

GOVERNMENT OF ZAMBIA

ACT

No. 14 of 2008

Date of Assent: 24th September, 2008

An Act to amend the Small Claims Court Act

[26th September, 2008

ENACTED by the Parliament of Zambia.

Enactment

1. This Act may be cited as the Small Claims Court (Amendment) Act, 2008, and shall be read as one with the Small Claims Court Act, in this Act referred to as the principal Act.

Short title

Cap. 47

2. Section *two* of the principal Act is amended
(a) by the deletion of the definitions of
"arbitrator" and "award"; and

Amendment
of section 2

(b) by the insertion in the appropriate
places of the following new
definitions:

"commissioner" means a person

appointed by the Commission under section *six*;

"judgment" means, the decision

made by the commissioner under section *twenty* in
favour of either party to a claim; and

"small claim" means, a liquidated claim that does not exceed such
sum as the Chief Justice may, by statutory instrument, specify.

3. Section *four* of the principal Act is amended by the deletion
of the words "One arbitrator" and the substitution therefor of the
words "A commissioner".

Amendment
of section 4

4. The principal Act is amended by the repeal of section *five*
and the substitution therefor of the following new section.

Repeal and
replacement
of section 5

5. (1) The jurisdiction of a small claims court shall be
limited to liquidated claims that do not exceed such sum as
the Chief Justice may, by statutory instrument, specify.

Jurisdiction
of small
Claims court

(2) Notwithstanding the generality of subsection (1), a small claims court shall have jurisdiction in respect of the following causes of action:

- (a) proceedings for the delivery of movable or immovable property whose value does not exceed the amount specified;
- (b) proceedings for debts that are due and payable;
- (c) proceedings for rentals that are due and payable in respect of any premises;
- (d) proceedings for possession against the occupier of any premises where the right of occupation per month does not exceed the sum that the Chief Justice may, by statutory instrument, specify;
- (e) proceedings relating to or arising out of a cheque or an acknowledgement of debt signed by a debtor; and
- (f) counterclaims in respect of any proceedings mentioned in paragraphs (a), (b), (c), (d) or (e).

(3) A claim for interest or costs shall not be taken into account in determining whether a claim falls within the jurisdiction of a small claims court.

(4) A small claims court shall not have jurisdiction in respect of—

- (a) a claim made under customary law;
- (b) an action which is beyond the jurisdiction of the court, notwithstanding any agreement of the parties thereto;
- (c) claims for divorce, custody or maintenance other than arrears in maintenance;
- (d) cases involving the validity of a will;
- (e) a matter in which an injunction is sought;
- (f) a matter in which damages are sought for—
 - (i) defamation;
 - (ii) malicious prosecution or wrongful imprisonment or arrest; or
 - (iii) adultery or seduction;
- (g) an action against a consular officer; or
- (h) an action against a foreign State.

(5) For the purposes of this section “consular officer” means any person appointed as consul general, consul, vice consul or consular agent by a foreign State and holding a valid exequatur or other authorisation to act in Zambia in that capacity.

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| <p>5. The principal Act is amended by the insertion immediately after section <i>five</i> of the following new section:</p> <p style="padding-left: 40px;">5A. Any provision in an agreement purporting to exclude the jurisdiction of a small claims court shall be of no effect.</p> | <p>Insertion of new section 5A</p> <p>Agreement to exclude jurisdiction of court to be of no effect</p> |
| <p>6. Section <i>six</i> of the principal Act is amended by the deletion of the word “arbitrators” and the substitution therefor of the word “commissioners”.</p> | <p>Amendment of section 6</p> |
| <p>7. The principal Act is amended by the insertion immediately after section <i>six</i> of the following new section:</p> <p style="padding-left: 40px;">6A. (1) In an action in which the sum claimed does not exceed the jurisdiction of the court and is the balance of an account, the court may enquire into and hear evidence upon the whole account, even though that account relates to items and transactions exceeding the jurisdiction of the court.</p> <p style="padding-left: 40px;">(2) Where the amount claimed or other relief sought does not exceed the jurisdiction of the court, the court shall not be deprived of that jurisdiction merely because it is necessary for the court, in order to arrive at a decision, to give a finding upon a matter beyond its jurisdiction.</p> <p style="padding-left: 40px;">(3) The plaintiff may only claim for the relief of specific performance if such claim is accompanied by an alternative claim for payment of quantified damages that the plaintiff has suffered as a result of the defendant’s failure to comply with the plaintiffs obligations.</p> | <p>Insertion of new section 6A</p> <p>Incidental Jurisdiction</p> |
| <p>8. The principal Act is amended by the repeal of section <i>seven</i> and the substitution therefor of the following new section:</p> <p style="padding-left: 40px;">7. A person shall not be appointed as a commissioner unless the person is a legal practitioner of not less than five years standing.</p> | <p>Repeal and replacement of section 7</p> <p>Qualification for appointment as commissioner</p> |
| <p>9. Section <i>eight</i> of the principal Act is amended by the deletion of the words “An arbitrator” and the substitution therefor of the words “A commissioner”.</p> | <p>Amendment of section 8</p> |

Repeal and replacement of section 9
Conflict of interest

10. The principal Act is amended by the repeal of section *nine* and the substitution therefor of the following new section:

9. A person shall not sit as a commissioner in any matter in which that person is a party, or in which that person has a direct or indirect pecuniary or personal interest.

