

GOVERNMENT OF ZAMBIA

STATUTORY INSTRUMENT NO. 26 OF 2002

The Industrial and Labour Relations Act
(Laws, Volume 15, Cap. 269)

**The Industrial Relations Court (Arbitration and Mediation
Procedure) Rules, 2002**

IN EXERCISE of the powers contained in section *ninety-six* of the Industrial and Labour Relations Act, the following Rules are hereby made:

PART I
PRELIMINARY

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| 1. These Rules may be cited as the Industrial Relations Court (Arbitration and Mediation Procedure) Rules, 2002. | Short Title |
| 2. In these Rules unless the context otherwise requires— | Interpreta-
tion |
| “ Act ” means the Industrial and Labour Relations Act; | |
| “ arbitration ” means a process by which parties to a dispute present their cases by the use of evidence to a neutral third party called arbitrator, who renders a decision which is binding on the parties and enforceable; | Cap 269 |
| “ Court ” means the Industrial Relations Court established under section <i>ninety-six</i> , of the Act; | |
| “ Judge ” means the Chairman or the Deputy Chairman of the Court; | |
| “ mediation ” means a process by which a neutral third party called a mediator assists parties to a dispute reach a voluntary settlement of their differences through a binding and enforceable agreement; | |
| “ mediation officer ” means the Registrar or Deputy Registrar of the Court or any officer of the Court authorised by the Chairman to perform the functions of the Registrar; | |
| “ party ” means an applicant, complainant or respondent to a suit; | |

“ Registrar ” means the Registrar or Deputy Registrar of the Court and includes any Officer of the Court authorised by the Chairman to perform the functions of the Registrar; and

“ suit ” means an action, legal proceedings or other original proceedings before the Court between parties commenced by Notice of Complaint or any such other manner as may be provided for by or under the Rules of the Court.

PART II

REFERENCE TO ARBITRATION

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| Application for reference to arbitration | 3. Where parties to a suit are of the opinion that the matter in issue in the suit should be referred to an arbitrator for final resolution, they may apply to the Court, at any time before final judgment, for an order of reference to arbitration. |
| Court to grant order for reference | 4. Where the parties apply for order of reference under Rule 3, the Court may grant the order for reference stating the number of arbitrators. |
| Parties to nominate arbitrators | 5. (1) The arbitrators shall be nominated by the parties in such manner as the parties may agree.
(2) Where the parties—
(a) fail to agree on the nomination of arbitrators; or
(b) nominate an arbitrator who refuses to accept the nomination;
the parties may ask the Court to appoint arbitrators in the matter. |
| Court to refer matter to arbitrators | 6. The Court or Judge shall, by an order under the seal of the Court, refer to the arbitrators, the matter in issue in the suit which requires determination. |
| Order of reference to direct compliance with Arbitration Act | 7. The order of reference to arbitration made under Rule 4 shall provide for—
(a) the conduct of arbitration;
(b) a party to apply or have recourse to the Court with regard to arbitration;
(c) Court assistance with regard to arbitration where required; |
| Act No. 19 of 2000 | in accordance with the Arbitration Act. |
| Court to appoint arbitrator | 8. Where the Court or a Judge makes an order for reference to arbitration and—
(a) the arbitrator dies; or
(b) refuses to act; or
(c) becomes incapable of acting; |

the Court or Judge shall appoint another arbitrator in place of the person so dying or refusing to act or becoming incapable of acting.

9. Where a party in a matter for arbitration questions the mandate, impartiality or jurisdiction of an arbitrator, the issue shall be resolved in accordance with the Arbitration Act.

Question of arbitrator's mandate or impartiality to be settled under Arbitration Act No. 19 of 2000

10. (1) Where the Court or Judge makes an order of reference to arbitration, the Court or Judge may order the costs of the suit to be in arbitration or reserve them to the discretion of the arbitrator or make such other order as the Court or a Judge may consider necessary.

Judge to order costs of suit

(2) The costs, fees and expenses of the parties to arbitration shall be administered in accordance with the Arbitration Act.

