

Zambia

Supreme Court of Zambia Act, 1973

Chapter 25

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Zambia

Supreme Court of Zambia Act, 1973

Chapter 25

Commenced on 14 September 1973

[This is the version of this document as it was at 31 December 1996 to 30 December 2002.]

[41 of 1973; 26 of 1974; 17 of 1976; 31 of 1976; 5 of 1979]

An Act to provide for the constitution, jurisdiction and procedure of the Supreme Court of Zambia; to prescribe the powers of the Court; and to provide for matters connected therewith or incidental thereto.

Part I – Preliminary

1. Short title

This Act may be cited as the Supreme Court of Zambia Act.

2. Interpretation

In this Act, unless the context otherwise requires—

"**appellant**" includes applicant;

"**the Court**" means the Supreme Court;

"**judgment**" includes decree, order, conviction, sentence and decision;

"**Master**" means the Master of the Court appointed in pursuance of the provisions of section twenty-nine;

"**practitioner**" has the meaning assigned to it by section two of the Legal Practitioners Act;

[Cap. 30]

"**qualified person**" has the meaning assigned to it by section three of the Legal Practitioners Act;

[Cap. 30]

"**rules of court**" means rules of court made under section twenty-eight;

"**sentence**" includes any order made on conviction not being—

- (a) a probation order or an order for conditional discharge;
- (b) an order under any enactment which enables the Court to order the destruction of an animal; or
- (c) an order made in pursuance of any enactment under which the Court has no discretion as to the making of the order or its terms.

[As amended by No. 31 of 1976]

Part II – Constitution and general powers of the Court

3. Constitution of the Court

- (1) When the Court is determining any matter, other than an interlocutory matter, it shall be composed of such uneven number of Judges, not being less than three, as the Chief Justice may direct.

- (2) The determination of any question before the Court shall be according to the opinion of the majority of the members of the Court hearing the case.

4. Powers of single Judge of the Court

A single Judge of the Court may exercise any power vested in the Court not involving the decision of an appeal or a final decision in the exercise of its original jurisdiction but—

- (a) in criminal matters if any Judge of the Court refuses an application for the exercise of any such power, the person making the application shall be entitled to have his application determined by the Court; and
- (b) in civil matters any order, direction or decision made or given in pursuance of the powers conferred by this section may be varied, discharged or reversed by the Court.

5. Judge not to sit on appeal from his own decision

A Judge of the Court shall not sit on the hearing of an appeal, nor shall he exercise any power under section four in respect of an appeal—

- (a) from any judgment given by himself or any judgment given by any Court of which he was sitting as a member;
- (b) against a conviction or sentence if he was the Judge by or before whom the appellant was convicted.

6. Seal

The Court shall have a seal having a device or impression and bearing an inscription approved by the Chief Justice.

7. Jurisdiction

The Court shall have jurisdiction to hear and determine appeals in civil and criminal matters as provided in this Act and such other appellate or original jurisdiction as may be conferred upon it by or under the Constitution or any other law.

8. Practice and procedure

The jurisdiction vested in the Court shall, as regards practice and procedure, be exercised in the manner provided by this Act and rules of court:

Provided that if this Act or rules of court do not make provision for any particular point of practice and procedure, then the practice and procedure of the Court shall be—

- (i) in relation to criminal matters, as nearly as may be in accordance with the law and practice for the time being observed in the Court of Criminal Appeal in England;
- (ii) in relation to civil matters, as nearly as may be in accordance with the law and practice for the time being observed in the Court of Appeal in England.

9. Execution of judgment of the Court

The process of the Court shall run throughout Zambia and any judgment of the Court shall be executed and enforced in like manner as if it were a judgment of the High Court.

10. Sittings of the Court

- (1) The sittings of the Court shall usually be held at Lusaka or Ndola but may be held at such other place as the Chief Justice may direct.

