

# THE JUDICIARY OF ZAMBIA



# COURT OF APPEAL

**SIMPLIFIED COURT PROCESSES AND PROCEDURES**



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## FOREWORD

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

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

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

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

*2021*

## ACKNOWLEDGEMENTS

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

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

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

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

We must reiterate that this is one of the several efforts that the Judiciary has embarked on in its quest to administer transparent and accountable justice.

Hon. Mr. Justice Jones Chinyama  
**Judge of the Supreme Court and Chairperson - Advisory Committee on  
Public Relations and Information of the Judiciary of Zambia**

2021

## **BACKGROUND INFORMATION**

The Court of Appeal is established under Article 130 of the Constitution of Zambia as amended by Act No. 2 of 2016. It is the second highest superior court of record ranking immediately below the Supreme Court and the Constitutional Court. The Court is created by the Court of Appeal Act. Article 130 of the Constitution, as read together with the Superior Courts (Number of Judges) Act No. 9 of 2016, constitutes the Court of Appeal with the Judge President, the Deputy Judge President and 17 Court of Appeal Judges.

## **SERVICES OFFERED AT THE COURT OF APPEAL REGISTRY**

The Registries are open to members of the public from Monday to Friday from 09:00 to 12:00 hours and from 14:00 to 15:00 hours. The services offered include:

- attending to Court users and guiding them on appeals and other Court processes;
- Receiving and filing Court documents;
- Issuing receipts once there is proof that a payment has been deposited at the Bank for court fees;
- Keeping of Court files;
- scanning of Court documents;
- Certification of documents;
- Commissioning of Affidavits; and
- Notarization of documents.

## **JURISDICTION AND SITTINGS OF THE COURT OF APPEAL**

The Court of Appeal has jurisdiction to hear appeals from;

- the High Court; and
- a quasi-judicial body, except a Local Government Elections Tribunal.

Where a question relating to the interpretation of the Constitution arises before the Court of Appeal, the court should refer the question to the Constitutional Court.

The Court of Appeal may hear appeals at Lusaka, Kabwe, Ndola or any other place that may be approved by the Chief Justice in a document called a circuit schedule.

### **INTERLOCUTORY APPLICATIONS THAT ARE HEARD IN THE COURT OF APPEAL**

The Court of Appeal generally hears civil and criminal appeals. The following are some interlocutory applications heard by the Court:

- Leave to appeal to the Court where the High Court has refused to grant leave to appeal;
- Injunctions;
- Stay of execution;
- Bail pending appeal in criminal matters;
- Security for costs;
- Motions (applications requesting a court for a desired ruling or order, including renewal of applications before the full court);
- Renewed applications from the High Court after refusal by the High Court.

### **GENERAL PROCEDURE FOR INTERLOCUTORY APPLICATIONS AND MOTIONS**

- Interlocutory applications (applications before the determination of the main appeal) are made to a single judge in chambers (Judge's office).
- Where an application is refused by a single judge, that application can be renewed and heard by the Court (3 or more judges of the Court of appeal sitting together in an uneven number).

- The application to the Court will be made by filing a notice of motion or summons together with an affidavit and arguments.

**NOTE 1:**

The Court of Appeal has the power to admit fresh evidence on appeal where the circumstances permit.

## **CIVIL APPEALS PROCEDURE**

- A notice of appeal together with a memorandum of appeal (document which contains grounds or reasons for the appeal), must be filed within thirty (30) days of judgment/ruling being appealed against. However, where it is an appeal against an interlocutory ruling or a judgment obtained in chambers, leave must be obtained from the High Court or the quasi-judicial body.
- An application to appeal out of time has to be made firstly before the High Court or quasi-judicial body if a party has run out of time. The application will only be allowed if acceptable reasons are given for the delay.
- Where leave to appeal is denied, an application for leave may be made before a single Judge of the Court of Appeal. The application is by way of summons or motion and must be accompanied by an affidavit.
- Once leave to appeal is granted, a person seeking to appeal to the Court of Appeal must file a notice of appeal and memorandum of appeal within the prescribed period.
- Where good reasons are given for failure to file the record of appeal within the prescribed time, a party may apply to (ask) the court to file out of time.
- The appellant should produce proof of payment for all documents they intend to file and a GRZ receipt will be issued.

