

GOVERNMENT OF ZAMBIA

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STATUTORY INSTRUMENT NO. 37 OF 2016

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**The Constitutional Court Rules Act, 2016**  
(Act No. 8 of 2016)

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**The Constitutional Court Rules, 2016**  
**Arrangement of Rules**

*Rule*

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## SCHEDULE

IN EXERCISE of the powers contained in section *thirty-one* of the Constitutional Court Act, 2016, the following Rules are made:

|                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|----------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Title          | 1. These Rules may be cited as the Constitutional Court Rules, 2016.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| Interpretation | 2. (1) In these Rules, unless the context otherwise requires—<br>“applicant ” means a person who makes an application before the Court;<br>“Aconventionally file ” means the act of filing or serving of paper documents;<br>“ Court ” means the Constitutional Court;<br>“ Deputy President ” has the meaning assigned to it in the Act;<br>“ Electoral Commission of Zambia ” has the meaning assigned to it in the Act;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| Cap. 1         | “interested party ” means a person or entity directly involved in the litigation that —<br>(a) has an identifiable legal interest in the proceedings;<br>(b) has a stake in the success or failure of the litigation;<br>or<br>(c) has a legal duty to participant in, or observe, the proceedings;<br>“ Master ” means a person appointed as Master of the Court;<br>“ petitioner ” has the meaning assigned to it in the Act;<br>“ President ” has the meaning assigned to it in the Act;<br>“ proper officer ” includes the Registrar, Deputy Registrar, Master or any other officer appointed to assist the Registrar in the performance of the Registrar’s functions;<br>“ Registrar ” has the meaning assigned to it in the Act;<br>“ Registry ” means the Registry of the Court referred to in paragraph 3;<br>“ respondent ” means a person against whom a petition or application is filed;<br>“ Republican President ” means the President of the Republic;<br>“ Republican Vice-President ” means the Vice-President of the Republic;<br>“ single judge ” means a single judge of the Court; and<br>“ taxing officer ” includes the Registrar and the Deputy Registrar; |

## ORDER I

### PRACTICE AND PROCEDURE

Applicability  
of English  
Practice and  
Procedure

Cap. 88

Cap. 88

1. (1) The jurisdiction vested in the Court shall, as regards practice and procedure, be exercised in the manner provided by the Act and these Rules, the Criminal Procedure Code or any other written law, or by such rules, orders or directions of the Court as may be made under the Act, the Criminal Procedure Code or such written law, and in default thereof in substantial conformity with the Supreme Court Practice, 1999 (White Book) of England and the law and practice applicable in England in the Court of Appeal up to 31st December, 1999.

(2) Where the Act and these Rules do not make provision for any particular point of practice or procedure, the practice and procedure of the Court shall be as nearly as may be in accordance with the law and practice for the time being observed in the Court of Appeal in England.

## ORDER II

### REGISTRY AND FILING

Registry

Filing of  
proceedings

1. The Registry of the Court shall be at Lusaka.

2. (1) A person shall institute proceedings in the Court by filing the appropriate documents in the Registry.

(2) All documents filed in relation to any proceedings in the Court shall be filed in the Registry.

(3) The Registry shall maintain a register and an electronic register of documents.

(4) A person may conduct an electronic or manual search of the register upon payment of the prescribed fee.

Acts done on  
Saturday,  
Sunday or  
public  
holiday

3. An act required to be done by a person on a date which falls on a Saturday, Sunday or public holiday shall be valid and effective if done on the next following day not being a Saturday, Sunday or public holiday.

## ORDER III

### ELECTRONIC DOCUMENTS AND E-FILING

Electronic or  
hard copy  
document  
Act No. 21  
of 2009

General e-  
filing

1. Subject to section *five* of the Electronic Communications and Transactions Act, 2009, where under these Rules any notice, record or other document is required to be in writing, such document may be in electronic or hard copy format, as applicable.

2. (1) Subject to rule 3, where a matter requires the filing of a document, that document may be filed electronically.

|                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|--------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                              | <p>(2) A party appearing in person may file documents using e-filing or conventional filing.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| Documents not permitted to be e-filed                        | <p>3. The following types of documents shall be conventionally filed:</p> <ul style="list-style-type: none"> <li>(a) documents filed under seal;</li> <li>(b) audio recordings not expressly authorised by the Court, in writing, to be filed electronically; and</li> <li>(c) affidavits of service for conventionally served or filed documents.</li> </ul>                                                                                                                                                                                                                                                                                                                                        |
| E-filing implementation                                      | <p>4. A petition, pleading, motion, summons, memorandum, order or other document electronically filed in a matter shall be maintained in electronic format by the Master and shall be maintained as the original and official record of the Court.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| Format of e-filed documents                                  | <p>5. (1) A filing party shall ensure that an electronically filed document is formatted in accordance with the applicable rules governing formatting of paper documents, rules of procedure and such other formats as the Court may require.</p> <p>(2) The Master shall not reject a document if it substantially conforms to the rules of procedure or a written law.</p>                                                                                                                                                                                                                                                                                                                         |
| Accepted file formats                                        | <p>6. (1) A party may electronically transmit a document in Microsoft Word, Microsoft Works, Microsoft Excel, Rich Text Format, WordPerfect, Portable Document Format and any standard non-proprietary graphic formats.</p> <p>(2) All documents electronically filed shall, upon acceptance and filing by the Registrar, be converted to Portable Document Format in compliance with the requirements set out in these Rules.</p> <p>(3) The Court may require a party to produce the original of a scanned exhibit that has been filed electronically by the party.</p> <p>(4) A party shall ensure that a proposed form of order is submitted electronically in a Microsoft Word file format.</p> |
| Hyperlinks, bookmarks and other electronic navigational aids | <p>7. (1) An electronically filed document may include hyperlinks, bookmarks and other electronic navigational aids for the convenience of the Court.</p> <p>(2) A hyperlink shall not form part of the filed document.</p> <p>(3) A hyperlink shall contain a text reference to the target of the link.</p> <p>(4) Despite anything contained in these Rules, a hyperlink shall not form part of the official Court record and shall not be preserved in an electronically filed document submitted and stored on the Masters electronic document management system.</p>                                                                                                                            |

8. (1) The Master shall ensure that every party and legal practitioner is registered and provided with a personally selected user name (ID) and password.

User ID and  
electronic  
signatures

(2) The user name referred to in subrule (1) shall, when used in conjunction with the personally selected password, constitute the signature of a registered party on documents submitted to the Court or by the Court.

(3) Despite subrule (2), a party may apply an electronic signature to a document to be submitted to the Court.

(4) In order to ensure the intent of the filing party, the signature line on an electronically filed document shall bear the printed name of the filing party preceded by the symbol “/s/”.

(5) An electronic document may be signed by the Master through the use of a printed signature preceded by the “/s/” symbol or through the use of the Court’s eFiling Manager (EFM) application judicial signature stamp.

(6) The eFiling manager (EFM) application judicial signature stamp shall be merged with the electronic document and shall be visible when the document is printed and viewed electronically.

(7) A document requiring the signature or other identifying indicator of a party shall be filed with the Court in paper format and scanned and maintained consistent with applicable record retention schedules and archival rules.

9. (1) The Master shall, upon completion of the transmission of an electronic document for filing, immediately scan the document for viruses.

File  
transmission,  
confirmation,  
acceptance  
and rejection

(2) Where the document transmitted under subrule (1) is free from infection, the document shall be deemed submitted and the Master shall send an acknowledgment of receipt of the document to the filing party.

(3) A document which has been successfully received shall be reviewed for compliance with all standard filing practices and, if it complies with the standards, shall be accepted and deemed filed as of the date and time it was received by the Master’s eFiling system.

(4) Where a document is infected, the Registrar shall discard the document and send a notice to the filing party that the document was infected and has not been filed.

(5) A notice under sub rule (4) shall be sent to a filing party or an authorised third party facilitating entity and shall specify the grounds for rejection.

(6) A party whose document has been rejected may resubmit the rejected document with appropriate corrections.

(7) A document received under sub rule (4) shall be received subject to review, payment of applicable fees and acceptance by the Master.

