

Zambia

High Court Act

Chapter 27

Legislation as at 31 December 1996

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Zambia

High Court Act

Chapter 27

Commenced on 7 November 1960

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[41 of 1960; 43 of 1961; 70 of 1963; 25 of 1964; 20 of 1966; 30 of 1967; 24 of 1968; 38 of 1969; 3 of 1972; 13 of 1994; Government Notices 303 of 1964; 497 of 1964; Statutory Instrument 63 of 1964]

An Act to amend the law with respect to the jurisdiction and business of the High Court, and with respect to the officers and offices of the High Court, and otherwise with respect to the administration of justice and the validation of certain acts.

Part I – Preliminary

1. Short title

This Act may be cited as the High Court Act.

2. Interpretation

(1) In this Act, unless the context otherwise requires-

"action" means a civil proceeding commenced by writ or in such other manner as may be prescribed by rules of court, but does not include a criminal proceeding by the People;

"cause" includes any action, suit or other original proceeding between a plaintiff and a defendant and any criminal proceeding;

"Clerk of Sessions" means an officer of the Court appointed as a Clerk of Sessions under the provisions of subsection (3) of section nineteen;

"committed for trial" includes every case of a person ordered to be tried on information before the Court, whether imprisoned or admitted to bail;

"Court" means the High Court;

"defendant" includes every person, other than a plaintiff, served with any writ of summons or process, or served with notice of, or entitled to attend, any proceedings in a civil cause, and also every person charged under any process of the Court with any crime or offence;

"district registry" means a district registry established under the provisions of section thirty-nine;

"Judge" includes the Chief Justice and any Puisne Judge of the Court;

"judgment" includes a decree;

"matter" includes every proceeding in the Court not in a cause;

"plaintiff" includes every person asking any relief (otherwise than by way of counter-claim as a defendant) against any other person by any form of proceeding, whether writ, petition or otherwise;

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

[Cap. 30]

"**principal registry**" means the office of the Registrar at Lusaka;

[Cap. 30]

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

"**Session**" means a sitting of the Court at a time and place appointed under the provisions of section nineteen for the purpose of transacting any of the business set forth in the said section;

"**Sessions Town**" means Lusaka, Ndola, and any place appointed under the provisions of paragraph (b) of subsection (1) of section nineteen;

"**suit**" includes action.

- (2) Any reference in this Act to any officer of the Court by title shall, unless the context otherwise requires, mean the person appointed to the office concerned under the provisions of this Act, and shall include any person lawfully performing the functions of such office and, to the extent that any person is empowered to exercise part only of such functions, such person.

[As amended by S.I. No. 63 of 1964]

Part II – Constitution of the Court

3. Establishment of Court

- (1) The High Court, as constituted by the Constitution, shall be the High Court of Judicature for Zambia.

[Cap. 1]

- (2) The Court shall be deemed to be duly constituted during, and notwithstanding, any vacancy in the office of the Chief Justice or of any Puisne Judge.

[As amended by S.I. No. 63 of 1964]

4. Powers and jurisdiction of Judges

Subject to any express statutory provision to the contrary, all the Judges shall have and may exercise, in all respects, equal power, authority and jurisdiction, and, subject as aforesaid, any Judge may exercise all or any part of the jurisdiction by this Act or otherwise vested in the Court, and, for such purpose, shall be and form a Court.

5. Trial with assessors

The trial of any civil cause or matter may, if the presiding Judge so decides, be held with the aid of assessors, the number of whom shall be two or more as to such Judge seems fit.

- (2) Where a trial is held with the aid of assessors under this section, all the provisions of the Criminal Procedure Code relating to assessors shall, so far as the same are applicable and subject to any rules of court, apply to such trial.

[Cap. 88]

[Please note: numbering as in original.]

Part III – Officers of the Court

6. Registrars

- (1) There shall be a Registrar of the High Court and one or more Deputy Registrars, who shall be appointed by the Judicial Service Commission.
- (2) The Public Service Commission may appoint Assistant Registrars, Deputy Assistant Registrars and other officers of the Court.
- (3) No person shall be appointed to be or to act as Registrar or Deputy Registrar unless he is a qualified person.