Amendment of section 10

11. Section *ten* of the principal Act is amended by the deletion of subsection (1) and the substitution therefor of the following subsection:

(1) The Commission may appoint such number of officers as the Commission may consider necessary for the administration of this Act.

Insertion of new section 12A

12. The principal Act is amended by the insertion immediately after section *twelve* of the following new section:

12A. (1) An individual may institute an action in the court.

Individual may commence action

(2) A body corporate or unincorporate body may become a party to an action as a defendant.

Insertion of new sections 16A, 16B, 16C and 16D

13. The principal Act is amended by the insertion immediately after section *sixteen* of the following new sections:

Institution of actions

16A. (1) Prior to the commencement of an action in the Court, the plaintiff shall cause to be issued and served upon the defendant a letter of demand requiring the defendant, within fourteen days of the receipt of such letter, to admit or deny the claim.

(2) A defendant shall, within fourteen days of receiving a letter of demand, reply to the letter, and shall indicate whether the defendant admits or denies the claim.

(3) The Clerk of Court shall —

(a) upon receiving a reply from a defendant, or in default thereof upon receiving proof of service of a letter of demand from a plaintiff; and

(b) upon the expiration of fourteen days from the date of service;

cause a Notice of Claim to be issued to the defendant.

(4) A Notice of Claim issued under subsection (3) shall be served upon a defendant in accordance with rules 3 and 4 of the rules of court.

<p>16B. A claim exceeding the jurisdiction of a small claims court shall not be split with the object of recovering it in more than one action if the parties to those actions and the point at issue in those actions would be the same.</p>	<p>Prohibition of splitting of claim</p>
<p>16C. (1) A plaintiff may at any time before or during the hearing of the plaintiff's action, withdraw the plaintiff's claim with the leave of court, and on such conditions as the court may determine.</p> <p>(2) A plaintiff may, where proceedings are withdrawn under subsection (1), institute a fresh action with the leave of court.</p>	<p>Withdrawal of claim</p>
<p>16D. A party may, in order to bring a claim or counter claim within the jurisdiction of a small claims court, abandon such part of the claim or counter claim as may be necessary.</p>	<p>Abandonment of claim</p>
<p>14. Section <i>eighteen</i> of the principal Act is amended in subsection (3) by the deletion of the words " the court may arrest him for contempt of court" and the substitution therefor of the words "the court may proceed to hear the matter and may enter judgment in default of appearance and defence ".</p>	<p>Amendment of section</p>
<p>15. Section <i>nineteen</i> of the principal Act is amended by the deletion of the word "claimant" and the substitution therefor of the word "plaintiff".</p>	<p>Amendment of section</p>
<p>16. The principal Act is amended by the insertion immediately after section <i>nineteen</i> of the following new section:</p> <p style="padding-left: 40px;">19A. (1) The court may, at any time before judgment, grant leave to amend any notice of claim or other document in connection with a case on application by a party:</p> <p style="padding-left: 80px;">Provided that an amendment shall not be made where a party other than the party applying for the amendment may be prejudiced by the amendment.</p> <p>(2) An amendment may be made upon such conditions as the court may consider appropriate.</p>	<p>Insert new section</p> <p>Amendment of do by 1 court</p>
<p>17. Section <i>twenty</i> of the principal Act is amended —</p> <p>(a) in paragraph (b) of subsection (1) by the deletion of the words " make an award " and the substitution therefor of the words " render a judgment ";</p> <p>(b) by the deletion of subsection (2) and the substitution therefor of the following new subsection:</p>	<p>Amendment of section</p>

“(2) A commissioner shall, in a judgment or dismissal, as the case may be, made by the commissioner under this section state the reasons upon which such judgment or dismissal is based and shall —

(a) in the case of a monetary judgment indicate—

- (i) when the sum is due and payable;
- (ii) that the money shall be paid directly to the judgment creditor;
- (iii) the manner of payment, whether by instalments or by one lump sum; and
- (iv) the period of payment;

(b) in the case of restitution, the period within which the restitution of property should be made; and

(c) in the case of specific performance of a contract, the period within which such performance should be done.

Insertion of
new
section 20A

18. The principal Act is amended by the insertion immediately after section *twenty* of the following new section:

Review,
variation
and
correction of
judgment

20A. A Court may, for good cause shown, on its own motion, and in the absence of any party—

- (a) review or vary any judgment made by it;
- (b) review or vary any judgment obtained by fraud or mistake; and
- (c) correct any latent errors in any judgment.

