

GOVERNMENT OF ZAMBIA

STATUTORY INSTRUMENT NO. 29 OF 2012

The Subordinate Courts Act
(Laws, Volume 3, Cap. 28)

The Subordinate Courts
(Civil Jurisdiction)(Amendment)Rules, 2012

IN EXERCISE of the powers contained in section *sixty-seven* of the Subordinate Courts Act, the following Rules are hereby made:

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| 1. These Rules may be cited as the Subordinate Courts (Civil Jurisdiction) (Amendment) Rules, 2012. | Title |
| 2. Order I of the principal Rules is amended by the insertion, immediately after rule 13, of the following new rule: | Amendment of Order I |
| <p style="margin-left: 40px;">14. (1) Subject to section <i>five</i> of the Electronic Communications and Transactions Act, 2009, where under these Rules any process, notice, record or other document is required to be in writing, such process or document may be in electronic or hard copy format, as applicable.</p> <p style="margin-left: 40px;">(2) Where any process, notice, record or other document is required to be served under these Rules, it may be served in electronic or hard copy format, as applicable.</p> | Electronic documents Act No. 21 of 2009 |
| 3. Order V is amended in rule 24 by the insertion, immediately after the words “ for sufficient reason ” and the comma, of the words “ receive evidence of a witness by audio-visual technology from a source within or outside Zambia, or ”. | Amendment of Order V |
| 4. Order VI of the principal Rules is amended— | Amendment of Order VI |
| <p style="margin-left: 40px;">(a) in subrule (2) of rule 3, by the insertion, immediately after the words “ full name ” wherever they appear, of</p> | |

a comma and the words “ postal and electronic mail address, if any ”;

(b) in rule 5—

(i) by the insertion, in subrule (1), immediately after the words “ date of issue ”, of the words “ and cause to be entered on the Register both an electronic and hard copy of the writ ”; and

(ii) by the deletion, in subrule (2), immediately after the words “ writ of summons ”, of the words “ clerk of the court shall, before issuing the writ ” and the comma, and the substitution therefor of the words “ magistrate, allocated the case shall, before the writ is issued ”; and

(c) in rule 6—

(i) by the deletion of subrule (1) and the substitution therefor of the following:

(1) The return day fixed by the Magistrate shall be such as to permit personal or electronic service being effected on the defendant and as to permit further the defendant having a reasonable time within which to comply with the provisions of these Rules in the event of the defendant wishing to defend the suit.; and

(ii) by the insertion, in subrule (2), immediately after the word “ writing ” of the words “ or by electronic means ” and a comma.

5. Order VII of the principal Rules is amended by the insertion, immediately after rule 17, of the following new rule:

17A (1) Where a document referred to in order I is filed electronically, the service of such document by electronic means shall be deemed to be personal service.

(2) Where a document is served electronically, the transmission shall contain a notice, in writing, explaining the contents of such document.

(3) Where a document has been served electronically—

(a) the document shall be deemed to have been received when it arrives at the server for incoming

Amendment
of Order
VII

Electronic
service of
documents

communications in connection with which the user identification or signature of the person to be served is associated; and

(b) the burden of disproving the service shall lie with the served party.

6. Order XXXIII of the principal Rules is amended by the insertion, immediately after rule 2, of the following new rule:

Amendment
of Order
XXXIII

3. (1) A default writ of summons that is not served within six months from the date of issue shall lapse.

Lapse of writ
of summons

(2) Where a default writ of summons is duly served and the matter remains inactive for ninety days, the writ shall be deemed to have lapsed.

7. Order XLI of the principal Rules is amended by the deletion of rule 3 and the substitution therefor of the following:

Amendment
of Order XLI

3. (1) A party in whose favour any judgement of a court for the payment of money is given may sue out of the office of the clerk of the court a writ of *feri facias* for execution of the same, if the same is not satisfied:

Writ of *feri
facias*

Provided that the writ of *feri facias* shall not be issued unless the applicant has filed an affidavit of service of the judgement to which it relates.

(2) An application for a stay of execution of a judgement shall not be entertained after seven days from the date of service of the judgement to which the application relates.

8. Order XLIII of the principal Rules is amended by—

Amendment
of Order
XLIII

(a) the insertion in the heading, immediately after the word “ARBITRATION” of the words “OR MEDIATION”; and

(b) the insertion, immediately after rule 14, of the following new rule:

15. (1) The court may, at any stage of the proceedings, refer any action to mediation except where the court considers a case unsuitable for referral to mediation.

Referral of
action to
mediation

(2) If an action referred to mediation under sub-rule (1) is not settled or mediated within thirty days, it shall be referred back to the court for trial.

(3) In the event of a failure of mediation due to non-attendance of one of the parties, the costs of the subsequent proceedings in court shall be borne by the defaulting party irrespective of the outcome of the case.

Amendment
of Order
XLIV

9. Order XLIV of the principal Rules is amended in subrule (1) of rule 3—

(a) by the deletion, in paragraph (c), of the full stop and the substitution therefor of a semicolon and the word “and”;
and

(b) by the insertion, immediately after paragraph (c), of the following new paragraph:

(d) an application to appeal out of time shall not be entertained unless the applicant pays the prescribed penalty fee.