(8) The Master shall, upon completion of the electronic filing review process, send a notification of the filings status to the filing party and, if accepted, the official file date and time of the filing.

(9) A document accepted for filing by the Master shall be electronically file stamped with the words “ELECTRONICALLY FILED”, the time and date of filing and the name of the Master accepting the filing.

(10) The file stamp referred to in subrule (9) shall be merged with the electronic document and shall be visible when the document is printed and viewed online.

(11) An electronically filed document that does not bear an electronic file stamp shall be deemed to be incomplete.

(12) An efiled file stamped in accordance with these Rules shall have the same effect as a document filed in the conventional manner.

Responsibility  
for filing

10. A party which files a document electronically shall have the same responsibility as a person conventionally filing a document in paper format for ensuring that the document is properly filed, complete and legible and that the appropriate copies have been provided to other parties in the matter.

Form of  
proceedings

11. (1) Proceedings filed in the Court shall be on A4 paper of good quality, unless the nature of the document renders it impracticable.

(2) Only one side of the paper shall be used and a margin of not less than 4 centimeters shall be left on the lefthand side of each sheet to permit binding in book form.

(3) The taxing officer shall, whatever medium of reproduction is adopted on taxation, allow only those costs which would in the taxing officer’s opinion have been incurred by using the most economical method permitted.

(4) A record of appeal shall be bound in book form with an outside cover of stout paper, and may, if long, be in more volumes than one.

(5) The title of the appeal shall appear on the outside cover

(6) A record of appeal shall be paginated continuously throughout.

(7) Every fifth line of a record of appeal shall be indicated by numbering in the unbound portion of the margin.

## ORDER IV

### COMMENCEMENT OF PROCEEDINGS

1. (1) Except as otherwise provided in the Constitution, the Act and these Rules, all matters under the Act brought before the Court shall be commenced by a petition in Form I set out in the Schedule.

Commencement  
of action by  
petition  
Cap. 1

(2) A petition shall disclose—

- (a) the petitioner's name and address;
- (b) the facts relied upon;
- (c) the constitutional provision allegedly violated; and
- (d) the relief sought by the petitioner.

(3) A petition shall be signed by the petitioner or the petitioner's advocate.

(4) A petition shall be filed with an affidavit verifying facts.

2. (1) The following matters shall be commenced by originating notice of motion:

Commence-  
ment of  
action by  
originating  
notice of  
motion or  
originating  
summons  
Cap. 1  
Cap. 1

(a) a matter relating to the Republican President or Republican Vice-President, other than the nomination or election of the Republican President or Republican VicePresident; and

(b) an application to review a decision of the Electoral Commission of Zambia in the delimitation of constituencies and wards.

(2) A matter relating to the interpretation of the Constitution shall be commenced by originating summons.

3. (1) A reference of a matter to the Court by the Republican President under Article 81(5) or 94(2) of the Constitution shall be made in writing.

Reference of  
matter to  
Court by  
Republican  
President

(2) A reference of a matter under subrule (1) shall be accompanied by a notification, in writing, setting out the details of the issues for determination.

(3) The Court shall hear and determine the matter referred by the Republican President within seven days of receipt of the matter.

4. (1) The respondent to a petition shall, within fourteen days of service of the petition, respond to the petition by way of an answer and opposing affidavit.

Answer to  
petition,  
originating  
notice of  
motion or  
originating  
summons

(2) The petitioner may reply to the respondent's answer within seven days of being served with the answer and opposing affidavit.

(3) The respondent may file a crosspetition which shall disclose the matters set out in rule 1 in Form II set out in the Schedule.

(4) The respondent shall, within fourteen days of being served with an originating notice of motion or originating summons respond to the summons or motion by way of affidavit in opposition.

(5) An originating notice of motion and an originating summons shall be as set out in Forms III and IV respectively.

Sealing 5. A petition, originating notice of motion originating or summons shall be sealed by the proper officer and shall thereupon be deemed to be issued.

Procedure on sealing petition 6. The petitioner or applicant or the petitioner's or applicant's advocate shall, on presenting the petition, summons or motion for sealing, leave with the proper officer a copy of the petition signed by or for the advocate, or by the petitioner if the petitioner is proceeding in person.

Filing and marking 7. An officer receiving a petition, originating summons or originating notice of motion shall file a copy and an entry of the filing thereof shall be made in a register.

## ORDER V

### PARTIES TO PROCEEDINGS

Where petitioner or applicant in doubt 1. Where the petitioner or applicant is in doubt regarding the persons from whom redress should be sought, the petitioner or applicant may join two or more respondents in order that the question as to which of the respondents is liable, and to what extent, may be determined between or among all parties.

Misjoinder or non-joinder 2. An originating process shall not be defeated by reason of the misjoinder or nonjoinder of parties, and the Court may, in every proceeding, deal with the matter in dispute.

Proceedings instituted in name of wrong person 3. Where proceedings have been instituted in the name of the wrong person as petitioner or applicant, or where it is doubtful whether proceedings have been instituted in the name of the right petitioner or applicant, the Court may, at any stage of the proceedings, if satisfied that the proceedings have been instituted through a mistake made in good faith and that it is necessary for the determination of the matter in dispute, order any other person to be substituted or added as petitioner or applicant upon such terms as it thinks fit.

4. The Court may, at any stage of the proceedings, upon or without the application of a party, and on such terms as may appear just order
- Order for striking out or adding name of party
- (a) that the name of any party improperly joined be struck out; and
- (b) any person who ought to have been joined, or whose presence before the Court may be necessary in order to enable it adjudicate upon and settle the matter, be added.
5. Where a respondent is added or substituted, the petition, originating notice of motion or originating summons shall, unless the Court otherwise directs, be amended in such a manner as may be necessary, and amended copies of the petition or originating notice of motion shall be served on the new respondent and, if the Court thinks fit, on the original respondents.
- Amendment of petition, originating notice of motion or originating summons
6. (1) A person may, with leave of the Court, make an application to be joined as an interested party.
- Interested party
- (2) The Court may, on its own motion, join a person as an interested party to the proceedings.
7. The death of a petitioner or an applicant shall not cause the suit to abate, if the cause of action survives.
- Effect of death of party on suit
8. The Court may, on the application of a party or on its own motion, order witnesses on both sides to be kept out of Court although intended to be called as witnesses, except the parties or their professional representatives.
- Ordering witnesses out of Court
9. The Court may, during a trial, take such measures as it considers necessary and proper for the prevention of communication with witnesses awaiting examination who are within the Court House or its precincts.
- Preventing communication with witness
10. Entries in books of account, kept in the course of business with such a reasonable degree of regularity as shall be satisfactory to the Court or a Judge of the Court, shall be admissible in evidence whenever they refer to a matter into which the Court or Judge has to inquire, but shall not alone be sufficient evidence to charge any person with liability.
- Entries in books of account

## ORDER VI

### PRODUCTION AND PROOF OF DOCUMENTS

1. The Government *Gazette* in Zambia and the Government *Gazette* of any Commonwealth country may be proved by the production of the Government *Gazette*.
- Government *Gazettes*

