

GOVERNMENT OF ZAMBIA

STATUTORY INSTRUMENT No. 75 of 2001

The Arbitration Act

(Act No. 19 of 2000)

(S.I. No. 75) The Arbitration (Court Proceedings) Rules, 2001

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IN EXERCISE of the powers contained in section thirty-two of the Arbitration Act, 2001, the following Rules are hereby made:

PART I

PRELIMINARY

- 1.** These Rules may be cited as the Arbitration (Court Proceedings) Rules, 2001. Short Title
- 2.** In these Rules, unless the context otherwise requires- Interpretation

“Act” means the Arbitration Act, 2001;

“Defendant” includes any party against whom relief is sought in legal proceedings as a party thereto;

“Judge” include a Judge of the High Court, the Chairman and Deputy Chairman of the industrial Relations Court or the Lands Tribunal;

“Plaintiff” includes a party seeking in legal proceedings against any other party; Act No. 19 of 2000

“Register” includes the registrar, a deputy registrar and a district registrar of the High Court, Industrial Relations Court or the Lands Tribunal.
- 3.** In addition to the High Court, the Industrial Relations Court, the Lands Tribunal all subordinate courts are hereby designated as courts having jurisdiction, with the meaning of section two of the Act, to the extent provided in these Rules. Designation of Courts
- 4.** (1) An application, under section ten of the Act to the High Court, Industrial Relations Court or the Lands Tribunal for the stay of legal proceedings which are he subject of an arbitration agreement shall be made by summons in the same proceedings to the Registrar of the court or, if the proceedings are pending before a Judge, to a Judge. Practice in High Court, Industrial Relations Court and Lands Tribunal on application for stay of proceedings

(2) An application referred to in sub-rule (1) shall be supported by an affidavit-

support shall be served on all the parties to the legal proceedings either by way of personal service or by letter sent by post to the address shown in the proceedings or to the last known address of each of the parties at least ten days before the return day.

(4) A party served with the notice of motion under sub-rule (3) may, within four days after service, file an affidavit in opposition or in answer and serve a copy thereof up the other party at least two days before the return day.

(5) Additional affidavits may only be filed with the leave of the court.

(6) A party affected by a decision, order or direction of a Subordinate Court may appeal to the High Court within fourteen days after the decision, order or direction and in accordance with the Rules of that court.

6. (1) After service of process, an application for the stay of proceedings in pending legal proceedings shall be disposed of by the court in accordance with the Rules of each particular court.

Rules applicable to applications for stay

7. The form of summons, notice of motion, affidavits and other processes to be used in applications for stay of pending legal proceedings shall be in accordance with the forms prescribed for use in each particular court.

Form of summons, notice of motion, etc

8. The court or a Judge may determine the costs of an application under this Part or reserve them to the discretion of the arbitrator and may make any other appropriate order relating to such costs.

Costs of an application for stay of proceedings

PART III

REQUESTS FOR INTERIM MEASURES OF PROTECTION

9. (1) An application under section eleven of the act, to a court for an interim measure of protection shall be made to a Judge of the High Court by originating summons.

(2) An application for an interim measure of protection in the course of an application for the stay of proceedings may be made to the Court before which those proceedings are held and by ordinary summons.

(3) The application for an interim measure of protection shall be supported by an affidavit-

- (a) exhibiting a copy of the arbitration agreement;
- (b) stating the nature of the interim measure required;
- (c) stating the particulars of the subject-matter of the dispute in respect of which the interim measure is sought;
- (d) stating the particulars of any person in possession of the subject-matter of the dispute and that person's address;
- (e) stating the particulars of any arbitral proceedings pending;
- (f) exhibiting any ruling or finding of fact made in pending arbitral proceedings;
- (g) giving an undertaking to pay damages in case the court or the arbitrator decides to discharge the interim measure or to order the payment of damages; and
- (h) stating any other facts relevant to the application.

(4) An application for an interim measure of protection which is urgent may be made to the court ex parte by affidavit, in accordance with the Rules of the Court, upon filing the originating summons; and the application shall be heard inter partes on the return day stated in the originating summons.

(5) Where an application for an interim measure of protection is urgent, it shall be accompanied by a certificate of urgency.