- (2) The dates of sittings of the Court shall be determined by the Chief Justice.
- (3) The times of sittings of the Court shall be determined by the Chief Justice or, if he is not a member of the Court hearing a case, the next senior Judge of the Court hearing the case.
- (4) At any sitting, the Court shall, subject to the provisions of this Act, be composed of such members as the Chief Justice may direct.

11. Right of audience

In all proceedings before the Court the parties may appear in person or be represented and appear by a practitioner.

Part III – Criminal appeals

12. First appeals

- (1) Any person convicted on a trial by the High Court may appeal to the Court on any matter of fact as well as on any matter of law, and shall be so informed by the Judge at the conclusion of the trial.
- (2) A person convicted by a subordinate court and committed to the High Court for sentence and sentenced by the High Court shall for all purposes connected with his rights of, and procedural matters relating to, appeal be deemed to have been convicted and sentenced on a trial by the High Court, and accordingly an appeal against such conviction and sentence shall lie to the Court.
- (3) If the Director of Public Prosecutions is dissatisfied with a judgment of the High Court in the exercise of its original jurisdiction upon a point of law, he may appeal against such judgment to the Court.
- (4) No appeal shall lie against any sentence the imposition of which is fixed by law.

[As amended by Act [No. 31 of 1976](#)]

13. ***

[Repealed by Act [No. 31 of 1976](#)]

14. Second appeals

- (1) Any party to an appeal to the High Court may appeal to the Court against the High Court judgment with the leave of that court if given at the time when judgment is pronounced, or with the leave of the Court.
- (2) For the purposes of this section, an order made by the High Court in the exercise of its revisional jurisdiction, or a decision of the High Court on a case stated, or a decision of the High Court refusing an application for an appeal to be heard out of time, shall be deemed to be a decision of the High Court in its appellate jurisdiction.
- (3) Where under section three hundred and twenty-four of the Criminal Procedure Code an application for an appeal to be heard out of time has been refused by the High Court, the applicant may apply to the Court for his appeal to be heard by the Court, and if such application is granted the appeal shall be heard by the Court as if it lay direct thereto.

[Cap. 88]

[As amended by Act [No. 26 of 1974](#)]

15. Determination of appeals

- (1) On an appeal against conviction, the Court shall allow the appeal if it is of the opinion that the judgment of the court before which the appellant was convicted or of the High Court in exercise of its appellate jurisdiction should be set aside—
 - (a) on the ground that in all the circumstances of the case it is unsafe or unsatisfactory; or
 - (b) on the ground of a wrong decision on any question of law; or
 - (c) on the ground that there was a material irregularity in the course of the trial;and in any other case shall dismiss the appeal:

Provided that the Court may, notwithstanding that it is of the opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no miscarriage of justice has actually occurred.

- (2) The Court shall, if it allows an appeal against conviction, either quash the conviction and direct a judgment and verdict of acquittal to be entered, or, if the interests of justice so require, order a new trial.
- (3) On any appeal, whether against conviction or sentence, the Court may substitute a judgment of guilty of such other offence as the trial court could have entered, and, in the case of an appeal from a judgment of the High Court in its appellate jurisdiction, the Court shall in addition have power to restore the conviction of the trial court.
- (4) On any appeal, whether against conviction or sentence, the Court may increase or reduce the sentence, or impose such other sentence or make such other order as the trial court could have imposed or made.

[As amended by Act [No. 17 of 1976](#)]

16. Supplementary powers of the Court

The Court may, if it thinks it necessary or expedient in the interests of justice—