|                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|---------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Proof of proclamation, Act and other official communication   | 2. proclamation, Act of State, whether legislative or executive, nomination, appointment and any other official communications of the Government, appearing in any <i>Gazette</i> referred to in rule 1 may be proved by the production of such <i>Gazette</i> and shall be <i>prima facie</i> proof of any fact of a public nature which the proclamation, Act, nomination, appointment or communication was intended to notify.                                                       |
| Books of science, maps, charts and literature                 | 3. The Court or a Judge of the Court may, on matters of public history, literature, science or art, if the Court or Judge thinks fit for the purposes of evidence, refer to such published books, maps or charts as the Court or a Judge shall consider to be of authority on the subject to which they relate.                                                                                                                                                                         |
| Foreign law                                                   | 4. Books printed or published under the authority of the government of a foreign country and purporting to contain the statutes, code or other written law of that foreign country, the printed and published books or reports of the decisions of the courts of the foreign country and books proved to be commonly admitted in those courts as evidence of the law of that foreign country, shall be admissible as evidence of the law of the foreign country.                        |
| Public maps                                                   | 5. A map made under the authority of any government or public municipal body, and not made for the purpose of any litigated question, shall <i>prima facie</i> be deemed to be correct, and shall be admitted in evidence without further proof.                                                                                                                                                                                                                                        |
| Examined or certified copies of documents                     | 6. Whenever a book or other document is of such a public nature as to be admissible in evidence on its mere production from the proper custody of an officer, and no Act or statute exists which renders its contents provable by means of a copy, any copy of the book or document or extract from the book or document shall be admissible in evidence if it purports to be signed and certified as a true copy or extract by the officer in whose custody the original is entrusted. |
| Production of documents without giving evidence               | 7. (1) A person, whether a party or not in a cause or matter, may be summoned to produce a document, without being summoned to give evidence.<br><br>(2) Where a person causes a document referred to in sub-rule (1) to be produced, the Court or a Judge of the Court may dispense with the person's personal attendance.                                                                                                                                                             |
| Documents to be exhibited in affidavit<br>Filing of affidavit | 8. If a party wishes to rely on a document, the document shall be exhibited in the supporting affidavit.<br><br>9. Before an affidavit is used in any proceeding for any purpose, the original shall be filed in the Court and only the original or an office copy shall be recognised for any purpose by the Court or a Judge.                                                                                                                                                         |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                             |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------|
| 10. An affidavit shall not be admitted which is proved to have been sworn by a person before—                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Inadmissibility of affidavit                |
| <ul style="list-style-type: none"> <li>(a) the person on whose behalf the same is offered;</li> <li>(b) the person's advocate; or</li> <li>(c) a partner or clerk of the person's advocate.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                |                                             |
| 11. The Court or a Judge of the Court may permit an affidavit to be used despite a defect in form according to these Rules, if the Court or Judge is satisfied that it has been sworn before a duly authorised person.                                                                                                                                                                                                                                                                                                                                                                | Use of defective affidavit                  |
| 12. A defective or erroneous affidavit may be amended and resworn, with leave of the Court or a Judge of the Court, on such terms as to time, costs or otherwise as the Court considers reasonable.                                                                                                                                                                                                                                                                                                                                                                                   | Amendment of affidavit and re-swearing      |
| 13. An affidavit shall contain only a statement of facts and circumstances to which the witness deposes, based on the witness's own personal knowledge or from information which the witness believes to be true.                                                                                                                                                                                                                                                                                                                                                                     | Contents of affidavit                       |
| 14. An affidavit shall not contain an extraneous matter by way of objection, prayer, legal argument or conclusion.                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | No extraneous matter in affidavit           |
| 15. When a witness deposes to the witness's belief in any matter of fact, and that witness's belief is derived from a source other than the witness's own personal knowledge, the witness shall specify explicitly the facts and circumstances forming the ground of the witness's belief.                                                                                                                                                                                                                                                                                            | Grounds of belief to be stated in affidavit |
| 16. When the belief of a witness is derived from information received from another person, the name of the witness's informant shall be stated, reasonable particulars shall be given respecting the informant and the time, place and circumstances of the information.                                                                                                                                                                                                                                                                                                              | Informant to be named in affidavit          |
| 17. (1) A Commissioner and any other person before whom an affidavit is taken shall ensure that—                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Rules in taking affidavit                   |
| <ul style="list-style-type: none"> <li>(a) the affidavit taken in a cause or matter is headed in the Court and in the cause or matter;</li> <li>(b) the affidavit states the full name, trade or profession, residence and nationality of the witness;</li> <li>(c) the affidavit is written in the first person and divided into convenient paragraphs and numbered consecutively;</li> <li>(d) any erasure, interlineation or alteration made before the affidavit is sworn is attested by the Commissioner, who shall affix the Commissioner's signature or initials in</li> </ul> |                                             |

the margin immediately opposite the interlineation, alteration or erasure;

(e) where an affidavit proposed to be sworn is illegible or difficult to read, or is, in the judgment of the Commissioner, so written as to facilitate fraudulent alteration, the Commissioner may refuse to swear the witness, and require the affidavit to be rewritten in an unobjectionable manner; and

(f) the affidavit is signed by the witness or, if the witness cannot write, marked by that witness with the witness's mark in the presence of the Commissioner.

(2) The jurat shall be written without interlineation, alteration or erasure unless the interlineation, alteration or erasure is initiated by the Commissioner, immediately at the foot of the affidavit and towards the left side of the paper, and shall be signed by the Commissioner.

(3) The jurat shall—

(a) state the date of the swearing and the place where the affidavit is sworn;

(b) state that the affidavit was sworn before the Commissioner or other officer before whom it is sworn;

(c) where the witness is illiterate or blind, state the fact, and that the affidavit was read over or translated into the witness's own language, in the case of a witness who does not have sufficient knowledge of English, and that the witness appeared to understand it;

(d) where the witness makes a mark instead of signing, state that fact, and that the mark was made in the presence of the Commissioner; and

(e) where two or more persons join in making an affidavit, contain their several names and show that each of them has sworn to the truth of the several matters stated in the affidavit.

(4) The Commissioner shall, if the jurat has been added and signed, add a new jurat on the affidavit being resworn and in the new jurat mention the alteration.

(5) The Commissioner shall not allow an affidavit, when sworn, to be altered in any manner without being resworn.

(6) The Commissioner may refuse to allow the affidavit to be resworn, and may require a fresh affidavit.

(7) The Commissioner may take, without oath, the declaration of a person affirming that the taking of an oath is, according to that person's religious belief, unlawful, or who, by reason of immature age or want of religious belief, ought not, in the opinion of the Commissioner, to be admitted to make a sworn affidavit.

(8) Every certificate on an exhibit referred to in an affidavit signed by the Commissioner before whom the affidavit is sworn shall be marked with the short title of the cause or matter.

18. Where a document referred to in an affidavit and exhibited to the affidavit is a handwritten document other than a statement of account, book of account or extract from the statement of account or book of account, there shall be exhibited a typewritten or printed copy certified in the affidavit to be a true and correct copy of the original of the statement of account or book of account.

Copies of  
exhibits

19. An objection to the reception of evidence by a party affected shall be made at the time the evidence is offered.

Objection to  
evidence

## ORDER VII

### OBJECTIONS

1. Where a question proposed to be put to a witness is objected to, the Court or a Judge of the Court shall, unless the objection appears frivolous, if required by either party, take a note of the question and objection, and mention on the notes whether the question was allowed to be put or not and, if put, the answer to it.

Objection to  
question to  
witness

2. Where a document is tendered in evidence and rejected by the Court or a Judge of the Court, the document shall be marked as having been so tendered and rejected.

Marking of  
rejected  
documents

## ORDER VIII

### EVIDENCE OF WITNESSES

1. (1) In the absence of an agreement between the parties, and subject to these Rules, a witness at the trial of any suit shall be examined orally and in open court.

Taking of  
evidence of  
witnesses

(2) The Court may, at any time, for sufficient reason, order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing or trial, on such conditions as the Court may think reasonable.