(6) Rules of the court relating to ex parte application, service there of and disposal or urgent applications shall apply to applications for interim measures of protection.

(7) An ex parte order granting an interim measure of protection may be discharged by the court in accordance with the rules of the court upon cause being shown.

PART IV

APPOINTMENT OF ARBITRATIONS

10. (1) An application to the court, under section twelve of the Act, for the appointment of an arbitrator shall be made by originating summons before the Registrar of the High court.

Application
appointment
of
arbitrator

(2) An application for the appointment of an arbitrator may be made by ordinary summons in the course of an application for stay of proceedings.

(3) An application referred in sub-rule (1) shall be supported by an affidavit-

- (a) exhibiting a copy of the arbitration agreement;
- (b) stating facts in support of the application, including steps taken to secure the appointment of an arbitrator; and
- (c) stating the name, address and qualifications of any proposed arbitrator.

PART V

PROCEDURE FOR CHALLENGE OF ARBITRATOR OR JURISDICTION OF THE ARBITRAL TRIBUNAL

11. (1) An application-

Procedure for challenge of arbitrator or jurisdiction of arbitral tribunal.

- (a) to decide on a challenge by a party, of an arbitrator, under Article 13(3) of the First Schedule to the Act;
- (b) to decide on any controversy regarding the termination of the mandate of an arbitrator under Article 14(1) of the First Schedule to the Act; or
- (c) to decide on the jurisdiction of an arbitral tribunal under Article 16(3) of the First Schedule to the Act.

Shall be made by originating summons to a Judge of the High court.

(2) The application referred to in sub-rule(1) shall be supported by an affidavit-

- (a) exhibiting a copy of the arbitration agreement;
- (b) stating the facts in support of the application including steps taken in the arbitral proceedings;
- (c) exhibiting any ruling or finding of fact made in the arbitral proceedings; and
- (d) stating the name, occupation and qualification of the arbitrator.

(3) The affidavit shall be accompanied by such other evidence with respect to the matter referred to in Articles 13(3), 14(1) and 16(3) of the First Schedule to the Act as may be necessary.

PART VI

REQUESTS FOR EXECUTORY ASSISTANCE

12. The Executory assistance under this Part includes-

Meaning of
executory
assistance

- (a) an order by a court directing a person to obey or comply with orders or directions made by an arbitral tribunal under section fourteen of the Act
- (b) an order by a court directing the sheriff of Zambia, an Under sheriff or a court bailiff or the Police to execute an order of an arbitral tribunal;
- (c) an order by a court compelling a witness to produce documents or for summons or subpoena ad testificandum to issue at the instance of the court; or
- (d) any other order of the court as will ensure that the order of the arbitral tribunal made under section fourteen, is not rendered ineffectual.

13. (1) An application to the court by an arbitral tribunal or a party for executory assistance under section fourteen of the Act shall be made by originating summons to a Judge of the High Court.

Application for
executory
assistance

(2) The application referred to in sub-rule (1) shall be supported by an affidavit-

- (a) exhibiting a copy of the arbitration agreement;
- (b) stating the fact relied upon;
- (c) giving details of the steps taken in the pending arbitral proceedings and the particulars of such proceedings;
- (d) stating the nature of the executory assistance required;
- (e) stating the particulars of persons holding any property relevant to the arbitration agreement and the situation of the property; and
- (f) exhibiting any ruling or finding of fact made in the pending arbitral proceedings.

(3) An application for executory for executory assistance which is urgent may be made to the court ex parte by affidavit in accordance with the Rules of the court upon filing the originating summons, and the application shall be heard inter partes on the return day stated in the originating summons.

(4) Where an application for executory assistance is urgent, it shall be accompanied by a certificate of urgency.

(5) Rules of the court relating to ex-parte applications, service

thereof and disposal of urgent applications shall apply to application for executory assistance.

(6) An ex parte order granting executory assistance may be discharged by the court in accordance with the rules of the court upon cause being shown.

PART VII

ENFORCEMENT OF AWARDS

14. In this Part-

"Judgment creditor" means the person seeking the enforcement of an award; and

Meaning of judgment creditor and judgment debtor

"Judgment debtor" means the party to the award against whom the award is invoked.