Insertion of
new Order
XLVII

10. The Principle Rules are amended by the insertion immediately after Order XLVI, of the following new Order:

ORDER XLVII

ELECTRONIC FILING

Interpretation

1. In this Order, unless the context otherwise requires—

“case management system” means the system used by the clerk of the court and the court to calendar, assign and track cases;

“conventionally file” means the act of filing or serving of paper documents;

“document management system” means the electronic document storage and imaging system maintained by the Registrar;

“e-filing” means electronic transmission of an original document to the court;

“electronic service” means electronic transmission of a document to parties as required by a written law and rules of a court and as designated by the filing party;

“electronic document” means an original document filed with the Registrar in electronic format;

“filing” means the act of submitting documents, electronically or in paper form to the clerk of the court for filing “hyperlink” means an electronic connection or reference to another place in a document, such that when selected, the user is taken to the portion of the document to which the hyperlink refers;

“ID” means a unique user identification;

“parties” means the parties related to a case, including a plaintiff and defendant or an advocate representing a plaintiff or defendant;

“PDF” means portable document format, a file format that preserves all fonts, formatting colours and graphics of any source document, regardless of the application platform used;

“TIFF” means a Tag Image File Format, a standardised file format used to store imaged documents;

“scanned document” means an electronic image created by scanning a paper document; and

“source document” means the document as originally submitted to the clerk of the court for filing.

2. Notwithstanding any other rules of court, the following types of documents shall be filed conventionally, unless expressly required to be filed electronically by the court:

Documents not permitted to be e-filed

(a) any document required to be filed under the Criminal Procedure Code Act;

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(b) documents filed under seal;

(c) audio recordings not expressly authorised by the court, in writing, for filing electronically; and

(d) affidavits of service for conventionally served or filed documents.

3. (1) Where a matter requires the filing of a document, that document may be filed electronically.

General e-filing guidelines

(2) Any case participant with standing to file conventionally with the court may file electronically in accordance with these Rules and all applicable laws and rules of court.

(3) A party appearing in person may file documents using e-filing or conventional filing.

E-filing
implement
tation

4. All pleadings, motions, memoranda, orders and other documents electronically filed in a matter shall be maintained in electronic format by the clerk of the court and shall be maintained as the original and official record of the court.

Format of e-
filed
documents

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:

Provided that those formats shall not cause participants to a matter to invest significant resources in making changes to the document.

(2) The clerk of the court shall not reject a document solely for the reason that it is not in substantial conformity with a specific rule of procedure or written law.

Accepted
file formats

6. (1) A participant 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.

(2) All documents electronically filed shall, upon acceptance and filing by the clerk of the court, be converted to Portable Document Format in compliance with the requirements set out in these Rules.

(3) The court may require a participant to produce the original of a scanned exhibit that has been filed electronically by the participant.

(4) Parties and other case participants shall ensure that all proposed forms of order are submitted electronically in a Microsoft Word file format.

Hyperlinks,
bookmarks
and other
electronic
navigational
aids

7. (1) An electronically filed document may include hyperlinks, bookmarks and other electronic navigational aids for the convenience of the court.

(2) A hyperlink shall not form part of the filed document.

(3) Each hyperlink shall contain a text reference to the target of the link.

(4) Notwithstanding anything contained in these Rules, a hyperlink shall not form part of the official court record and shall not be preserved in electronically filed documents submitted and stored on the clerk of the court's electronic document management system.

8. (1) The clerk of the court shall ensure that every party and practitioner is registered and provide each with a personally selected user name (ID) and password.

User ID and
electronic
signatures

(2) The user name referred to in sub-rule (1) shall, when used in conjunction with the personally selected password, constitute a signature of the registered participant on documents submitted to the court or by the court.

(3) Notwithstanding sub-rule (2), a participant may apply an electronic signature to a document to be submitted to the court.

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

(5) An electronic document may be signed by the clerk of the court through the use of a printed signature precede court’s e-filing Manager (EFM) application judicial signature stamp.

(6) The e-filing 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 of a party or participant or other identifying indicators 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 clerk of the court 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 sub-rule (1) is free from infection, the document shall be deemed submitted and the clerk of the court shall send an acknowledgment of receipt of the document to the filing participant.

(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 clerk of the court’s e-filing system.

(4) Where a document is infected, the clerk of the court shall discard and send the document with a notice to the filing participant that the document was infected and has not been filed.

(5) A notice under sub-rule (4) shall be sent to a filing participant or any authorised third party facilitating entity and shall set forth the grounds for rejection.

(6) A party whose document has been rejected may re-submit any rejected document with appropriate corrections.

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

(8) The clerk of the court shall, upon completion of the electronic filing review process, send notification of the filing's status and, if accepted, the official file date and time of the filing.

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

(10) The file stamp referred to in sub-rule (9) shall be merged with the electronic document and shall be visible when the document is printed and viewed on line.

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

(12) An e-filing file stamped in accordance with these Rules shall have the same force and effect as documents filed in the conventional manner.

10. A participant who files a document electronically shall have the same responsibility as a person 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 case.

LUSAKA
27th April, 2012

E. L. SAKALA,
Chief Justice

Responsibility
for filing