[As amended by G.N. No. 303 of 1964]

7. Powers, etc., of Registrar and other officers of the Court

- (1) The Registrar and Deputy Registrars shall, subject to any rules of court, have the same jurisdiction, powers and duties as a Master of the Supreme Court of Judicature, and a Registrar of the High Court, in England, and, in addition, shall have such further jurisdiction, powers and duties as the Chief Justice may by rule prescribe.
- (2) Officers of the Court other than the Registrar, Deputy Registrars and District Registrars shall have such jurisdiction and powers as the Chief Justice may by rule prescribe.
- (3) Rules made under the provisions of this section may make provision for and concerning appeals from decisions of the Registrar, Deputy Registrars and other officers of the Court.
- (4) Subject to the general or special directions of the Chief Justice or to the directions of the Court in any particular cause or matter, the manner in which the Deputy Registrars and other officers of the Court carry out the duties imposed upon them by this or any other written law or otherwise shall be under the control and superintendence of the Registrar.

8. Directions by the Chief Justice as to duties and functions

The Chief Justice may give such directions as he thinks fit as to the duties to be carried out by, and for the apportionment of functions among, the officers of the Court, and, without prejudice to the generality of the power hereby conferred, such directions may specify, either by name or office, the officers of the Court who shall be responsible for the issue of summonses, warrants and writs of execution, for the registration of orders and judgments, for the taxing of bills of costs, for the keeping of the records of the proceedings of the Court, and for the custody of and other matters relating to fines, fees and other moneys paid into or out of the Court.

Part IV – Jurisdiction and law

9. Jurisdiction

- (1) The Court shall be a Superior Court of Record, and, in addition to any other jurisdiction conferred by the Constitution and by this or any other written law, shall, within the limits and subject as in this Act mentioned, possess and exercise all the jurisdiction, powers and authorities vested in the High Court of Justice in England.

[Cap. 1]

- (2) The jurisdiction vested in the Court shall include the judicial hearing and determination of matters in difference, the administration or control of property or persons, and the power to appoint or

control guardians of infants and their estates, and also keepers of the persons and estates of idiots, lunatics and such as, being of unsound mind, are unable to govern themselves and their estates.

[As amended by S.I. No. 63 of 1964]

10. 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 the Criminal Procedure Code, or by any other written law, or by such rules, order or directions of the Court as may be made under this Act, or the said Code, or such written law, and in default thereof in substantial conformity with the law and practice for the time being observed in England in the High Court of Justice.

[Cap. 88]

[As amended by No. 25 of 1964]

11. Probate and divorce jurisdiction

- (1) The jurisdiction of the Court in divorce and matrimonial causes and matters shall, subject to this Act and any rules of court, be exercised in substantial conformity with the law and practice for the time being in force in England.
- (2) The law and practice for the time being in force for the Probate, Divorce and Admiralty Divisions of the High Court of Justice in England with respect to the Queen's Proctor shall, subject to rules of court and to any rules made under the provisions of the Colonial and Other Territories (Divorce Jurisdiction) Acts, 1926 to 1950, of the United Kingdom, apply to the Attorney-General.
- (3) The jurisdiction of the Court in probate causes and matters shall, subject to this Act and any rules of court, be exercised in substantial conformity with the law and practice in force in England on the 17th August, 1911 (being the commencement of the Northern Rhodesia Order in Council, 1911).
- (4) No probate of a will or letters of administration granted prior to the commencement of this Act to any person shall be invalid by reason only that the right to the grant was determined in accordance with any law in force in England after the 17th August, 1911.
- (5) No suit or other legal proceedings shall be instituted against any person by reason only that the deceased person's estate was administered in accordance with the law in force in England after the 17th August, 1911.

[As amended by No. 70 of 1963]

12. Rules as to application of English statutes

- (1) All statutes of the Parliament of the United Kingdom applied to Zambia shall be in force so far only as the limits of the local jurisdiction and local circumstances permit.
- (2) For the purpose of facilitating the application of the statutes referred to in subsection (1), it shall be lawful for the Court to construe the same with such verbal alterations, not affecting the substance, as may be necessary to make the same applicable to the proceedings before the Court.
- (3) Every Judge or officer of the Court having or exercising functions of the like kind or analogous to the functions of any Judge or officer referred to in any statute mentioned in subsection (1), shall be deemed to be within the meaning of the provisions thereof relating to such last-mentioned Judge or officer, and whenever the Great Seal or any other seal of a court is mentioned in any such statute it shall be read as if the seal of the Court or of a district registry, as the case may be, were substituted therefor.