Act No. 19 of 2000

11. (1) An award made by an arbitrator pursuant to an order of reference to arbitration shall be binding and enforceable and shall not be liable to be set aside except as provided for under the Arbitration Act.

Award not to be set aside

(2) An award made pursuant to an order of reference to arbitration shall be registered and enforced in accordance with the Arbitration Act.

Act No. 19 of 2000

PART III

REFERENCE TO MEDIATION

12. (1) The Court or a Judge may refer any action to mediation at any stage of proceedings except where---

Court to refer action to mediator at any stage of proceedings

(a) the case involves an injunction; or

(b) the Court or a Judge considers a case unsuitable for reference to mediation.

(2) An order for reference to mediation shall be as set out in Form 1 of the First Schedule to these Rules.

13. (1) A mediation officer shall keep a list of mediators who have been trained and certified to act in this capacity.

Mediation officer to keep list of mediators

(2) The mediators to be listed under sub-rule (1) shall be those currently approved or certified by the Chief Justice in respect of High Court proceedings under the Rules of the High Court.

Mediation officer to handover to mediator record of suit, action or legal proceedings	<p>14. (1) Where a mediator is appointed in respect of a matter, the mediation officer shall handover to the mediator the record of the suit, action or legal proceedings.</p> <p>(2) Upon receipt of the record of the suit, action or legal proceedings under sub-rule (1), the mediator shall acknowledge such receipt in writing.</p>
Mediator to inform parties about time, date and venue of mediation	<p>15. (1) The mediator shall, soon after collecting the record under Rule 14, contact the parties to the action and state the time, date and place of the mediation.</p> <p>(2) The mediator shall, within ninety days from the date of collection of the suit, action or legal proceedings in respect of which the mediator has been appointed, complete the process of mediation.</p>
Party to appear in person or with legal practitioner	<p>16. (1) A party to mediation shall appear in person and where represented, with their legal practitioner.</p> <p>(2) Where the party to mediation is not a natural person, an officer or director of sufficient rank to settle the matter shall attend and where represented with the legal practitioner.</p>
Mediator to read out to parties statement of understanding	<p>17. At the commencement of mediation, the mediator shall read out to the parties, and their advocates where necessary, the statement of understanding contained in Form 2 set out in the First Schedule which the mediator shall request the parties to sign.</p>
Mediator not required to keep record of mediation	<p>18. (1) The mediator shall not keep a record of the mediation.</p> <p>(2) Where the mediator prepares any document during proceedings and the mediation fails, the mediator shall destroy such document in the presence of both parties at the end of the mediation.</p>
Statement made in mediation are confidential and privileged	<p>19. Any statement made during mediation is confidential and privileged and may not be used as evidence in any matter.</p>
Mediator not to communicate with trial judge	<p>20. A mediator may not communicate with any trial Judge in relation to any matter which is subject of mediation.</p>
Mediator to return record to mediation officer with report	<p>21. (1) Where a mediation fails, the mediator shall within ten days after the close of mediation proceedings return the record referred to in Rule 14 to the mediation officer and submit a report as in Form 3 set out in the First Schedule.</p>

(2) The mediation officer shall, not more than seven days after receipt of the report under sub-rule (1), submit the record to the Court or a Judge.

(3) Where the Court or a Judge receives a report under sub-rule (2) the Court or a Judge shall, within fourteen days of such receipt, summon the parties for purposes of fixing the date of hearing for the pending action or application.

22. (1) Where mediation ends in a settlement, the parties and the mediator shall sign the mediation settlement document set out in Form 4 of the First Schedule.

Mediation
settlement

(2) The mediation settlement referred to in sub-rule (1) shall be registered and sealed by the Court.

(3) A mediation settlement sealed and registered by the Court shall have the force and effect of a judgment, order or any decision of the Court or Judge and shall be enforced in the like manner.

23. Every mediator shall at the close of mediation return to the Court or Judge the record of proceedings and shall submit the mediator's report as set out in Form 5 of the First Schedule.

Mediator to
return record
of proceed-
ings

24. (1) Where a party fails to comply with the order of reference to arbitration under these Rules, the Court or Judge shall—

- (a) make a default judgment or an appropriate order against that party if that party is a respondent; or
- (b) strike out or dismiss the case where the party is the applicant or complainant.