(3) The Court may dispense with any witness whose attendance in Court ought, for some sufficient cause, to be dispensed with and the witness shall be examined by interrogatories or otherwise before an officer of the Court or other person.

|                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|-------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                           | <p>(4) Where it appears to the Court that the other party in good faith desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorising the evidence of such witness to be given by affidavit.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| Admission of affidavits                   | <p>2. The Court may, in any matter, if the interests of justice so require, for reasons to be recorded in the record of proceedings, admit an affidavit in evidence although it is shown that the party against whom the affidavit is offered in evidence has had no opportunity of cross-examining the person making the affidavit.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| Evidence before suit instituted           | <p>3. (1) Evidence may be taken, on the application of any person, before a suit is instituted, where it is shown to the satisfaction of the Court or a Judge of the Court on oath that B</p> <ul style="list-style-type: none"> <li>(a) the person applying has good reason to apprehend that a suit will be instituted against that person in the Court;</li> <li>(b) that some person within the jurisdiction at the time of the application can give material evidence on the subject of the apprehended suit, but that the person is about to leave the jurisdiction;</li> <li>(c) from some other cause, the person applying will lose the benefit of the person's evidence if it is not taken at once; and</li> <li>(d) the evidence taken may be used at the hearing, subject to just exceptions.</li> </ul> <p>(2) The Court or a Judge of the Court may impose any terms or conditions with reference to the examination of a witness, and the admission of the witness's evidence, as the Court or a Judge of the Court considers reasonable.</p> |
| Facilities for proving deed or instrument | <p>4. (1) A party desiring to give in evidence any deed or other instrument which shows upon the face of it that it has been duly executed may deliver to the opposite party, not less than four clear days before the return day, a notice, in writing, specifying the date and nature of, and the parties to the deed or instrument, and requiring the opposite party to admit that the deed or instrument was executed as it purports to have been, saving all just exceptions as to its admissibility, validity and contents.</p> <p>(2) If, at or before the hearing of the suit, the party notified under sub-rule (1) neglects or refuses to give such admission, the Court or a Judge may adjourn the hearing in order to enable the party tendering the deed or instrument to obtain proof of the due execution of the deed or instrument, and, upon production of such proof, the Court or a Judge may order the costs of such proof to be</p>                                                                                                     |

paid by the party neglecting or refusing, whether that party be the successful party or not.

## ORDER IX

### SERVICE OF PROCESS

1. (1) Except as otherwise provided in these Rules, the petitioner or applicant shall serve the respondent with the originating process within five days of filing or such time as the Court may direct.

Service

(2) Service of process shall be proved by filing an affidavit of service or, if served by the Sheriff, by debit and advice note.

(3) Where a document is required to be served under these Rules, it may be served in electronic or hard copy format.

2. Personal service of a petition, originating notice of motion, originating summons, order or other document of which service is required, may be made by any person.

Effecting of service

3. A person serving a document shall, on the request of the party served, explain to that party the contents of the document.

Document to be explained

4. A person serving originating process which would entitle the petitioner or the applicant to enter final judgment shall request the party served to acknowledge receipt by signing on the original or copy of the process or on some other document tendered for the purpose, and the fact of a refusal to sign shall be endorsed by the person serving the process.

Acknowledgment of service

5. (1) Where personal service of an originating process, order, document, proceeding or written communication is required and it is made to appear to the Court or a Judge of the Court that prompt personal service cannot be effected, the Court or Judge may make such order for substituted or other service, or for the substitution for service of notice by letter, public advertisement or otherwise as may be just.

Substituted service

(2) An application to the Court or a Judge of the Court for an order to be made under this rule shall be supported by an affidavit setting out the grounds upon which the application is made.

6. Court process shall not be served on a Saturday, Sunday or public holiday.

Restriction on service of process

7. (1) A document or proceeding in respect of which personal service is not required shall be sufficiently served if

Mode of service when personal service not required

(a) left at the address for service of the person to be served with any person resident at or belonging to such place; or

(b) posted in a prepaid registered envelope addressed to the person to be served at the postal address for service.

(2) Where service of a document under this rule is made by registered post, the time at which the document so posted would be delivered in the ordinary course of post shall be considered as the time of service thereof.

Service  
upon  
advocate of  
party  
formerly  
appearing in  
person

8. Where a party, after having commenced an action or appearing in person, gives notice, in writing, to the opposite party through an advocate that the advocate is authorised to act in the cause or matter on that party's behalf, all documents or proceedings which ought to be delivered to or served upon the party on whose behalf the notice is given shall be delivered to or served upon that advocate.

Service on  
partners

9. (1) Where partners are sued in the name of their firm, documents or proceedings required to be served shall be served upon any one or more of the partners or at the principal place within the jurisdiction of the business of the partnership upon any person having, at the time of the service, the control or management of the partnership business.

(2) Where a matter is commenced against a firm, a person upon whom it is served shall be informed by notice, in writing, given at the time of such service whether that person is served as a partner or as a person having the control or management of the partnership business, or in both characters.

(3) Where no notice is given to the person referred to in sub-rule (2), the person served shall be deemed to be served as a partner.

(4) Service of a document or other court process on a body corporate other than a company shall be effected on any office bearer.

Service on  
prisoner

10. Where the person on whom service is to be effected is a prisoner in a prison, it shall be sufficient service to deliver the document or court process at the prison to the jailer or person appearing to be the head officer-in-charge of the prison, who shall cause the same to be served on such prisoner.

Service on  
person in  
asylum or  
prison

11. Where the person on whom service is to be effected is employed and dwells in any medical institution or any other public asylum or in any prison, it shall be sufficient service to deliver the document or court process to the gatekeeper or lodge keeper of that asylum or prison, who shall cause the same to be served on such person.

12. Where a matter is against a respondent residing out of Zambia but carrying on business within Zambia in that person's own name or under the name of a firm, through an authorised agent, and such matter is limited to a cause of action which arose within Zambia, the court process or document may be served by giving it to the authorised agent, and such service shall be equivalent to personal service on the respondent.

Service on respondent out of jurisdiction but carrying on business within jurisdiction

13. (1) An application for leave to issue court process for service out of the jurisdiction may be made *ex parte* to the Court or a Judge of the Court.

Application for leave to serve out of jurisdiction

(2) The application referred to in subrule (1) shall state—

- (a) the grounds upon which the application is made and the facts which bring the petitioner's or applicant's case within the class in respect of which service out of the jurisdiction may be allowed;
- (b) that the deponent is advised and believes that the petitioner or applicant has a good cause of action or right to relief;
- (c) in which place or country the respondent resides or may probably be found; and
- (d) whether the respondent is a citizen of Zambia or not.

14. Where court process is issued for service outside Zambia upon a person who is not a citizen of Zambia, notice of the originating process and not the originating process itself shall be served on that person.

Service on foreign person in foreign country

15. Where an officer of the Court or a person charged with the service of court process on a person is prevented from personally serving the court process on that person because of the violence or threats of such person, or any other person in concert with the person, it shall be sufficient to inform the person to be served of the nature of the court process and to leave the court process as near such person as is practicable.

Service where violence threatened

16. Except as otherwise provided in these Rules, the Court shall, as soon as practicable, but not later than seven days after the petition has been filed, call for a scheduling conference, give such directions as may be necessary and set a date of hearing.

Scheduling conference

17. (1) If the respondent does not respond within the time stipulated for the answer to a petition, originating notice of motion or originating summons, the Court may hear and determine the petition or application in the respondent's absence.

Failure to respond within stipulated time

(2) The Court may, subject to such order as to costs as the

|                           |                                                                                                                                                              |
|---------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                           | Court may make, set aside a decision made under subrule (1) on its own motion or upon the application of the respondent or a party affected by the decision. |
| Consolidation             | 18. The Court may, on its own motion or on application by a party, consolidate causes or matters on such terms as it may consider just.                      |
| Amendment of process      | 19. A party that wishes to amend the process or any document may do so with the leave of the Court before the conclusion of the hearing.                     |
|                           | 20. (1) An interlocutory application under the Act shall be by summons or notice of motion, as the case may be.                                              |
| Interlocutory application | (2) The summons and notice shall be in Forms V and VI set out in the Schedule.                                                                               |

## ORDER X

### HEARING AND DETERMINATION OF MATTERS

|                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|----------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Hearing of cause or matter | 1. (1) The hearing of a cause or matter under the Act shall be in open court or in chambers as the Court may direct.<br>(2) Except as otherwise provided in these Rules, evidence before the Court may be presented by affidavit or orally.                                                                                                                                                                                                                                                                                                                                                                                     |
| Interim orders             | 2. (1) Despite any provision to the contrary, the Court may hear and determine an application for an interim order.<br>(2) An application under subrule (1) may be made <i>ex parte</i> and the Court may grant such order <i>ex parte</i> on such terms as the Court may consider reasonable.<br>(3) Any <i>ex parte</i> order may be discharged, varied or set aside by the Court on an application made by a party dissatisfied with such order.<br>(4) An order issued in subrule (1) shall be served on the respondent or with leave of the Court, by substituted service within such time as may be limited by the Court. |
| Discontinuance             | 3. (1) A petitioner or an applicant may, at any stage before judgment, on notice to the Court and to the respondent, apply to discontinue a matter instituted under the Act.<br>(2) The Court may, subject to an order regarding costs, allow the discontinuance or withdrawal of the matter.<br>(3) Where the Court declines to grant an application to discontinue a matter, the Court shall give directions on the further conduct of the matter.                                                                                                                                                                            |

4. The parties may, with leave of the Court, record an amicable settlement reached by the parties in partial or final determination of the matter.

