 5:

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 person cannot afford to hire a lawyer, the Government may in

appropriate cases provide a legal representative from the Legal Aid Board. There are also other forms of legal aid available.

- 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 severely than the law provides for.
- To change plea at any stage of trial before judgment.
- To appeal.

Note 6:

CONTEMPT OF COURT IN THE SUBORDINATE COURTS

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.

FEES PAYABLE IN THE SUBORDINATE COURT

Document	Amount (Kwacha)
Writ of Summons	83
Default Writ of Summons with un-commissioned Affidavit	108
Default Writ of Summons with commissioned Affidavit	91
Money Lenders	183
Committal Order	133
Adoption	158
Affiliation and Maintenance	108
Originating Notice of Motion	108
Judgment Summons	50
Ex-parte/Inter-parte Summons, Order and Affidavit	83
Praecipe/Notice of Entry of Judgment	50
Writ of Fieri Facias (FiFa)	25
Notices	25
Certificate of Urgency	42
Garnishee Summons	33
Search of the whole year	167
Search	8

Judgment copy (per page)	5
Copy of Proceedings (per page)	17
Mediation Fee (per party)	375

NOTE: The fees payable in the Subordinate 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 SUBORDINATE 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.

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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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.

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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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