Failure to
comply with
order of
reference to
arbitration
judgement
or other
order

(2) For the purpose of this rule non-compliance shall include—

- (a) failure to attend a scheduled mediation hearing; or
- (b) legal representative's attendance of a mediation hearing without full instructions or authority from the party.

25. Where the Court or Judge makes an order or Judgment under rule 24 the Court or Judge may not set aside such decision unless sufficient cause is shown on application duly made by a party to the Court or Judge.

Court not to
set aside
judgement
or order
except on
sufficient
cause

26. (1) A mediator may postpone or adjourn a mediation hearing at any stage if considerations of justice so demand or if that postponement or adjournment is likely to facilitate a possible settlement.

Mediator
may
postpone or
adjourn
mediation
hearing

(2) A postponement or adjournment of a matter under this rule shall be granted by a mediator only within the ninety days period prescribed under rule 15.

(3) Where on the request of the mediator after expiry of the ninety day period the Court or a Judge is of opinion that the chances of settlement are still feasible, the Court or a Judge may grant a further period as may be thought reasonable by the mediator.

No appeal
against
mediated
settlement

27. No appeal shall lie against a mediated settlement.

Parties to
pay media-
tion fee

28. (1) There shall be paid to the mediator in equal proportion by the parties to the suit a mediation fee at each sitting.

(2) The fee referred to in sub-rule (1) shall be as set out in the Second Schedule to these Rules.

Failure to
pay media-
tion fee

29. Where a party fails to pay a mediation fee—

- (a) that party shall be barred from taking any further proceedings in the matter until payment of that fee; or
- (b) and judgment has been entered against that party, execution will be levied against that party by the Court to recover the fee on behalf of the mediator.

FIRST SCHEDULE
(Rule 12,17, 21, 22 and 23)

REPUBLIC OF ZAMBIA

Industrial Relations Court
(Arbitration and Mediation Procedure) Rules 2002

Form I

IN THE INDUSTRIAL RELATIONS COURT Complainant/Application No....

HOLDEN AT

BETWEEN:

COMPLAINANT/APPLICANT

and

RESPONDENT

ORDER FOR MEDIATION (RULE 12)

This case has been scheduled for mediation which shall take place within 14 days of receipt of this order. The mediator will be

And the mediation shall take place at an appointed place which the mediator will communicate to ALL THE PARTIES and their advocates are hereby ORDERED to appear. Unless an agreement disposing of this case is filed with the Court in advance of this date, the mediation will occur as scheduled.

The Court ORDERS full compliance with the following:

1. All parties who must approve a settlement and at least one advocate, must appear at the mediation. If the settlement must be approved by someone other than a party to the suit, that person should be present during the scheduled mediation. Institutional parties must have an individual with the authority to settle the case present at the mediation pursuant to Rule 16 of the Industrial Relations Court (Arbitration and Mediation Procedure) Rules, 2002.
2. Each party or advocate must bring to the mediation (a) if damages are requested, an outline of how they have been or should be calculated (including, if appropriate, the time period and rates of interest), and (b) relevant documentation, such as appraisals, receipts and records.
3. All proceedings at the mediation, including any statement made or document prepared by any party, advocate, or other participants are confidential and will not be disclosed to the trial judge or affect the case if it is not settled at this time . No party shall be bound by anything said or done at the mediation unless a settlement is reached. If a settlement is reached, the agreement will be put in writing and will be binding upon all parties to the agreement.
4. In the event that a complainant or applicant and, if represented, the complainant's or applicant's advocate does not appear at the mediation, the Court may strike out or dismiss the case. In the event that a respondent and, if represented, the respondent's advocate does not appear at the mediation, the court may enter a default judgment against the respondent.
5. The mediator's fee as prescribed should be paid at the commencement of the sitting.

This ORDER is entered, this.....day of.....2.....

.....
Judge/Registrar

REPUBLIC OF ZAMBIA
Industrial Relations Court
(Arbitration and Mediation Procedure) Rules 2002

Form 2

IN THE INDUSTRIAL RELATIONS COURT Complaint/Application No:.....