- (a) order the production of any document, exhibit, or other thing connected with the proceedings, the production of which appears to it necessary for the determination of the case;
- (b) order any witness who would have been a competent and compellable witness at the trial to attend and be examined before the Court, whether he was or was not called at the trial, or order the examination of any such witness to be conducted in manner provided by rules of court before any Judge of the Court or other person appointed by the Court for the purpose, and allow the admission of any deposition so taken as evidence before the Court;
- (c) receive the evidence, if tendered, of any witness (including the appellant) who is a competent but not compellable witness, and, if the appellant makes application for the purpose, of the husband or wife of the appellant in cases where the evidence of the husband or wife could not have been given at the trial except on such application to the trial court;
- (d) remit the case for further hearing to the court from which the appeal was brought, with such instructions as regards the taking of further evidence or otherwise as appear to it necessary;
- (e) where any question arising at the appeal involves prolonged examination of documents or accounts or any scientific or local investigation which cannot, in the opinion of the Court, conveniently be conducted before the Court, order the reference of the question in manner provided by rules of court for inquiry and report to a special commissioner appointed by the Court, and act upon the report of any such commissioner so far as it thinks fit to adopt it;

- (f) appoint any person with special expert knowledge to act as an assessor in an advisory capacity in any case where it appears to the Court that such knowledge is required for the proper determination of the case;
- (g) issue any warrant necessary for enforcing any order or sentence of the Court; and
- (h) on the application of an appellant and pending the determination of his appeal or application for leave to appeal to the Court, admit the appellant to bail and, in the event of an appellant having been admitted to bail, give any directions which it may consider necessary concerning the time at which the sentence of the appellant shall be resumed or begin to run:

Provided that—

- (i) in no case shall any sentence be increased by reason of or in consideration of any evidence that was not given at the trial; and
- (ii) whenever the Court receives further evidence or gives instructions for the taking of further evidence, it shall make such order as will secure an opportunity to the parties to the proceedings to examine every witness whose evidence is so taken.

17. Time for appealing

- (1) A person who intends to appeal against a judgment of the High Court under this Part shall, within fourteen days of the date of the judgment against which he intends to appeal—
 - (a) give notice of his intention to appeal; or
 - (b) if leave to appeal is required, submit an application for such leave;to the Registrar of the High Court in such manner and form as may be prescribed by rules of court.
- (2) *[Repealed by Act No. 31 of 1976]*
- (3) If the intending appellant is in prison, the aforesaid notice or application, as the case may be, may, within the said period of fourteen days, be given to the officer in charge of the prison, who shall forward it to the Registrar of the High Court.
- (4) The Court may extend the time for giving notice of intention to appeal or of submitting an application for leave to appeal notwithstanding that the time for giving such notice or submitting such application has already expired:

Provided that where sentence of death has been passed, no extension of time shall be granted after the sentence has been confirmed by the President.

[As amended by Act No. 31 of 1976]

18. Stay of execution of sentence of death or corporal punishment

- (1) In the case of a sentence of death or corporal punishment—
 - (a) the sentence shall not be executed until after the expiration of the time within which notice of intention to appeal may be given or, as the case may be, an application for leave to appeal may be submitted;
 - (b) if notice of intention to appeal is so given, the sentence shall not be executed until the appeal has been determined or abandoned;
 - (c) if the application for leave to appeal is so submitted, the application shall be determined as soon as practicable, and the sentence shall not be executed until the application has been refused or the appeal has been determined or abandoned.
- (2) Notwithstanding the provisions of subsection (1), a sentence of corporal punishment imposed or confirmed on appeal by the High Court, or imposed by a subordinate court, may be executed before,

the expiration of the time within which notice of intention to appeal to the Court may be given or, as the case may be, an application for leave to appeal may be submitted, if the person sentenced to such corporal punishment has given written notice to the Master or the Registrar of the High Court or the clerk of that subordinate court, as the case may be, that he wishes the sentence to be carried out without further delay and that he—

- (a) does not intend to appeal or to apply for leave to appeal; or
- (b) has abandoned his appeal or his application for leave to appeal.

19. Right of appellant to be present

- (1) An appellant shall be entitled to be present, if he so desires, at the hearing of his appeal or any application to the Court.
- (2) An appellant who does not appear at the hearing of his appeal by a practitioner may present his case and argument in writing, and any case or argument so presented shall be considered by the Court.
- (3) The power of the Court to pass any sentence under this Act may be exercised notwithstanding that the appellant is for any reason not present.