- Security for costs in the sum of K600 must be paid by the appellant. Refer to the schedule at the back of this Service Charter for all other fees.
- The Appellant is required to serve process (give respondent copies of the appeal documents) on the respondent and there should be proof of service (affidavit of service).
- The court will set a hearing date and the parties will be informed accordingly.

**NOTE 2:**

An application to appeal as an indigent (poor) person may be made to the Court at no cost. If the Court is satisfied that indeed the applicant lacks means to appeal the applicant may be allowed to file their appeal at no cost.

## **HEARING OF CIVIL APPEALS**

- The Court of Appeal hears appeals on the basis of the record of appeal, filed arguments and oral arguments, if any.
- The Court of Appeal does not receive oral testimonies from witnesses. However, the Court of Appeal may call a witness to appear before it to give testimony or produce a document.
- Where a party does not wish to attend the hearing and has filed heads of argument, he may file a notice of non-attendance and the Court will proceed to deliver its judgment based on the arguments and a consideration of the record of appeal filed before the Court.



**NOTE 3:**

Parties are free to enter into a consent agreement to withdraw an appeal after which the appeal shall be dismissed. However, the appeal shall remain on the list for the hearing of issues relating to costs or other outstanding matters.

**CRIMINAL APPEALS PROCEDURE**

**FIRST APPEALS** (*An appeal coming from the High Court as a Court of first instance exercising its original jurisdiction and/or the High Court exercising sentencing powers where the conviction was by the Subordinate Court which commits the person to the High Court for sentencing*):

- A person convicted by the High Court may appeal to the Court of Appeal. The convict is informed of this right to appeal by the High Court after Judgment is read out.
- The notice of intention to appeal or application for leave to appeal should be made in writing (typed). Four copies of the notice are filed with the Master of the Court of Appeal within 30 days from the date of the judgment appealed against.
- The notice of intention to appeal must be signed by the Registrar of the High Court.
- A person who has been convicted by the Subordinate Court but has been sentenced by the High Court can only appeal to the Court of Appeal.
- The Director of Public Prosecution (DPP) has power to appeal to the Court of Appeal on a question of law.
- Where the sentence imposed is a mandatory minimum fixed by law, there are no appeals against sentence only.

**SECOND APPEALS** (*An appeal from the High Court exercising its appellate jurisdiction*):

- A person who appeals to the High Court from the Subordinate Court will only be allowed to appeal to the Court of Appeal after getting permission (leave) from the High Court.
- Where the High Court has reviewed the decision of the Subordinate Court or the High Court has made a decision on a case stated, permission is required for a person to appeal to the Court of Appeal.
- Where the High Court has confirmed the sentence imposed by the Subordinate Court, permission is required for a person to appeal to the Court of Appeal.
- Where the High Court has refused a person to appeal out of time the same application can be made (renewed) to the Court of Appeal.
- The Registrar of the High Court will prepare, on behalf of the parties, twenty-one (21) copies of the record of appeal upon receiving the notice of intention to appeal. The copies will then be transmitted to the Master of the Court of Appeal.
- The record of appeal in criminal appeals is prepared and served by the Court on behalf of the parties. However, the parties are required to prepare their own heads of arguments and serve the same on each other.
- The court will set a hearing date and the parties will be informed of the hearing date by the Court.

**NOTE 4:**

Where persons have been jointly convicted, they may file notices of appeal individually or together.

## **HEARING OF CRIMINAL APPEALS**

- The Court of Appeal hears appeals on the basis of the record of appeal, filed arguments and oral arguments, if any.
- The Court of Appeal does not hear testimonies from witnesses. However, the Court of Appeal may call a witness to appear before it to give testimony or produce a document.
- A convict appealing is entitled to be present at the hearing of an appeal or any other application that is made to the Court. However, where the person is represented by a lawyer, he may inform his lawyer that he does not want to appear before the Court and the lawyer will appear on his behalf. The Court will then proceed to hear the appeal in his absence
- A convict who has appealed may abandon (withdraw) the appeal at any time after filing the notice of appeal but before Judgment.