13. Law and equity to be concurrently administered

In every civil cause or matter which shall come in dependence in the Court, law and equity shall be administered concurrently, and the Court, in the exercise of the jurisdiction vested in it, shall have the power to grant, and shall grant, either absolutely or on such reasonable terms and conditions as shall seem just, all such remedies or reliefs whatsoever, interlocutory or final, to which any of the parties thereto may appear to be entitled in respect of any and every legal or equitable claim or defence properly brought forward by them respectively or which shall appear in such cause or matter, so that, as far as possible, all matters in controversy between the said parties may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters avoided; and in all matters in which there is any conflict or variance between the rules of equity and the rules of the common law with reference to the same matter, the rules of equity shall prevail.

14. Execution of instruments by order of the Court

Where any person neglects or refuses to comply with a judgment or order directing him to execute any conveyance, contract or other document, or to endorse any negotiable instrument, the Court may, on such terms and conditions, if any, as may be just, order that the conveyance, contract or other document shall be executed or that the negotiable instrument shall be endorsed by such person as the Court may nominate for that purpose, and a conveyance, contract, document or instrument so executed or endorsed shall operate and be for all purposes available as if it had been executed or endorsed by the person originally directed to execute or endorse it.

15. Form of writs, etc

All writs, precepts and mandatory process to be used, issued or awarded by the Court shall run and be in the name of the President, and shall be sealed with the seal of the Court.

[As amended by S.I. No. 63 of 1964]

16. Restriction of vexatious actions

- (1) If, on application made by the Attorney-General under this section, the Court is satisfied that any person has habitually and persistently and without any reasonable ground instituted vexatious legal proceedings, whether in the Court or in any subordinate court, and whether against the same person or against different persons, the Court may, after hearing such person or giving him an opportunity of being heard, order that no legal proceedings shall, without leave of the Court or a Judge, be instituted by him in any court, and that any legal proceedings instituted by him in any court before the making of such order shall not be continued by him without such leave, and such leave shall not be given unless the Court or a Judge is satisfied that the proceedings are not an abuse of the process of the Court and that there is *prima facie* ground for such proceedings.
- (2) A copy of any order made under the provisions of this section shall be published in the *Gazette*.

[As amended by No. 30 of 1967]

17. Appeals in civil matters

- (1) Civil appeals from subordinate courts shall be heard by one Judge except where in any particular case the Chief Justice shall direct that the appeal shall be heard by two Judges.
- (2) Where an appeal is heard by a bench of two Judges under the provisions of this section and they are divided in opinion, the appeal shall be dismissed.

17A. Completion of proceedings

- (1) Where the presiding Judge is, on account of illness, death, relinquishment or cesser of jurisdiction or any other similar cause, unable to deliver a judgment already prepared by him, then the Chief

Justice may direct that another Judge of the High Court shall deliver in open court the judgment prepared by the presiding Judge and shall, thereafter, complete the proceedings of the case as if he had himself heard and determined the case:

Provided that the judgment shall be dated and signed by the Judge at the time of delivering it.

- (2) In any case where a Judge has been appointed (whether before or after the * commencement of Act [No. 3 of 1972](#)) to be or to act as the Supreme Court Judge, he shall complete any proceedings already commenced before him, and for this purpose he shall be deemed to retain the position and powers which he held immediately before his being so appointed.

* 30th March, 1972.

[No. 3 of 1972]

Part V – Sittings and distribution of business

18. Place of sitting

The sittings of the Court shall usually be held in such buildings within Zambia as the Chief Justice may assign as Court Houses for that purpose, but in case the Court shall sit in any other building or place within the limits of jurisdiction for the transaction of legal business, the proceedings shall be as valid, in every respect, as if the same had been held in any such Court House.