20. Reservation for consideration of the Court of decisions on exceptions and objections to informations

- (1) If, in the exercise of powers conferred upon the High Court, it thinks fit to reserve for the consideration and determination by the Court any question decided by the High Court on any exception or objection taken to the information preferred against any person on trial before the High Court for any offence, the High Court shall state the question reserved and direct that the question so stated be transmitted to the Master for consideration and determination by the Court.
- (2) The Court shall determine any question reserved for its consideration under subsection (1).
- (3) On the determination by the Court of a question reserved for its consideration in terms of subsection (1), the Court may make an order confirming, amending or setting aside the decision in respect of which the question was reserved and give such directions as the Court thinks fit to give as to the information and the further proceedings before the High Court.

21. Procedure with respect to frivolous or unsubstantial appeals

- (1) If it appears to any Judge of the Court that any notice of an appeal against a conviction is frivolous or vexatious or does not show any substantial ground of appeal, such Judge may direct the Master to refer the appeal to the Court for summary determination, and, when the appeal is so referred, the Court may, if it considers that the appeal is frivolous or vexatious or does not show any substantial ground of appeal and the appeal can be determined without adjourning the same for a full hearing, dismiss the appeal summarily without calling on any person to attend the hearing or to appear for the People thereon.
- (2) The provisions of subsection (1) shall not apply in the case of an appeal by a person upon whom a sentence of death is passed.

22. Provisions as to bail

- (1) Where the High Court has, in exercise of its powers under section three hundred and thirty-six of the Criminal Procedure Code, refused to admit an appellant to bail or to postpone the payment of any fine imposed upon him, the Court may, if it deems fit, on the application of the appellant, and

pending the determination of his appeal or application for leave to appeal to the Court in a criminal matter—

- (a) admit the appellant to bail, or if it does not so admit him, direct him to be treated as an unconvicted prisoner pending the determination of his appeal or of his application for leave to appeal, as the case may be; and
 - (b) postpone the payment of any fine imposed upon him.
- (2) The time during which an appellant, pending the determination of his appeal, is admitted to bail, and, subject to any directions which the Court may give to the contrary in any appeal, the time during which the appellant, if in custody, is treated as an unconvicted prisoner under this section, shall not count as part of any term of imprisonment under his sentence. Any imprisonment of the appellant under the sentence, whether it is the sentence passed by the court of trial or by the High Court in its appellate jurisdiction or the sentence passed by the Court, shall, subject to any directions which the Court may give to the contrary, be deemed to be resumed or to begin to run, as the case requires—
- (a) if the appellant is in custody, as from the day on which the appeal is determined;
 - (b) if the appellant is not in custody, as from the day on which he is received into goal under the sentence.

[Cap. 88]

Part IV – Civil appeals from the High Court

23. Right of appeal in civil cases

Subject to the exceptions and restrictions contained in section twenty-four, an appeal in any civil cause or matter shall lie to the Court from any judgment of the High Court.

24. Restrictions on civil appeals

- (1) No appeal shall lie—
 - (a) from an order allowing an extension of time for appealing from a judgment;
 - (b) from an order of a Judge giving unconditional leave to defend an action;
 - (c) from a judgment given by the High Court in the exercise of its appellate or revisional jurisdiction without the leave of the High Court or, if that has been refused, without the leave of a Judge of the Court;
 - (d) from an order of the High Court or any Judge thereof made with the consent of the parties or from an order as to costs only which by law is left to the discretion of the court without the leave of the court or of the Judge who made the order or, if that has been refused, without the leave of a Judge of the Court;
 - (e) from an order made in chambers by a Judge of the High Court or from an interlocutory order or interlocutory judgment made or given by a Judge of the High Court, without the leave of the Judge or, if that has been refused, without the leave of a Judge of the Court, except in the following cases:
 - (i) where the liberty of the subject or the custody of infants is concerned;
 - (ii) where an injunction or the appointment of a receiver is granted or refused;
 - (iii) in the case of a decision determining the claim of any creditor or the liability of any contributory or the liability of any director or other officer under the Companies Act;