Repeal and
replacement
of section 21

19. The principal Act is amended by the deletion of section *twenty one* and the substitution therefor of the following:

Enforcement
of judgement
Cap. 27

21. The provisions of the High Court Act shall apply, with the necessary modifications, to the enforcement of judgements made under this Act.

Insertion of
new sections
22A and 22B

20. The principal Act is amended by the insertion immediately after section *twenty-two* of the following new sections:

Review of
Judgement
by panel of
Commissioners

22A. (1) A party may, where a court has adjudicated upon a matter, bring the proceedings on review before a panel of three commissioners within thirty days of the judgement, on any of the following grounds:

- (a) absence of jurisdiction of the court;
- (b) that the party was not given an opportunity to make representation to the court;
- (c) corruption, fraud, malice or interest in the cause, on the part of the court; and
- (d) gross irregularity with regard to the proceedings:

Provided that an application for review by a party shall not operate as a stay of execution.

(2) Subsection (1) shall not prejudice the right of an applicant to apply to the panel of commissioners for a stay of execution.

22B. (1) A panel of commissioners may, on review of a judgment, confirm or set aside a judgment upon satisfying itself that any of the grounds in section *twenty two B* have been proved. Powers of panel of commissioners

(2) A panel of commissioners shall, where it sets aside a judgment under subsection (1), hear the matter *de novo*.

21. The principal Act is amended by the repeal of section *twenty four* and the substitution therefor of the following new section. Repeal and replacement of section 24

24. (1) A small claims court may issue a writ of execution against any person who has failed to pay a sum due and payable to a party in proceedings before it. Writ of execution

(2) A writ of execution issued under this Act shall be in the prescribed form and shall be executed by the Sheriff's office.

(3) All property whatsoever, real or personal, belonging to a party against whom execution is to be enforced, and whether held in the party's own name or by another person in trust for the party or on the party's own behalf is liable to attachment and sale in execution of the judgment:

Provided that this subsection shall not apply to—

- (a) the wearing apparel and bedding of a party against whom execution is to be enforced or the party's family; and
- (b) the tools and implements of trade of a party against whom execution is to be enforced.

(4) A warrant of distress shall not apply to property which is claimed by a third party, or in respect of which any third party has an interest.

(5) Where a writ of execution issued under this section is to be executed at a place more than fifty kilometers from the place where the small claims court sat, that court may forward the writ by post, by hand or otherwise, to the sheriff's office within whose territorial jurisdiction it is to be executed.

(6) Where there is no property to be seized the Court may, at any time, on application by a party issue a summons to the judgment debtor calling on the judgment debtor to appear and be examined respecting the judgement debtor's ability to satisfy the judgment, as to the existence and value of the judgement debtor's property and of any debts owing to the judgment debtor, and the judgment debtor may be examined as to the same upon oath.

- Amendment of section 25
- 22.** Section *twenty-five* of the principal Act is amended
- (a) by the deletion of paragraphs (a) and (g);
- (b) in paragraph (f) by the deletion of the word "arbitrator" and the substitution therefor of the word "commissioner"; and
- (c) by the renumbering of paragraphs (b), (c), (d), (e), (f) and (h) as paragraphs (a), (b), (c), (d), (e) and (f), respectively.
- Amendment of section 26
- 23.** Section *twenty-six* of the principal Act is amended by the deletion of the words "warrant of distress" and the substitution therefor of the words "writ of execution".
- 24.** Section *twenty-seven* of the principal Act is amended by the deletion of the words "an arbitrator" wherever they appear and the substitution therefor of the words "a commissioner".
- Amendment of section 27
- 25.** Section *twenty-nine* of the principal Act is amended in subsection (2) by the deletion of the word "claimant" and the substitution therefor of the word "plaintiff".
- Repeal and replacement of section 30
- 26.** The principal Act is amended by the repeal of section *thirty* and the substitution therefor of the following:
- 30.** No action or other proceedings shall lie or be instituted against a commissioner or any other officer of a small claims court for, or in respect of, any act or thing done or omitted to be done in good faith in the exercise or purported exercise of the functions of the officer under this Act.
- Immunity of commissioners and officers of small claims courts

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27. Section *thirty-one* of the principal Act is amended by the deletion of paragraph (a) and the substitution therefor of the following:

Amendment
of section
31

(a) set out the jurisdiction of a small claims court;

28. The principal Act is amended by the insertion immediately after section *thirty-one* of the following new section:

Insertion of
new section
31A

31A. (1) The conduct of commissioners shall be governed by the Judicial Code of Conduct Act, 1999.

Code of
conduct of
commissioners
Act No. 19
of 1999

(2) Notwithstanding the provisions of subsection (1), sections *sixteen*, *seventeen* and *eighteen* of the Judicial Code of Conduct Act, 1999, shall not apply to the conduct of commissioners.

Act No. 19
of 1999