[As amended by G.N. No. 303 of 1964]

19. Sessions

- (1) The Chief Justice may by statutory order under his hand appoint-
- (a) the times at which Sessions shall normally be held in Lusaka, Ndola, Kitwe, Livingstone, Mansa, Solwezi, Kabwe, Mongu, Kasama and Chipata for the trial of persons committed for trial before the Court by subordinate courts within such Provinces or Districts as may be so appointed; and
 - (b) the places, other than Lusaka, Ndola, Kitwe, Livingstone, Kabwe, Mongu, Kasama, Chipata, Mansa and Solwezi and the times at which Sessions shall normally be held for the trial of persons committed for trial before the Court by subordinate courts within such Provinces or Districts as may be so appointed, and for the trial of civil cases and the disposal of all other legal business pending within such Provinces or Districts.
- (2) A Judge may, whenever the business of the Court shall so require, by order under his hand appoint-
- (a) the time at which a special Session shall be held at any Sessions Town for the purpose of dealing with any of the matters mentioned in subsection (1); or
 - (b) the place, other than a Sessions Town, and the time at which a special Session shall be held for such purposes as such Judge shall specify.
- (3) The Chief Justice may appoint an officer of the Court to be the Clerk of Sessions in respect of any particular Session, or in respect of any group or series of Sessions or in respect of any Sessions held by a particular Judge.

20. Special provisions as to Lusaka, and all Courts with Resident Judges and District Registrars

- (1) Subject to any rules of court relating to sittings and vacations, the Court shall be open throughout the year in Lusaka, all Courts with Resident Judges and in district registries, except on Sundays and public holidays, for the transaction of general legal business pending therein other than trial on information of criminal cases, and the Court may at any time hear and determine any causes

or matters pending in the Court, other than such criminal cases, upon notice to the parties and otherwise as shall be determined by rules of court or as shall seem just and reasonable.

- (2) Whenever it appears to the Chief Justice that it is expedient that any criminal matter arising out of proceedings in any subordinate court in any Province or District other than those appointed under the provisions of paragraph (a) of subsection (1) of section nineteen should be heard and determined at Lusaka or any other Court with a Resident Judge the Chief Justice may direct that such matter shall be so heard and determined:

Provided that, in the case of a criminal appeal, whether by way of case stated or otherwise, the appellant shall, except where the Chief Justice has directed that such appeal shall be heard by two Judges, be entitled, by written notice to the Court, to require that such appeal shall be heard and determined at the next Session to be held in respect of the Province or District concerned.

21. Adjournment of Court, etc., in absence of Judge

In case the Judge before whom any cause or matter is to be heard or by whom any Session is to be held for any reason is unable or fails to attend on the day appointed, and no other Judge attends in his stead, the Court or Session shall stand adjourned from day to day until a Judge shall attend or until the Court or Session shall be adjourned or closed by order under the hand of a Judge or an officer of the Court or of a magistrate.

Part VI – Powers of transfer

22. Transfer in criminal cases

The provisions of this Part as to the transfer of causes and matters shall apply to criminal causes only so far as the same are not inconsistent with the provisions of the Criminal Procedure Code relating to the transfer of such causes.

[Cap. 88]

23. Transfer between Judges, etc.

- (1) Any cause or matter may, at any time or at any stage thereof, and either with or without the application of any of the parties thereto, be transferred from one Judge to another Judge by an order of the Judge before whom the cause or matter has come or been set down:

Provided that no such transfer shall be made without the consent of the Judge to whom it is proposed to transfer such cause or matter.

- (2) Any cause or matter may, at any time or at any stage thereof, and either with or without the application of any of the parties thereto, be transferred by the Court or a Judge from any subordinate court to any other subordinate court or to the Court, or from the Court to any subordinate court, or from any Session or sitting of the Court to any other Session or sitting.
- (3) A transfer to a subordinate court under the provisions of subsection (2) shall take effect notwithstanding the provisions of section four of the Subordinate Courts Act, and for the purpose of any such transfer the subordinate court concerned shall be deemed to have jurisdiction throughout Zambia, but no such transfer shall be deemed to enlarge the limits set upon the civil jurisdiction of subordinate courts by the provisions of Part III of the said Act or to confer any jurisdiction in excess thereof.

[Cap. 28]

- (4) Where any transfer has been made under the provisions of subsection (2), any person affected by such transfer may make application to the Court or to the Judge, as the case may be, making such transfer for an order setting aside such transfer or for an order transferring the cause or matter to the subordinate court of some District other than that to which it was first transferred,

or to the Court, and the Court or the Judge shall, on such application, make such order as, in the circumstances, may be just and reasonable.