15. A party that wishes to enforce an award recognized as binding in terms of section eighteen of the Act shall register the award and comply with the provisions of this Part.

Registration of awards

16. An application for the registration and enforcement of an award shall be made by ex parte originating summons to the register of the High Court.

Application for registration and enforcement

(2) An application for the registration and enforcement of an award shall be supported by an affidavit-

- (a) exhibiting the duly authenticated original award or a duly certified copy thereof;
- (b) exhibiting the original arbitration agreement or a duly certified copy thereof;
- (c) exhibiting a duly certified translation of the award and the arbitration agreement if they are not in the official language;
- (d) specifying the rate of interest sought by the deponent or the amount of interest which has become due under the award;
- (e) stating the full name, title, trade or business of the respondent so far as is known to the deponent; and

(f) stating to the best of information and belief of the deponent;

(i) that the applicant is entitled to enforce the award;

(ii) that at the date of the application, the award has not been satisfied, or if the award has been not been satisfied, or if the award has been satisfied in part, stating the amount or any other matter which remains unsatisfied.

(iii) if the award is a foreign award, that at the date of the application the award can be enforced by execution in the country in which it was made; and

(vi) that the award is valid and binding on the parties and has not been set aside or suspended in Zambia or in the country in which, or under the law of which, it was made.

(3) Where the sum payable under the award is expressed in a currency other than currency of the Republic of Zambia, the affidavit shall also state the amount which that sum represents in the currency of the Republic, Calculated at the average rate of exchange prevailing at the date of enforcement of the award.

(4) The court may in respect of an application for registration order the applicant to find security for the costs of the application and of any proceedings which may thereafter be brought to set aside the registration to the award.

(5) If an application for setting aside or for the suspension of an award has been made in accordance with section nineteen of the Act to a court of the country in which the award was made, the court dealing with the application for registration and enforcement may, adjourn its decision and direct the applicant to issue summons and serve the application and the affidavit upon the other party.

(6) If an application for setting aside or for the suspension of an award has been made to a court in the country or under the law of which the award was made, the judgment creditor may apply to the court for an order compelling the debtor to provide appropriate security.

(7) An application for security under sub rule (7) shall be by Order for

summons and supported by an affidavit of facts.

registration and
enforcement

17. (1) An order giving leave to register an award shall be drawn up by or on behalf of the judgment creditor and the order shall not be required to be served on the judgment debtor.

(2) An order referred to in sub rule (1) shall state a period, not exceeding ninety days from the date of receipt of the award by the applicant, within which an application may be made to set aside the registration and shall contain a notification that execution of the award will not issue until expiration of that period.

Register of
awards

18. (1) There shall be kept at every Registry of the High Court a register of arbitration awards ordered to be registered under these Rules.

(2) The Registrar shall record in the register, in relation to each award, the following:

- (a) the registration number;
- (b) the date of registration;
- (c) the full particulars of the award registered and the order for registration;
- (d) the name and address of the judgment creditor or the judgment creditor's legal practitioner or agent on whom, and at which any summons or other court process issued by the judgment debtor may be served;
- (e) the name and address of the judgment debtor;
- (f) the amount due under the award or any other order made under the award for the transfer, possession or delivery of property; and
- (g) the rate of interest or amount of interest due under the award.

Notice of
registration

19. (1) The applicant shall file in court a written notice of the registration of the award and serve it on the other parties-

- (a) in the case of a party within the jurisdiction, by personal service as in the case of a writ of summons, unless some other mode of service is ordered; or
- (b) in the case of a party outside the jurisdiction, in accordance with the rules applicable to the service of a writ of summons out of the jurisdiction.

(2) The notice of registration shall state-

- (a) the full particulars of the award registered and the order for registration;
- (b) the date of registration;
- (c) the name and address of the judgment creditor or the judgment creditor's legal practitioner or agent on whom, and at which any summons issued by the other party may be served;
- (d) the name and address of the judgment creditor;
- (e) the right of the judgment debtor to apply on the grounds specified in section seventeen of the Act to have the registration set aside; and
- (f) in accordance with the term of the order giving leave to register, within what time from the date of service of the notice an application to set aside the registration may be made:

(3) Within three days from the date of service or within such extended period as may in special circumstances, be allowed by order of the court, the notice or a copy thereof shall be endorsed by the person serving the notice with the date on which service was affected, and if the notice is not so endorsed, the judgment creditor shall not issue execution on the award without the leave of the court or a Judge.