Settlement  
by consent

## ORDER XI

### APPEALS AND CROSS-APPEALS

1. This Order applies to appeals and cross-appeals only.

Application

2. (1) A court or tribunal may grant or refuse leave to appeal to the Court without formal application at the time when judgment is given, and in that event the judgment shall record that leave has been granted or refused accordingly.

Leave to  
appeal

(2) If leave is granted, the appellant shall proceed to give notice of appeal in accordance with rule 3.

(3) An application to the High Court for leave to appeal to the Court, except where leave has been refused under sub-rule (1), shall be by motion or summons and state the grounds of the application, and shall, if necessary, be supported by an affidavit.

(4) An application referred to in sub-rule (3) shall be filed in the proceedings from which it is intended to appeal, and all the necessary parties shall be served.

(5) If leave is granted, the order granting leave shall be included in the record of appeal.

(6) Where leave to appeal is refused, an application shall be made to a single Judge of the Court and the order refusing leave shall be produced on an application for leave to appeal subsequently made to the Court.

(7) Where leave to appeal is refused by a single Judge of the Court, the application may be renewed before the Court.

3. (1) A person desiring to appeal to the Court shall give notice of appeal in accordance with this rule.

Notice of  
Appeal

(2) An appellant may appeal against the whole or a part of a judgment.

(3) The notice of appeal shall state whether the whole or part only, and what part, of the judgment is appealed against.

(4) The names and addresses of all persons intended to be served with a notice of appeal shall be stated in the notice of appeal.

(5) The notice of appeal and memorandum of appeal shall be entitled in the proceedings from which it is intended to appeal and shall be filed with the Registrar within thirty days after the judgment appealed against.

(6) The Registrar shall forward one copy of the notice to the Master.

(7) One copy of the notice of appeal for each party directly affected by the appeal shall at the same time be submitted by the Registrar to the Master for sealing and return to the appellant or the appellant's practitioner for service in accordance with this order.

(8) A notice of appeal shall be substantially in Form VII set out in the Schedule.

(9) A notice of appeal, together with the memorandum of appeal, may be lodged and filed in electronic form.

(10) A memorandum of appeal shall be in Form VIII set out in the Schedule.

(11) The Court may in any case direct that the notice of appeal be served upon a party to the proceedings in any court or tribunal on whom it has not been served, or upon a person not party to those proceedings.

Appeals  
relating to  
nominations

4. (1) Where the appeal relates to the nomination of a candidate for election as a Member of Parliament or councillor, the notice of appeal, memorandum of appeal and the record of appeal shall be filed within five days of the judgment of the High Court or a tribunal as the case may be.

(2) The Court shall hear and determine the appeal within fourteen days of its lodgement.

Lodging of  
appeal

5. Subject to rule 4 and any extension of time, the appellant shall, within thirty days after filing a notice of appeal, lodge the appeal by filing in the Registry twenty hard copies of the record of appeal together with heads of argument and an electronic copy of the record of appeal.

Default in  
lodging  
appeal

6. If an appeal is not lodged as provided in rule 5 the respondent may make an application to the Court for an order dismissing the appeal for want of prosecution, or alternatively, for such other order with regard to the appeal as the respondent may require.

Appeal not  
to operate as  
stay of  
execution

7. An appeal shall not operate as a stay of execution or of proceedings under the judgment appealed against unless the High Court or the Court so orders and no intermediate act or proceeding shall be invalidated, except so far as the Court may direct.

Register of  
appeals

8. (1) register of appeals shall be kept in the Registry.

(2) Upon an appeal being lodged before the Court the Master shall enter the appeal in the register of appeals.

(3) An entry made in the register of appeals shall include the title of the cause or matter, the name of the appellant and the appellant's practitioner, if any, the names of the respondents and their practitioners, if any, and the date of such entry.

(4) The Master shall assign a serial number to the appeal and shall inform the appellant of the number.

9. (1) The record of appeal shall include copies of the proceedings in the High Court, a tribunal or any lower court or tribunal as the case may be. Record of appeal

(2) A memorandum of appeal shall set forth concisely and under distinct heads, without argument or narrative, the grounds of objection to the judgment appealed against, and shall specify the points of law or fact which are alleged to have been wrongly decided, such grounds to be numbered consecutively.

(3) The appellant shall not thereafter without the leave of the Court put forward any grounds of objection other than those set out in the memorandum of appeal, but the Court in deciding the appeal shall not be confined to the grounds put forward by the appellant.

(4) The record of appeal shall contain the following documents in the order in which they are set out:

(a) a complete index of the evidence and all proceedings and documents in the case showing the pages at which they appear;

(b) a certificate of record signed by the Registrar;

(c) the notice of appeal together with a copy of the order granting leave to appeal where appropriate;

(d) the memorandum of appeal;

(e) a statement showing the address for service of each party to the appeal, if so furnished, or the name and last known address of any respondent who has not filed notice of address for service, together with proof of service of the notice of appeal on that respondent;

(f) a copy of the judgment appealed against;

(g) copies of the documents in the nature of pleadings, so far as it is necessary for showing the matter decided and the nature of the appeal;

(h) copies of all affidavits read and all documents put in evidence in the High Court or a tribunal, so far as they are material for the purposes of the appeal, and, if such

documents are not in the English language, copies of certified translations thereof; affidavits, together with copies of documents exhibited thereto, shall be arranged in the order in which they were originally filed; other documentary evidence shall be arranged in strict order of date, without regard to the order in which the documents were submitted in evidence;

- (i) such other documents, if any, as may be necessary for the proper determination of the appeal, including any interlocutory proceedings which may be directly relevant to the appeal;
- (j) a copy of the notes of the hearing at first instance in the court below or, if the hearing was recorded by shorthand or by means of a recording apparatus, a copy of the transcript thereof;
- (k) copy of the Certificate after Trial, if any;
- (l) a list of exhibits, or schedule of evidence, as the case may be, indicating those items which are being forwarded to the Master and those which are being retained by a court below or the tribunal; and
- (m) copies of the exhibits or parts of exhibits, including correspondence, as are relevant to the matters in controversy on the appeal.

(5) The index shall as regards the notes of the evidence taken in any court below or tribunal and any transcript of a shorthand note or electronic or other mechanical recording of such evidence show the names of all witnesses and the relevant pages of the record as well as indicating the numerical sequence of the witnesses.

(6) Whenever the record comprises more than one volume the index shall appear in the first volume only.

(7) The Court may call for the production of the notes of the hearing at first instance.

(8) The appellant shall, at the same time of filing the record of appeal, serve a copy of the record of appeal on each party who has been served with the notice of the appeal and has filed a notice of address for service.

(9) If there is more than one respondent represented by one practitioner, it shall be sufficient to serve one copy on that practitioner.

(10) The document setting out the heads of argument shall

clearly set out the main heads of the appellant's arguments together with the authorities to be cited in support of each head of argument.

(11) Each copy of the record shall be certified by the appellant or the appellant's practitioner.

(12) The respondent shall, not later than seven days before the date fixed for the hearing of the appeal, deliver twenty hard copies and an electronic copy of the respondent's heads of argument to the Master and one copy thereof to a party to the appeal.

10. (1) If the respondent is of the opinion that the record filed by the appellant is defective, the respondent may without prejudice to the respondent's rights, if any, file twenty hard copies and an electronic copy of a supplementary record of appeal containing copies of any further documents which in the respondent's opinion are required for the proper determination of the appeal.

Supplementary  
record

(2) A supplementary record shall be prepared as nearly as may be in the same manner as a record of appeal and shall be filed within seven days of receipt of the main record of appeal.

(3) A copy of the supplementary record of appeal shall be served on the appellant and on any other respondent who has filed a notice of address for service.