[As amended by No. 25 of 1964]

24. Transfer to local courts

- (1) Any cause or matter may, at any time or at any stage thereof, and either with or without the application of any of the parties thereto, be transferred by the Court or a Judge from the Court to any local court recognised under the provisions of the Local Courts Act having jurisdiction over such cause or matter.
- (2) Before making any order under the provisions of subsection (1), the Court or the Judge shall satisfy himself that the making of such order will not be contrary to the interests of justice or cause undue inconvenience to the parties, and shall record his reasons for ordering such transfer, and the fact of such transfer shall be recorded in the appropriate Court register.

[As amended by No. 25 of 1964]

[Cap. 29]

25. Manner of transfer

The powers of transfer conferred by this Part shall be exercised by means of an order under the hand of a Judge or the Registrar and the seal of the Court, and any such order may apply to any particular cause or matter in dependence or generally to all such causes or matters as may be described in such order, and, in the latter case, may extend to future causes or matters as well as to such as may, at the time of the making of such order, be in dependence:

Provided that such power of transfer in any particular cause or matter may, in any case of urgency, be exercised by means of a telegraphic communication from the Judge or the Registrar concerned followed by a subsequent order as required by this section, and any such telegraphic communication shall have effect as if it were an order under the hand of a Judge or the Registrar and the seal of the Court.

[As amended by No. 25 of 1964]

26. Effect of order of transfer

Every order of transfer made under this Part shall operate as a stay of proceedings before the court or Judge from which or from whom the proceedings are to be transferred in any cause or matter to which such order is applicable, and the process and proceedings in every such cause or matter, and an attested copy of all entries in the books of the court from which transfer is made shall, where necessary, be transmitted to the court or Judge to which or to whom the same shall be transferred, and such cause or matter shall be continued, heard and determined by such court or Judge.

Part VII – Evidence

27. Summoning and compelling attendance of witnesses

- (1) In any suit or matter, and at any stage thereof, the Court, either of its own motion or on the application of any party, may summon any person within the jurisdiction to give evidence, or to produce any document in his possession or power, and may examine such person as a witness and require him to produce any document in his possession or power, subject to just exceptions.
- (2) If any person summoned as in subsection (1) provided, having reasonable notice of the time and place at which he is required to attend and after tender of his reasonable travelling expenses to and from the Court, fails to attend accordingly and does not excuse his failure to the satisfaction of the Court, he shall, independently of any other liability, be guilty of a contempt of court, and may be punished therefor, and may be proceeded against by warrant to compel his attendance.

- (3) Nothing in this section contained shall be construed so as to make it lawful in any criminal proceeding for any person to refuse or fail to attend as a witness or to give evidence on the ground that his expenses have not first been paid or provided for.

28. Refusal to be sworn or to give evidence

If, in any suit or matter, any person, whether appearing in obedience to a summons or brought up under warrant, being required to give evidence, refuses to take an oath or make an affirmation in lieu thereof, or to answer any question lawfully put to him, or to produce any document in his possession or power, and does not excuse his refusal to the satisfaction of the Court, he shall independently of any other liability, be guilty of a contempt of court, and the Court may, by warrant, commit him to prison, there to remain until he consents to take the oath or make an affirmation, or to answer duly, or to produce any such document, as the case may be.

29. Evidence of bystander

Any person present in court, whether a party or not in a cause or matter, may be compelled by the Court to give evidence or to produce any document in his possession or power, in the same manner and subject to the same rules as if he had been duly summoned to attend and give evidence or to produce such document, and may be dealt with under the provisions of section twenty-eight for any refusal to obey the order of the Court.

30. Evidence of prisoners

A Judge may issue a warrant under his hand to bring up any person confined as a prisoner under any sentence or otherwise, to be examined as a witness in any cause or matter depending in the Court, and the gaoler or person in whose charge such prisoner may be shall obey such warrant by bringing up such prisoner in custody and delivering him to an officer of the Court:

Provided that this section shall not apply in any case to which section sixty-four of the Prisons Act applies.

[Cap. 97]

31. Allowances to witnesses

- (1) It shall be lawful for the Court, in civil as well as criminal proceedings, to order and to allow to all persons required to attend or be examined as witnesses such sum of money as the Chief Justice may, by rule made with the concurrence of the Minister responsible for finance, prescribe, as well for defraying the reasonable expenses of such persons as for allowing them a reasonable compensation for their trouble and loss of time.
- (2) All sums of money allowed under the provisions of this section shall be payable, in civil proceedings, by the party on whose behalf the witness is called, and shall be recoverable as ordinary costs of suit unless the Court shall otherwise order, and in criminal proceedings they shall, where not ordered to be paid by the person convicted or the prosecutor, be paid out of the general revenues of the Republic.