(4) An affidavit of service of a notice referred to in sub-rule (2) shall state on what day it was endorsed in the manner required by sub-rule (3).

Issue execution of

20. (1) Execution shall not issue on a registered award until after the expiration of the period specified in the order giving leave to register as the period within which an application may be made to set aside the registration.

(2) If an application is made to set aside the registration of the award, execution shall not issue until the application has been disposed of.

(3) The party wishing to issue execution upon a registered award shall file in court an affidavit of service of the notice of registration and of any order made by the court in relation to the

Form of writ of execution

award registered.

21. In the case of a registered award the form of a writ of execution or fieri-facias shall be varied as follows:

For the words "which said sum of money and interest were lately before us in the High court for Zambia" etc., there shall be substituted the words:" which said sum of money and interest were lately in..... (describing the arbitration in which the award was rendered)", etc." which award has been duly registered", etc., and which award has been duly registered in the High Court for Zambia pursuant to the Arbitration Act, 2000".

Other court
processes of
enforcement

22. A party entitled to enforce an award may invoke any of the processes available under the High Court Rules for the enforcement of judgments, including writs of possessions, writs of fieri facias and writs of elegit.

PART VIII

SETTING ASIDE AN AWARD

23. (1) An application, under section seventeen of the Act, to set aside an award shall be made by originating summons to a Judge of the High court.

Application for
setting aside

(2) The application referred to in sub-rule (1) shall be supported by an affidavit-

- (a) exhibiting the original award or a certified copy thereof;
- (b) exhibiting the original arbitration agreement or duly certified copy thereof;
- (c) stating to the best of the knowledge and belief of the deponent, the facts relied upon in support of the application; and
- (d) stating the date of receipt of the award by the party applying to set aside the award.

(3) The affidavit shall be accompanied by such other evidence with respect to the matters referred to in subsection (2) of section seventeen of the Act, as may be necessary to support the application.

(4) On an application to set aside an award, the court may

direct that an issue between the parties shall be stated and tried and may give such direction in relation to the trial of such issue as may be necessary, to make any other considered necessary in the circumstances.

24. (1) An application, under subsection (4) of section seventeen of the Act, to suspend setting aside proceedings shall be made by summons to the Judge hearing the application for setting aside. Suspension of setting aside proceedings

(2) The application referred to in sub-rule (1) shall be supported by an affidavit deposing to the relevant facts.

PART IX

PROVISIONS TO ENSURE CONFIDENTIALITY OF ARBITRATION

25. Applications made to a court in relation to arbitral proceedings shall be treated with utmost confidentiality. Confidentiality of proceedings

26. All records, registers and other documents relating to legal proceedings under the Act shall, while they are in the custody of the court, be confidential and shall be kept in a place of special security. Custody of records, registers and documents

27. (1) Except as is required or authorized by or under the Act, any law or by these Rules, or with the leave of the court, no document or order held by or lodged with the court in legal proceedings under the Act shall be open to inspection or search by any person, except the parties, their legal practitioners or their representatives; and no copy of any such document or order, or of an extract from any such document or order, shall be taken by or issued to any person. Prohibition against inspection, search, disclosure or communication

(2) Section twenty-seven of the act, *mutatis mutandis*, apply to proceedings under these Rule.

28. All legal proceedings under these Rules shall be held in camera. Proceedings to be held in camera

29. Any person who, in contravention of Rules 25, 26 and 27 publishes, communicates or discloses any information relating to proceedings under the Act commits contempt of court and is liable, on conviction, to the same penalties prescribed in section one hundred and sixteen of the Penal Code. Unlawful publication communication or disclosure of legal proceedings Cap. 87

30. All legal proceedings under the Act shall be recorded in a Register of arbitral proceedings

separate register to be called the register of arbitral proceedings, which shall be maintained at the Principal Registry and all District Registries of the High Court.