## **DELIVERY OF JUDGMENTS**

- After the Court of Appeal has heard the appeal, the parties are informed when the judgment of the Court will be given. The date for giving the judgment may also be communicated at a later stage.
- The Court may give permission to the Master of the Court to read its Judgment.
- The decision of the court may be given immediately after the hearing and the reasons may be given later in a judgment.

- When the Court passes an order in open Court, it is the duty of a successful party to prepare without delay the Order in writing (typed) and submit it for signature by the Judge (s).

### **ENFORCEMENT OF JUDGMENTS/RULINGS/ORDERS**

- All judgments/orders of the Court of Appeal are executed/enforced by the High Court (Refer to the High Court Service Charter on modes of enforcement) except an award for costs.
- Enforcement of the judgment can only take place after at least three days from the date of judgment unless the Court directs otherwise.

### **Costs awarded in a Judgment**

- where the court has awarded costs and the parties do not agree on the amount due to the winning party, an application can be made before the Registrar for taxation of costs.
- When the Registrar determines the costs, enforcement is by issuing a writ of Fieri Facias (FiFa) in the High Court.

### **APPEALS TO THE SUPREME COURT**

- Appeals from the Court of Appeal go to the Supreme Court. However, appeals are not automatic (as of right).
- An appeal to the Supreme Court will only be made with leave (permission) of the Court of Appeal.
- Where the Court of appeal refuses to give permission to appeal, an application can be renewed before the Supreme Court.
- The Court of appeal can only give permission to a person to appeal where the person shows any of the following:
  - the appeal raises a point of law of public importance;
  - it is in the public interest that an appeal by the person convicted should be heard by the Supreme Court;

- the appeal would have high chances of success; or
- there is some other convincing reason for the appeal to be heard by the Supreme Court.

### **FEES PAYABLE IN THE COURT OF APPEAL**

<b>Document</b>	<b>Amount (Kwacha)</b>
Notice of Appeal	250
Memorandum of Appeal	35
Leave to Appeal to the Court	69
Summons	84
Affidavit (Commissioned at Court)	26
Affidavit (Not Commissioned at Court)	9
Order	18
Certificate of Urgency	68
Record of Appeal	69
Notice of Cross Appeal	250
Notice of Motion	250
Notice of Motion	50
Notice to Adjourn	50
Notice to Raise Preliminary Issues	50
Other Notices	50
Security for Costs	600
Extraction per page	9
Sealing/Subpoena (per witness)	50
Certificate of Service	17
Sealing/entering Order	50
Supplementary Record of Appeal	69

Bond	15
Hearing appeal per day	50

**NOTE:** *The fees payable in the Court of Appeal are stipulated in fee units. To arrive at the amount payable, a conversion rate of 30 ngwee (Statutory Instrument No. 41 of 2015) for each fee unit is used.*

#### HOW CORRUPTION CAN BE AVOIDED AT THE COURT OF APPEAL

- 1) Members of the public should follow the law and court procedures and rules to obtain a service and should desist from offering bribes in order to speed up their cases or acquire an order, ruling or judgment in their favour.
- 2) Members of the public should seek services only from prescribed officers and offices and not in the streets, court corridors, car parks, etc.
- 3) Members of the public should familiarize themselves with the prescribed fees and should demand official Government receipts for any payments at Court.
- 4) Any suspected exorbitant fees should be reported to supervising officers at the court.
- 5) All cases of suspected corruption should be reported to relevant authorities.
- 6) When in doubt as to any Court order or procedure, the Master of the Court of Appeal should be immediately contacted.
- 7) Court officials should at all times work professionally in accordance with the Code of Conduct and Ethics.

## **COMPOSITION OF THE AD HOC COMMITTEE MEMBERS**

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

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



## **THE JUDICIARY OF ZAMBIA**

**Vision:** To provide timely and accessible justice to all.

**Mission:** To adjudicate civil, criminal and constitutional matters in an independent, impartial and timely manner without fear or favour.

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## **TRANSPARENCY INTERNATIONAL ZAMBIA**

**Vision:** A Zambia anchored on citizens and institutions of integrity.

**Mission:** A leading anticorruption crusader contributing to the development of a Zambian society based on a culture of transparency and accountability through the promotion of good governance and zero tolerance to corruption.

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