32. Commissioners of the Court

- (1) A Judge may, in respect of any proceedings in the Court, appoint any person or persons to be a Commissioner or Commissioners for taking affidavits and declarations and receiving production of documents, or for taking and receiving the evidence of witnesses on interrogatories or otherwise.
- (2) Any order of the Court or of a Judge for the attendance and examination of witnesses or the production of documents before any Commissioner appointed under the provisions of this section and within the jurisdiction of the Court shall be enforced in the same manner as an order to attend and be examined or produce documents before the Court.

33. Inspection

In any cause or matter, the Court may make such order for inspection by the Court, the parties or witnesses of any real or personal property the inspection of which may be material to the determination of the matter in dispute, and may give such directions with regard to such inspection as to the Court may seem fit.

34. Evidence of African customary law and assessors thereof

- (1) The Court may, in any cause or matter in which questions of African customary law may be material to the issue-
 - (a) call as witnesses thereto chiefs or other persons whom the Court considers to have special knowledge of African customary law;
 - (b) call any such chiefs or persons to its assistance as assessors of African customary law;
 - (c) consult, if it shall think fit and, to such extent as to it seems proper, give effect to any book or publication which the Court shall consider to be an authority on African customary law.
- (2) It shall be the duty of assessors called under the provisions of subsection (1) to advise the Court on all matters of African customary law which may arise in the cause or matter concerned, and to tender their opinions to the Court on such cause or matter generally, but in reaching its decision the Court shall not be bound to conform to such opinions.
- (3) Assessors called under the provisions of subsection (1) shall be paid such fees and allowances as the Chief Justice may, by rule made with the concurrence of the Minister responsible for finance, determine, and such fees and allowances shall be paid out of the general revenues of the Republic unless the Court, in any particular civil cause or matter, orders that they shall be costs in the proceedings concerned.

35. Record of evidence, etc

- (1) Save as hereinafter in this section provided, no person shall be entitled as of right at any time or for any purpose to inspection or a copy of a record of evidence given in any case before the Court, or to a copy of the notes of the Court, save as may be expressly provided by rules of court.
- (2) Any party to any cause or matter before the Court shall, on payment of such fee as may be prescribed by rules of court, be entitled to a copy of the record of evidence given in such cause or matter.
- (3) The Director of Public Prosecutions shall, without payment of fee, be entitled to the record of evidence given in any criminal proceedings before the Court.

[As amended by S.I. No. 63 of 1964]

36. Oaths, etc

- (1) Whenever an oath is required to be taken under the provisions of this or any other law, or in order to comply with any such law, the following provisions shall apply:
 - (a) The person taking the oath shall hold, if a Christian, a copy of the Gospels of the Four Evangelists or of the New Testament, or, if a Jew, a copy of the Old Testament, in his uplifted right hand, or, if he be physically incapable of so doing, he may hold such copy otherwise, or, if necessary such copy may be held before him by the officer administering the oath, and shall say or repeat after such officer the words "I swear by Almighty God that . . ." followed by the words of the oath prescribed by law or by the practice of the court, as the case may be:

Provided that if any person desires to take the oath in the form and manner in which an oath is usually administered in Scotland, he shall be permitted to do so.

- (b) If the person taking the oath is neither a Christian nor a Jew, he may take the oath in any manner which he declares to be, or accepts as, binding on his conscience or which is lawful according to any law, and in particular he may do so by raising his right hand and saying or repeating after the officer administering the oath the words "I swear by Almighty God that . . ." followed by the words of the oath prescribed by law or by the practice of the court, as the case may be:
- Provided that if the person taking the oath is physically incapable of raising his right hand, he may say or repeat the words of the oath without raising his right hand.
- (c) If any person shall express any objection to taking an oath or desires to make an affirmation in lieu thereof, he may make such affirmation without being further questioned as to the grounds of such objection or desire, or otherwise, and in such case there shall be substituted for the words "I swear by Almighty God" aforesaid the words "I do solemnly and sincerely affirm" and such consequential variations of form as may be necessary shall thereupon be made.
- (2) Notwithstanding any other provision contained in this section, any person may be required to make an affirmation in the form specified in paragraph (c) of subsection (1) if it is not reasonably practicable to administer an oath to him in the manner appropriate to his religious belief, and for the purposes of this subsection "reasonably practicable" means reasonably practicable without inconvenience or delay.
- (3) Where any oath has been duly administered and taken, the fact that the person to whom such oath was administered had, at the time of taking such oath, no religious belief, or had a religious belief other than that to which the oath taken normally applies, shall not for any purpose affect the validity of such oath.
- (4) For the purposes of this section, "officer" means any person duly authorised by law to administer oaths, and shall include any Assistant Registrar, Deputy Assistant Registrar and official interpreter administering an oath in the presence of a Judge or the Registrar or other person authorised by any law to administer oaths.