11. (1) Where a respondent intends, upon the hearing of the appeal to contend that the judgment of the court below or a tribunal should be varied, the respondent may at any time after receiving notice of appeal but not more than seven days after the service on that respondent of the record of appeal—

Respondent's  
notice of  
cross-appeal

(a) give a notice of crossappeal in Form IX set out in the Schedule, specifying the grounds thereof, to the appellant and to any other respondent named in the notice of appeal who may be affected by the crossappeal whether or not such other respondent has filed a notice of address for service; and

(b) file in the Registry within the like period twenty hard copies of such notice of cross appeal.

(2) If the respondent fails to give the notice within the time prescribed the respondent shall not be allowed, except by leave of the Court, to contend on the hearing of the appeal that the judgment appealed against should be varied.

(3) The Court may in its discretion hear any such contention and may, if it thinks fit, impose terms as to costs, adjournment, or otherwise.

Preliminary  
objection

12. (1) Subject to rule 4 a respondent shall, where the respondent intends to take a preliminary objection to an appeal, not less than seven days prior to the hearing of the appeal, give notice thereof to the Court and to the other party to the appeal.

(2) The Court may, where the notice referred to in subrule (1) is not given, refuse to entertain the objection or adjourn the hearing and make such order as it considers just.

(3) This rule applies to an appeal and a crossappeal.

Notice  
of non-  
appearance

13. An appellant or a respondent may at any time not less than seven days before the day fixed for the hearing but after lodgment, file in the Registry a notice in writing, in Form X set out in the Schedule, that the appellant or respondent does not wish to be present in person or by practitioner on the hearing of the appeal.

Non-  
appearance  
of parties at  
hearing

14. (1) If on a day fixed for the hearing of an appeal—

(a) the appellant does not appear in person or by practitioner, the Court may strike out, dismiss or determine the appeal;

(b) the appellant appears, and any respondent fails to appear either in person or by practitioner, the appeal shall proceed in the absence of that respondent, unless the Court for any sufficient reason sees it fit to adjourn the hearing; or

(c) the parties do not appear either in person or by a practitioner, the appeal may be adjourned, struck out, or dismissed.

(2) Where an appeal is dismissed, allowed, or struck out under subrule (1), a party who was absent may apply to the Court, within seven days of the dismissal, allowing or striking out of the appeal for the rehearing or hearing of the appeal, as the case may be.

(3) Where it is proved upon an application for re-hearing or hearing of the appeal in accordance with sub-rule (2) that there was sufficient reason for the absence of that party, the Court may order that the appeal be restored for hearing upon such terms as to costs or otherwise as it thinks fit.

(4) This rule applies, with the necessary modifications, to the hearing of any crossappeal.

## ORDER XII

### JUDGMENT

Judgment

1. (1) The judgment of the Court shall be pronounced in open court, either on the hearing of the proceedings or at any subsequent time of which notice shall be given by the Master to the parties to the proceedings.

(2) The judgment may be pronounced despite the absence of the judges who composed the Court or any of them, and the judgment of any such judge not present may be read by any judge present or by the Master.

(3) Certified copies of the judgment shall be sent by the Master to the High Court and any court below, or a tribunal, as the case may be, and to the parties or their practitioners in hard copy or electronic form.

(4) An interested party may obtain a copy of the judgment in hard copy or electronic form upon payment of the prescribed fee.

(5) If the Court reserves judgment at the hearing, parties to the suit shall be served with notice to attend and hear judgment, unless the Court, at the hearing, states the day on which judgment will be delivered, in which case there shall be no further notice.

### ORDER XIII

#### COSTS

1. (1) The Court may make such order as to the whole or any part of the costs of proceedings or in any court below as may be just, and may assess the same, or direct taxation thereof in accordance with the prescribed scales of costs.

Orders as to costs

(2) Taxation proceedings for costs shall be commenced within three months of the judgment or such time as may be allowed by the taxing officer.

(3) Taxation shall be subject to payment of such fees as may be prescribed by the Chief Justice.

(4) The taxing officer shall only sign the certificate of taxation after payment of the applicable fees.

2. Under the denomination of costs is included the whole of the expenses necessarily incurred by either party on account of a cause or matter, and in enforcing the order made therein, such as the expenses of summoning and of the attendance of the parties and witnesses, and of procuring copies of documents, and the fees of court.

What included in costs

3. A question relating to the amount of costs shall, unless summarily determined by the Court, be referred to a taxing officer, and, after notice of taxation to the parties, be ascertained by the taxing officer.

How amount of costs determined

4. (1) with the allowance or disallowance in whole or in part of any item by a taxing officer, or with the amount allowed by a taxing officer in respect of an item, may apply to the taxing officer to review the taxing officer's decision in respect of that item.

Application to taxing officer for review

(2) An application under this rule for review of a taxing officer's decision may be made at any time within fourteen days after that decision or such shorter period as the taxing officer appoints.

(3) An application under this rule for review of a decision in respect of any item shall not be made after the signing of the taxing officer's certificate dealing finally with that item.

(4) An applicant for review under this rule shall, at the time of making the application, deliver to the taxing officer objections in writing specifying by a list the items or parts of items the allowance or disallowance of which, or the amount allowed in respect of which, is objected to and stating concisely the nature and grounds of the objection in each case.

(5) An applicant shall deliver a copy of the objections to any other party, if any, who attended on the taxation of those items or to whom the taxing officer directs that a copy of the objections shall be delivered.

(6) A party to whom a copy of the objections is delivered under this rule may, within fourteen days or such shorter period as the taxing officer appoints, after delivery of the copy to that party, deliver to the taxing officer answers in writing to the objections stating concisely the grounds on which the party will oppose the objections, and shall at the same time deliver a copy of the answers to the party applying for review and to any other party to whom a copy of the objections has been delivered or to whom the taxing officer directs that a copy of the answers shall be delivered.

Appeal  
against taxing  
officer's  
decision

5. A party who is dissatisfied with the decision of a taxing officer to allow or to disallow any item in whole or in part may appeal to a single Judge of the Court and the decision of the single Judge shall be final.

## ORDER XIV

### ADDITIONAL RULES FOR PRESIDENTIAL ELECTION PETITIONS

Commencement  
of presidential  
election  
petition  
Cap. 1

1. (1) A presidential election petition shall be filed before the Court within seven days of the declaration of an election result in accordance with Article 101 of the Constitution.

(2) The petition shall disclose—

(a) the petitioner's name and address;

(b) the facts relied upon;

Cap. 1

(c) the provision of the Constitution or any other law relating to elections allegedly not complied with; and

(d) the relief sought by the petitioner.

(3) The petition shall be filed together with—

- (a) an affidavit verifying facts;
- (b) witness statements;
- (c) skeleton arguments; and
- (d) a list of authorities and copies of the authorities cited.

2. (1) The respondent shall, within five days of service of a petition, respond to the petition by filing an answer.

Answer to  
Presidential  
petition

(2) The answer shall be filed together with—

- (a) an opposing affidavit;
- (b) witness statements;
- (c) skeleton arguments; and
- (d) a list of authorities and copies of the authorities cited.

(3) The petitioner may reply to the respondent's answer within two days of being served with the answer and opposing affidavit.

(4) The reply shall be filed together with skeleton arguments in reply if any.

3. (1) A Judge of the Court shall, immediately after the filing of a petition and answer, summon parties to a scheduling conference at which the Judge shall issue directions for trial which shall be adhered to strictly.

Scheduling  
conference

(2) A Judge shall, at the scheduling conference referred to in sub-rule (1), and in consultation with the parties to the petition, issue directions for the exchange of bundles of pleadings and documents, discovery and fix a date for hearing.

(3) The witness statement shall be treated as the evidence-in-chief of the witness and shall contain all the facts relevant to the petition, answer or reply as the case may be, and make reference to the documents relied upon in the bundle of documents.

(4) The Court shall not permit a witness to give oral testimony in the absence of a witness statement filed before the Court in relation to the testimony of that witness.

(5) A Judge of the Court may, after a scheduling conference, summon parties to a compliance or status conference to review the status of the petition and make any order, including an order as to costs, against any party.