HOLDEN AT

BETWEEN:

COMPLAINANT/APPLICANT
and
RESPONDENT

STATEMENT OF UNDERSTANDING: THE ROLE OF THE MEDIATOR-(RULE 17)

My name is.....I have been assigned to mediate your case. I will serve as neutral party to help you resolve your dispute. I will not act as an advocate for any party.

No party shall be bound by anything said or done in the mediation unless a settlement is reached and is in writing.

Any statements made during the mediation are confidential and privileged and may not be used as evidence in any matter.

I as mediator in this matter may not be called upon to testify to what transpired in the mediation.

Please sign below to acknowledge that you have read and/or understand this statement.

.....
Complaint (s)/ Applicant (s) Respondent (s)
.....
Complaint's Advocate Respondent's Advocate

Mediator

REPUBLIC OF ZAMBIA
Industrial Relations Court
(Arbitration and Mediation Procedure) Rules 2002

Form 3

IN THE INDUSTRIAL RELATIONS COURT Complaint/Application No:.....

HOLDEN

BETWEEN:

COMPLAINANT/APPLICANT
and
RESPONDENT

MEDIATOR'S REPORT-(RULE 21)

TO: THE MEDIATION OFFICER

I, having been designated as mediator in this action and having conducted mediation between the parties, do hereby report that the parties have failed to reach a settlement. In terms of the above rule, you are required within 7 days of your receiving this report to remit the record herewith to the Court or Judge.

Dated the.....day of.....2.....

Mediator's Signature

REPUBLIC OF ZAMBIA
Industrial Relations Court
(Arbitration and Mediation Procedure) Rules 2002

Form 4

IN THE INDUSTRIAL RELATIONS COURT Complaint/Application No:.....

HOLDEN

BETWEEN:

COMPLAINANT/APPLICANT
and
RESPONDENT

MEDIATION SETTLEMENT - (RULE-22)

We, the undersigned parties to this action have agreed to settle our dispute/
differences as follows:

[Dotted lines for settlement details]

Dated the . day of

Complaint (s)/ Applicant (s)

Respondent (s)

Complaint's/ Applicant's Advocate

Respondent's Advocate

Mediator

Mediator's Full Name

REPUBLIC OF ZAMBIA
Industrial Relations Court
(Arbitration and Mediation Procedure) Rules.2002

Form 5

IN THE INDUSTRIAL RELATIONS COURT Complaint/Application No:.....

HOLDEN

BETWEEN:

COMPLAINANT/APPLICANT
and
RESPONDENT

MEDIATOR'S CASE REPORTING FORM (RULE 23)

Mediator's Name:.....

1. Claim/Application type (check all issues in the case)

- Terminal benefits
Reinstatement/Declaration
Collective dispute
Complaint Against discrimination/Wrongful or Unfair dismissal or Termination
Other:.....

2. *Case Disposition*

- Settled before mediation
- Mediated and *fully* settled
- Mediated and *partially* settled
- Mediated and not settled
- Not mediated
- There are chances for settlement of this matter. I request for extension of my mandate to continue with the mediation...

3. Check reasons why the case was not mediated (check all that apply)

- Non-appearance of one or more parties
- Non-appearance of one or more advocates
- Advocate without settlement authority
- Other:.....

4. *Mediator's Fees*

- The fees were paid
- The fees were not paid by.....

Dated the day of 2.....

SIGNED:.....

Mediator

REPUBLIC OF ZAMBIA
Industrial Relations Court
(Arbitration and Mediation Procedure) Rules 2002
 SECOND SCHEDULE
 (Rule 28)

MEDIATION FEE

The mediator's fee shall be as follows:

1. Three Hundred Thousand Kwacha at each sitting during the mediation process.
2. The practitioners, in every case referred to mediation shall collect from their respective clients their half share of the Three Hundred Thousand Kwacha (K300,000.00) and pay the same over to the mediator at the commencement of the sitting.

LUSAKA

11th April, 2002

N. M. MWANZA,
Chairman