[As amended by No. 43 of 1961]

37. Recording of proceedings

The proceedings in any cause or matter before the Court shall be taken down and recorded in such manner as may be prescribed by rules of court.

[As amended by No. 43 of 1961]

38. Perjury

- (1) The Court, if it appears to it that a person has been guilty of perjury in any proceeding before it, may, after calling upon such person to show cause why he should not be punished as for a contempt of court, commit him to prison for any term not exceeding six months, with or without hard labour, or fine him any sum not exceeding one hundred penalty units, or impose both such penalties upon him, in each such case as for a contempt of court.
- (2) Any penalty imposed under this section shall be a bar to any other criminal proceedings in respect of the same offence.

[As amended by Act No. 13 of 1994]

Part VIII – District registries

39. Establishment of district registries and appointment of District Registrars

- (1) The Chief Justice may, by statutory notice, establish in such places as are specified in such notice, district registries for the Provinces or Districts set out in such notice, from which such writs of summons for the commencement of actions in the Court may be issued, and wherein such other proceedings may be taken, as may be prescribed by rules of court.
- (2) The Chief Justice may, at any time by statutory notice, vary or revoke any notice issued under the provisions of subsection (1).
- (3) The Chief Justice may appoint any qualified person to be the District Registrar of any district registry.
- (4) Every District Registrar shall be an officer of the Court.

40. Seals of district registries

- (1) In every district registry there shall be used such seal as the Chief Justice may direct.
- (2) The seal of the district registry shall be impressed upon every document required by this Act or by rules made thereunder or by any other written law to be so sealed, and all such documents and all exemplifications and copies thereof, purporting to be sealed with the seal of a district registry, shall be received in evidence within Zambia without further proof.
- (3) For the purposes of this section, "seal" means any device capable of making an imprint, whether embossed or otherwise, on paper.

[As amended by No. 25 of 1964]

41. Powers of District Registrars

District Registrars shall have power to administer oaths and shall perform such of the functions of the Registrar with respect to any proceedings in the Court as the Chief Justice may by rule prescribe or as may be directed by any special order of the Court.

42. Removal of proceedings

- (1) Any party to any proceedings commenced in a district registry may, at any time, apply to the Court or a Judge to remove such proceedings from such district registry to the principal registry or to another district registry, and the Court or Judge may thereupon, if the Court or Judge thinks fit, order that the proceedings be transferred accordingly, and the proceedings and such original documents, if any, as have been filed therein shall, upon receipt of such order, be transmitted by the District Registrar concerned to the principal registry or to such other district registry, and the proceedings shall thenceforth continue in the same manner as if they had been originally commenced in the principal registry or such other district registry, as the case may be.
- (2) The Court or a Judge may order the removal of any proceedings from the principal registry to a district registry, and, in such case, the provisions of subsection (1) shall, *mutatis mutandis*, apply.

Part IX – Miscellaneous

43. Fees

The Chief Justice may, by statutory instrument, make rules regulating all matters connected with the deposits and fees to be payable in respect of any step taken or thing done in any cause or matter before the

Court, including the amount (whether fixed or according to a scale or according to a percentage) of such fees, and the method (whether in money, by revenue stamp or otherwise) and the time of payment of such fees.

44. Rules of court^{*}

^{*}See section 8 of the Evidence Act (Cap. 43).