## ORDER XV

### REMEDIES, FEES, ERRORS, OATHS AND TIME

|                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|---------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Remedies                                          | <p>1. Upon hearing a matter under the Act, the Court may grant any one or more of the following remedies:</p> <ul style="list-style-type: none"><li>(a) declaration;</li><li>(b) mandamus;</li><li>(c) certiorari;</li><li>(d) prohibition</li><li>(e) restitution;</li><li>(f) damages, and</li><li>(g) any other remedy that the Court may consider just.</li></ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| Payment of fees                                   | <p>2. A document required to be filed in the Registry shall not be accepted by the Registry unless the prescribed fees have been paid.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| Clerical errors and accidental slips or omissions | <p>3. (1) Clerical errors by the Court or a judge thereof in documents or process, or in any judgment, or errors therein arising from any accidental slip or omission, may, with leave of the Court and within seven days of the decision be corrected by the Court.</p> <p>(2) The decision made by the Court in subrule (1), shall be final.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| Oaths                                             | <p>4. (1) Where an oath is required to be taken under the Act, the following shall apply:</p> <ul style="list-style-type: none"><li>(a) the person shall hold the Bible in that person's uplifted right hand, or, if that person is physically incapable of so doing, the person may hold the copy otherwise, or, if necessary that copy may be held before the person by the officer administering the oath;</li><li>(b) the person referred to in paragraph (a) shall say or repeat after such officer the words: " I swear by the Almighty God that the evidence/advice I shall give before this Court shall be the truth the whole truth and nothing else but the truth, So help me God "; and</li><li>(c) if the person does not wish to be sworn on the Bible or desires to make an affirmation, the person may make the affirmation without being further questioned as to the grounds of such objection or desire, or otherwise, and in such case there shall be substituted for the words " I swear by the Almighty God " the words " I do solemnly and sincerely affirm that the evidence/advice</li></ul> |

I shall give before this Court shall be the truth the whole truth and nothing else but the truth ”.

(2) For the purposes of this section, “ office ” means a person duly authorised by law to administer oaths, and shall include an Assistant Registrar, Deputy Assistant Registrar and official interpreter administering an oath in the presence of a Judge or the Registrar or other person authorised by any law to administer oaths.

5. The Court may adjourn any proceedings pending or current before it to such time and place as it determines.

Adjournment

6. For the purposes of these rules, in computing time, unless a contrary intention is expressed—

Computation  
of time

(a) a period of days from the happening of an event or the doing of an act shall be considered to be exclusive of the day on which the event happens or the act is done;

(b) if the last day of the period is a Saturday, Sunday or public holiday “ excluded day ”, the period shall include the next day;

(c) where an act or a proceeding is directed or allowed to be done or taken on a specified day and that day is an excluded day, the act or proceeding shall be considered as done or taken in due time if it is done or taken the next day; and

(d) where an act or a proceeding is directed or allowed to be done or taken within a time not exceeding six days, an excluded day shall not be counted in the computation of the time.

7. The Court may extend time limited by these rules, or by a decision of the Court, except where time is specifically limited by the Constitution.

Extension of  
time

Cap. 1

SCHEDULE  
(Orders IV, IX, X and XI)

Form I  
(*Order IV Rule 1*)

IN THE CONSTITUTIONAL COURT PETITION NO..... OF.....20.....  
AT .....

IN THE MATTER OF Article.....

IN THE MATTER OF ALLEGED CONTRAVENTION OF ..... (insert article)

BETWEEN  
AB (insert names of parties) PETITIONER  
AND  
CD (insert names of parties) RESPONDENT  
TO:

# PETITION

The Constitutional Court

The Petition of A.B (insert names of Petitioner) of (insert address of Petitioner) .....in the Republic of Zambia is as follows:.....(the allegations upon which the Petitioner(s) rely must be set out)

Your Petitioner(s) therefore pray(s) that ..... (set out exact reliefs(s) sought)

Or that such other order(s) as this Honourable Court shall deem just.

DATED at ..... this ..... day of ..... 20.....  
Signed ..... Petitioner/Advocate for the Petitioner

DRAWN &amp; FILED BY:

TO BE SERVED UPON:

IN THE CONSTITUTIONAL COURT PETITION NO..... OF.....20.....  
AT .....  
IN THE MATTER OF Article .....  
IN THE MATTER OF ALLEGED CONTRAVENTION OF ..... (insert article)  
BETWEEN

AB (insert names of parties) PETITIONER  
AND  
CD (insert names of parties) RESPONDENT

## CROSS-PETITION

The Constitutional Court

The Petition of A.B (insert names of Respondent) of (insert address of Respondnet) .....in the Republic of Zambia is as follows:.....(the allegations upon which the Respondnet(s) rely must be set out)

Your Petitioner(s) therefore pray(s) that ..... (set out exact reliefs(s) sought)

Or that such other order(s) as this Honourable Court shall deem just.

DATED at ..... this ..... day of ..... 20.....  
Signed ..... Respondent/Advocate for the Petitioner

To: The Master of the Constitutional Court.

The Appellant.  
(Name)  
of  
(Address for service)

NOTES:

- (1) This Notice must be served on all interested parties who have themselves furnished addresses for service.
- (2) Inapplicable words, etc., on this form should be deleted.

Form III  
(Order IV Rule 4(5))

IN THE CONSTITUTIONAL COURT PETITION NO..... OF.....20.....  
AT .....

IN THE MATTER OF Article .....  
IN THE MATTER OF ALLEGED CONTRAVENTION OF ..... (insert article)

BETWEEN  
AB (insert names of parties) APPLICANT  
AND  
CD (insert names of parties) RESPONDENT

ORIGINATING NOTICE OF MOTION

TAKE NOTICE THAT this Honourable Court shall be moved on the.....day  
of..... 20.... at ..... hours in the ..... noon or as soon thereafter as the  
applicant/counsel for the applicant may be heard on an application FOR ORDERS-

(a) .....  
(b) .....

WHICH APPLICATION is made on the following grounds:

(i) .....  
(ii) .....

AND WHICH APPLICATION is supported by the attached affidavit of ..... and by  
such other grounds, reasons and arguments as shall be adduced at the hearing hereof.

DATED at ..... this day of ..... 20.....

APPLICANT/ADVOCATES FOR THE APPLICANTS

Drawn and filed by:

To be served upon:

“If any person served does not appear at the time and place abovementioned such orders shall be  
made and proceedings taken as the court deems just and expedient”.

IN THE CONSTITUTIONAL COURT  
AT .....

PETITION NO..... OF.....20.....

IN THE MATTER OF Article .....

IN THE MATTER OF ALLEGED CONTRAVENTION OF ..... (insert article)

BETWEEN

AB (insert names of parties)

APPLICANT

AND

CD (insert names of parties)

RESPONDENT

## ORIGINATING SUMMONS

Let

of \_\_\_\_\_ within \_\_\_\_\_ days after service of this summons, inclusive of the day of such service,  
cause an appearance to be entered to this summons, which is issued on the application of  
of \_\_\_\_\_ who claims to be\*

for the determination of the following questions:

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

This summons was taken out by

of †

whose address for service is at \_\_\_\_\_ and whose

postal address for service is at \_\_\_\_\_, Advocate \_\_\_\_\_ for the

Applicant who resides at \_\_\_\_\_.

The Respondent may appear hereto by entering appearance either personally or by Advocate at the Constitutional Court Registry, Lusaka.

NOTES:

- (1) If the Respondent does not enter appearance within the time and at the place above mentioned such order will be made and proceedings may be taken as the Judge may think just and expedient.
- (2) A person appearing personally may, if the person=s desire, enter appearance by post and the appropriate forms may be obtained from the Constitutional Court Registry. The forms, when completed, should be sent by registered letter addressed to the Registrar, P.O. Box 50067, Lusaka, so as to reach the Registrar within the time stated above.

\* State the nature of the claim.

† State the questions.

‡ Here insert both actual and postal addresses.

IN THE CONSTITUTIONAL COURT PETITION NO..... OF.....20.....  
AT .....