31. The following particulars shall be entered in the register of arbitral proceedings, in respect of each legal proceedings:

Particulars to be entered in register

- (a) cause number, with the abbreviations/ARB as part of the number;
- (b) date of filing;
- (c) names of parties;
- (d) name of arbitrator;
- (e) date and details of award; and
- (f) any remarks relevant to the arbitral proceedings.

PART X

SERVICE OF PROCESS AND CONDUCT OF PROCEDURES

32. Summons issued under these Rules, shall be served at least seven clear days before the return day, unless provided or ordered otherwise.

Service summons of

33. An originating summons and any support affidavit issued under these Rules shall be served at least fourteen days before the return day.

Service originating summons of

34. A party served with a originating summons or summons and an affidavit may, within seven days after service, file an affidavit in opposition or in answer and shall deliver a copy of that party's affidavit to the party serving the originating summons or summons at least two clear days before the return day.

Service affidavit opposition of in

35. Additional affidavits, other than those specified in these Rules, shall not be filed in legal proceedings without the leave of the court or a Judge.

Additional affidavits

36. (1) Service out of the jurisdiction of any originating summons or an order made on such summons, may be effected with the leave of the Court if the arbitration to which the summons or order relate is governed by the law of Zambia or has been, is being, or is to be held in Zambia.

Service out of Jurisdiction of

(2) Service out of jurisdiction of an originating summons for leave to register and enforce an award may be effected with the leave of the court whether or not the arbitration is governed by the law of Zambia.

(3) An application for the grant of leave under this Rule shall be supported by an affidavit stating the grounds on which the application is made, and stating in what place or country the person to be served is, or probably maybe found; and leave shall not be granted unless the Court considers that the case is a proper one for service out of the jurisdiction under this rule.

PART XI

COURT ASSISTANCE IN TAKING EVIDENCE

37. (1) An application under Article 27 of the first Schedule to the Act to a court by an arbitral tribunal or a party for assistance in taking evidence shall be made by originating summons before the Registrar.

Court assistance in taking evidence

(2) The application referred to under sub-rule (1) shall be supported by an affidavit-

- (a) exhibiting the arbitration agreement;
- (b) giving details and particulars of the arbitration and the stage of the arbitral proceedings; and
- (c) stating the type of assistance required in taking evidence.

(3) The originating summons and affidavit shall be served on all the parties and, if the arbitral tribunal is not the originator of the application, on the tribunal.

PART XIII

GENERAL

38. (1) Where these Rules do not provide for any particular matter or do not make sufficient provision enabling a court to dispose of a matter before it or to enable a party to prosecute its case, the Rules of the High Court or of the subordinate court, as the case may be, relating to civil proceedings with these Rules.

General application of High court or Subordinate Court rules

(2) Parties to legal proceedings shall also be entitled to make ancillary and incidental applications and to invoke other necessary court processes, available under the High court Rules, in dealing with applications under these Rules.

39. Upon hearing an application under these rules, the Court or

a Judge may order the costs to be in the arbitration or reserve them in the discretion of the arbitrator or may make such other order as the court or the Judge may deem fit.

Orders for costs

40. If an application under these Rules appears to the Registrar proper for the decision of a Judge, the Registrar may refer it to a Judge and the Judge may either dispose of the proceedings or refer the application to the Registrar with such directions as the Judge may think fit.

Reference of application by Registrar to Judge

41. (1) Except as otherwise provided in the Act, a party affected by a decision of the Registrar under these Rules, may appeal there from to a Judge at Chambers and the appeal shall be by notice in writing to attend before the Judge without a fresh summons, within seven days after the decision complained of, or such further time as may be allowed by the Judge or the Registrar.

Appeals from Registrar to Judge

(2) Unless otherwise ordered, there shall be allowed at least two clear days between service of the notice of appeal and he return day.

42. The forms in the First Schedule may be used in all matters , causes and proceedings to which they are applicable, under these Rules with such variations as circumstances may require.

Forms

43. (1) The fees specified in the Second Schedule shall be payable in respect of applications to the High court by the party at whose instance they are incurred, and may afterwards be recovered as costs of the cause, if the court or a Judge so orders.