- (iv) in the case of a decree nisi in a matrimonial cause or a judgment or order in any Admiralty action determining liability;
 - (v) in the case of an order on a special case stated under any law relating to arbitration;
[Cap. 388]
 - (f) from an order absolute for the dissolution or nullity of marriage made by a Judge in favour of any party who, having had time and opportunity to appeal from the decree nisi on which the order was founded, has not appealed from that decree.
- (2) An order refusing unconditional leave to defend an action shall not be deemed to be an interlocutory order or interlocutory judgment within the meaning of paragraph (e) of subsection (1).

24A. Appeal in *habeas corpus* proceedings

An appeal shall lie to the Court in any civil proceedings upon application for *habeas corpus* against an order for the release of the person restrained as well as against the refusal of such an order.

[As amended by Act No. 5 of 1979]

25. Powers of the Court on an appeal in civil matters

- (1) On the hearing of an appeal in a civil matter, the Court—
- (a) shall have power to confirm, vary, amend, or set aside the judgment appealed from or give such judgment as the case may require;
 - (b) may, if it thinks it necessary or expedient in the interests of justice—
 - (i) order the production of any document, exhibit or other thing connected with the proceedings, the production of which appears to it necessary for the determination of the case;
 - (ii) order any witness who would have been a competent and compellable witness at the trial to attend and be examined before the Court, whether he was or was not called at the trial, or order the examination of any such witness to be conducted in manner provided by rules of court before any Judge of the Court or before any officer of the Court or other person appointed by the Court for the purpose, and allow the admission of any deposition so taken before the Court;
 - (iii) receive the evidence, if tendered, of any witness (including any party) who is a competent but not compellable witness, and if a party makes application for the purpose, of the husband or wife of that party in cases where the evidence of the husband or wife could not have been given at the trial except on application to the trial court;
 - (iv) remit the case to the High Court for further hearing, with such instructions as regards the taking of further evidence or otherwise as appear to it necessary; and
 - (c) shall, if it appears to the Court that a new trial should be held, have power to set aside the judgment appealed against and order that a new trial be held.
- (2) Whenever the Court gives instructions for the taking of further evidence, it shall make such order as will secure an opportunity to the parties to the proceedings to examine every witness whose evidence is taken.

Part V – Miscellaneous

26. Administration of oaths

- (1) The Court or any judge thereof may require and administer any necessary oath.
- (2) The form of an oath shall be the same, as nearly as may be, as that which is used in the High Court.
- (3) Any person who, by law, is entitled to make an affirmation instead of taking an oath, may do so in any cause or matter in the Court, and shall do so in the form prescribed by law.

27. Warrant for production of appellant before the Court

When the presence of an appellant who is in custody is necessary or desirable at the hearing of his appeal or he exercises the right conferred upon him by section nineteen to be present at the hearing of his appeal, a judge of the Court may issue a warrant for the production of the appellant at the appeal

28. Rules of Court

The Chief Justice may, by statutory instrument, make rules of court for regulating generally the practice and procedure of the Court and with respect to appeals to or reviews by the Court including rules as to the time within which any requirement of the rules is to be complied with, as to the costs of and incidental to any proceedings in the Court and as to the fees to be charged in respect of proceedings therein and generally in regard to any other matter which appears to the Chief Justice to be necessary or desirable.

29. Officers of the Court

- (1) There shall be a Master and such other officers as may be necessary to give effect to the provisions of this Act.
- (2) The Master shall be appointed by the Judicial Service Commission.
- (3) The Registrar of the Court of Appeal immediately prior to the commencement shall be the first Master.

30. ***

[Has had its effect]

31. ***

[Obsolete]