IN THE MATTER OF Article .....  
IN THE MATTER OF ALLEGED CONTRAVENTION OF ..... (insert article)

BETWEEN  
AB (insert names of parties) APPLICANT  
AND  
CD (insert names of parties) RESPONDENT

SUMMONS

An application in respect of a decision of ..... sitting in its original/  
appellate jurisdiction at ..... and dated the ..... day of....., 20.....

LET ALL PARTIES concerned appear before .....  
in Court/Chambers at ..... on the ..... day of ..... 20....., at the hour of ..... o'clock  
in the ..... noon, or so soon thereafter as Counsel can be heard on the hearing of an application  
on the part of the Applicant/Respondent/..... for an Order that  
on the grounds that

Dated at ..... this ..... day of ..... 20.....

This Summons was taken out by ..... whose address for  
service is .....

.....  
*Master of the Constitutional Court*

Dated.....

To: The Applicant .....  
of .....

The Respondent .....  
of .....

Mr ..... for the Applicant will read in support of the application  
the

affidavit(s) of ..... sworn on the ..... day(s) of ..... 20..... .

NOTES:

(1) “ Summons before the Master should commence as follows: ALET ALL PARTIES  
attend before the Master of the Court at the Registry of the Constitutional Court at Lusaka  
..... ”.

(2) Inapplicable words, etc., on this form should be deleted.

Form VI  
(Order XI rule 20(2))

IN THE CONSTITUTIONAL COURT  
AT .....

PETITION NO..... OF.....20.....

IN THE MATTER OF Article .....  
IN THE MATTER OF ALLEGED CONTRAVENTION OF ..... (insert article)

BETWEEN

AB (insert names of parties)

APPLICANT

AND

CD (insert names of parties)

RESPONDENT

NOTICE OF MOTION

An application in respect of a decision of ..... sitting at ..... in its  
original/appellate jurisdiction and dated the..... day of....., 20....

TAKE NOTICE that the Constitutional Court will be moved before Mr Justice ..... on.....  
day, the..... day of....., 20....., at the hour of..... o'clock in the ..... noon, or so  
soon thereafter as Counsel can be heard,

by .....  
of Counsel on behalf of the Applicant/Respondent/ .....  
for an Order that  
on the grounds that

(Signed) .....

*Appellant/Applicant*

Address for service .....

.....

.....

Dated at ..... this ..... day of ....., 20.....

*Master of the Constitutional Court*

Date .....

To: The Applicant .....  
of .....  
The Respondent .....  
of .....  
Mr ..... for the Applicant will read, in support of  
the application the affidavit(s) of ..... sworn the .....

day(s) of ....., 20.....

NOTES:

(1) A Notice of Motion to be heard by the full Constitutional Court shall commence  
as follows:

“ TAKE NOTICE that the Constitutional Court will be moved on ..... ”.

(2) Inapplicable words, etc., on this form should be deleted.

Form VII  
(Order XI Rule 3 (8))

IN THE CONSTITUTIONAL COURT PETITION NO..... OF.....20.....  
AT .....  
IN THE MATTER OF Article .....  
IN THE MATTER OF ALLEGED CONTRAVENTION OF ..... (insert article)  
BETWEEN

AB (insert names of parties) APPELLANT  
AND  
CD (insert names of parties) RESPONDENT

NOTICE OF APPEAL

TAKE NOTICE that .....  
being dissatisfied with the decision of .....  
given in the at ..... on the ..... day of ....., 20....., intends to appeal to  
the Constitutional Court against the whole decision (No. ) or against such  
part or parts of the said decision ( ) as decides .....  
that .....  
Dated at ..... this ..... day of ....., 20 .....

Appellant (or appellant=s Counsel)  
Address for service  
To: (insert the Court or Tribunal that made the decision appealed against)  
The Respondent to the intended appeal  
(Name)  
of  
(Address for service)  
The Master of the Constitutional Court.  
Filed this ..... day of ....., 20....., at.....

NOTES:

- (1) A respondent served with this Notice is required within 14 (fourteen) days after such service to file in these proceedings and to serve upon the appellant a Notice of the respondent=s address for service for the purpose of the intended appeal, and within a further 14 (fourteen) days to serve a copy thereof on every other respondent named in this Notice who has filed a Notice of an address for service. In the event of noncompliance, the appellant may proceed ex parte.
- (2) Inapplicable words, etc., on this form should be deleted.

IN THE CONSTITUTIONAL COURT PETITION NO..... OF.....20.....  
AT .....  
IN THE MATTER OF Article.....  
IN THE MATTER OF ALLEGED CONTRAVENTION OF ..... (insert article)  
BETWEEN

AB (insert names of parties) APPELLANT  
AND  
CD (insert names of parties) RESPONDENT

## MEMORANDUM OF APPEAL

The Appellant above named, appeals to the Constitutional Court against the whole/part(s) of the judgment ( ) in the abovementioned matter on the following ground(s), namely:

GROUNDS (Here set out what part or parts of the judgment..... is complained  
 of and the ground or grounds of appeal:

Dated at ..... this ..... day of ....., 20.....

Appellant (or appellant=s Counsel).....

Address for service .....

To: The Master of the Constitutional Court.....

The Respondent (Name).....

of.....

(Address for service).....

Filed at ..... this ..... day of ....., 20.....

Master of the Constitutional Court

NOTE: Inapplicable words, etc., on this form should be deleted.

IIN THE CONSTITUTIONAL COURT PETITION NO..... OF.....20.....  
AT .....  
IN THE MATTER OF Article .....  
IN THE MATTER OF ALLEGED CONTRAVENTION OF ..... (insert article)  
BETWEEN

AB (insert names of parties) APPELLANT  
AND  
CD (insert names of parties) RESPONDENT

NOTICE OF CROSS-APPEAL

TAKE NOTICE that .....  
being dissatisfied with the decision of .....  
given in the at ..... on the ..... day of ....., 20....., intends to appeal to  
the Constitutional Court against the whole decision (No. ) or against such  
part or parts of the said decision ( ) as decides .....  
that .....

Dated at ..... this ..... day of ....., 20 .....

Appellant (or appellant=s Counsel)

Address for service.....

To: (insert he Court or Tribunal that made the decision appealed against)

The Respondent to the intended appeal (Name).....

of .....

(Address for service).....

*The Master of the Constitutional Court.*

Filed this ..... day of ....., 20....., at.....

NOTES:

- (1) A respondent served with this Notice is required within 14 (fourteen) days after such service to file in these proceedings and to serve upon the appellant a Notice of the respondent=s address for service for the purpose of the intended appeal, and within a further 14 (fourteen) days to serve a copy thereof on every other respondent named in this Notice who has filed a Notice of an address for service. In the event of noncompliance, the appellant may proceed ex parte.
- (2) Inapplicable words, etc., on this form should be deleted.

IN THE CONSTITUTIONAL COURT PETITION NO..... OF.....20.....  
AT .....  
IN THE MATTER OF Article .....  
IN THE MATTER OF ALLEGED CONTRAVENTION OF ..... (insert article)  
BETWEEN

AB (insert names of parties) APPELLANT

AND

CD (insert names of parties) RESPONDENT

## NOTICE OF NONAPPEARANCE

TAKE NOTICE that the Appellant/Respondent (Name) .....

- (1) Does not desire to be present in person or by practitioner at the hearing of the abovementioned appeal, or at any proceedings subsequent thereto.
- (2) Submits herewith written argument for the consideration of the Constitutional Court as set out in the Appendix hereto.

Dated at ..... this ..... day of ....., 20.....

Appellant/Respondent

Address for service

To: The Master of the Constitutional Court.....

The Appellant (Name).....

of .....

(Address for service).....

The Respondent (Name).....

of .....

(Address for service).....

## APPENDIX

(Here set out the argument to be put forward)

Appellant/Respondent.....

NOTES:

- (1) This Notice must be served on all interested parties who have themselves furnished addresses for service.
- (2) Inapplicable words, etc., on this form should be deleted

LUSAKA

25th May , 2016

[RHC. 2/5]

M. S. MWANAMWAMBWA,  
*Acting chief Justice*