Fees

(2) The court fees payable in respect of applications for the stay of legal proceedings under Part II of these Rules, shall be those payable in respect of civil matters before the court in which the proceedings are held.

FIRST SCHEDULE

(Rule 41)

REPUBLIC OF ZAMBIA

H.C. ARB 1

GENERAL TITLE OF ORIGINATING SUMMONS AND OTHER DOCUMENTS
IN LEGAL PROCEEDINGS

IN THE HIGH COURT ZAMBIA 2...../H...../ARB/No.....(a)

AT THE PRINCIPAL/DISTRICT REGISTRY (b)

IN THE MATTER OF THE ARBITRATION ACT, 2000

AND

IN THE MATTER OF AB ARBITRATION

BETWEEN:

A.B. PLAINTIFF

AND

C.D. DEFENDANT

.....(c)

(a) Here put in the year, letter and number, in an action commenced in the principal Registry at Lusaka, the letters shall be HP. In actions commenced in the Ndola, Kitwe or Livingstone District Registries respectively the letters shall be, HN, HK or HL respectively.

(b) delete if inapplicable

(c) insert description of document.

REPUBLIC OF ZAMBIA

HC.ARB 2

ORIGINATING SUMMONS
(General Title)

LET C.D. of attend before the Learned Deputy/District Registrar [or Judge] in Chambers at the High Court [Lusaka/Ndola/Kitwe etc] on the

Day..... of.....2.....at hours on

The hearing of an application by the Plaintiff A B of

That

DATED the..... day of 2.....

This Summons was taken out by:

Of

Advocate for the said Plaintiff whose address for service is at

And whose postal address for service is at

[or this Summons was taken out by:

of.....agent for

of..... Advocate for the said Plaintiff whose address is as stated above]

[or where the Plaintiff sues in person. This Summons was taken out by the said Plaintiff who resides at..... and (if the Plaintiff does not reside within the Jurisdiction) whose address for services is

Note: If a Defendant does not attend personally or by his Counsel or Advocate at the time and place above mentioned such order will be made as the Court may think just and expedient.

Note: A defendant served with this summons and a supporting Affidavit may within 7 days after service of this summons on him, counting the day of service, lodge with the Court an Affidavit in Opposition Origin Answer, in accordance with the Rules of the Court.

REPUBLIC OF ZAMBIA

EX PARTE ORIGINATING SUMMONS

H.C. ARB 3

(General Title)

LET ALL PARTIES CONCERNED attend before the learned Deputy/District Registrar [or Judge] in Chambers at the High Court..... On the

..... Day of2..... at

..... hours on the hearing of an application by AB that

Dated the..... Day of..... 2.....

This summons was taken out by:

Of.....

[agent for of]

Advocate for the Plaintiff/Defendant.

REPUBLIC OF ZAMBIA
H.C. ARB 4
CERTIFICATE OF URGENCY
(General Title)

I,..... The Advocate having the care and conduct of this matter on behalf of the Plaintiff/Defendant [or where the party sues in person..... the plaintiff/Defendant in this Act in this action]. DO HEREBY CERTIFY that the application for [Interlocutory Injunction/executory assistance/interim measure of protection (1)] filed herewith is of utmost urgency and calls for immediate determination, on the grounds that:
Dated the day of2.....

Signed:

Advocate for the Plaintiff/Defendant

(1) Describe nature of relief application.

REPUBLIC OF ZAMBIA

SUMMONS
H. C. ARB 5
(General Title)

LET ALL PARTIES CONCERNED attend before the Learned Deputy/District Registrar [or Judge] in Chambers at..... on the day of
2..... athours on the hearing of an application on the part of.....
For an Order that

Dated at..... this..... day of.....2.....

This summons was taken out by:.....of.....Advocates for the

	the proceedings	56	The Search form
13	On filing a Notice of Registration of an Award	84	The filed copy
14	On filing a Certificate of Urgency	45	The filed copy
15	Any filing of Notice not specifically provided for	45	The filed copy
16	On filing a Notice of Appeal to Judge in Chambers	168	The filed copy