- (1) Rules of court may be made, by statutory instrument, under this Act for the following purposes:
- (a) for regulating and prescribing the procedure (including the method of pleading) and the practice to be followed in the Court in all causes and matters whatsoever, including matrimonial causes and matters, in or with respect to which the Court has for the time being jurisdiction (including the procedure and practice to be followed in the principal registry and in district registries), and any matters incidental to or relating to any such procedure or practice, including (but without prejudice to the generality of the foregoing provision) the manner in which and the time within which, any applications which under the provisions of this or any other written law are to be made to the Court are to be made;
 - (b) for regulating and prescribing the procedure on appeals, other than criminal appeals, from any court or person to the Court, and the procedure in connection with the transfer of proceedings under this Act;
 - (c) for regulating the sittings of the Court and of Judges whether sitting in Court or in chambers, and for regulating and prescribing the vacations to be observed by the Court and the offices and registries thereof, and for providing for the hearing during the vacations of all such applications and such other matters as may require to be immediately or promptly heard;
 - (d) for prescribing what part of the business which may be transacted and of the jurisdiction which may be exercised by a Judge in chambers may be transacted or exercised by the Registrar and other officers of the Court;
 - (e) for prescribing the forms to be used in connection with any cause or matter before the Court;
 - (f) for regulating the expenses of parties and witnesses, their amount, and the method and time of payment thereof;
 - (g) for regulating the means by which particular facts may be proved, and the mode in which evidence thereof may be given, in any proceedings or on any application in connection with or at any stage of any proceedings;
 - (h) for regulating and prescribing the procedure and practice to be followed in any proceedings in the Court under the provisions of the Lands Acquisition Act;
- [Cap. 189]*
- (i) for regulating or prescribing any other matter which is to be regulated or prescribed by rules of court under any of the provisions of this Act.

- (2) Where any written law provides for the making of rules of court and the power to make such rules-

- (a) is expressly conferred upon the High Court; or
- (b) is not expressly conferred upon any specified authority or person;

such rules shall be made in the same manner as rules of court under this Act.

[As amended by S.I. No. 63 of 1964 and No. 24 of 1968]

45. High Court Rules Committee

- (1) Rules of court made under this Act shall be made by a committee, to be known as the High Court Rules Committee and hereinafter referred to as the Committee, which shall consist of-

The Chief Justice.

Two Puisne Judges appointed by the Chief Justice.

Two practitioners nominated by the Council established under the provisions of the Law Association of Zambia Act, and appointed by the Chief Justice.

- (2) A practitioner shall not be nominated, or, if nominated shall not be appointed, to the Committee unless-
 - (a) he holds a current practising certificate issued under the provisions of the Legal Practitioners Act; and
[Cap. 30]
 - (b) his name has been on the roll of practitioners, kept under the provisions of the said Act, for a period of not less than three years.
- (3) A practitioner appointed to the Committee shall continue to be a member thereof for a period of one year from the date of his appointment:
 Provided that-
 - (i) should no practitioner be nominated in sufficient time to allow his appointment to the Committee to become effective before the expiration of the term of office of his predecessor, the latter shall continue in office until his successor is appointed; and
 - (ii) a practitioner shall cease to be a member of the Committee immediately he ceases to hold a valid practising certificate.
- (4) The Chief Justice shall be the chairman of the Committee, shall convene all meetings thereof, and shall have a casting as well as a deliberative vote.
- (5) The quorum for any meeting of the Committee shall be the chairman and two other members.
- (6) Nothing done by the Committee shall be invalid only by reason of any vacancy in the membership thereof or of the absence of any member from Zambia.
- (7) The Committee may transact its business by way of circulation of papers, and in any such case it shall not be necessary to convene a meeting of the Committee, but no business shall be considered to have been completed under this subsection unless and until all members of the Committee for the time being in Zambia have communicated their views thereon to the secretary of the Committee in writing.
- (8) The Chief Justice may appoint the Registrar or any other officer of the Court to be the secretary of the Committee.

[Cap. 31]

46. Repeal and savings

The High Court Act, Chapter 3 of the 1960 Edition of the Laws, is hereby repealed:

Provided that such repeal shall not affect any appointment made under the provisions of the said Act and any such appointment shall be deemed to have been made under the provisions of this Act.

47. Validation of certain rules of court

Where, prior to the enactment of this Act, any Act given power to the High Court to make rules of court, any rules of court made by the Chief Justice in purported exercise of any such power shall be, and shall be deemed always to have been, as valid as if they had been made by the High Court in exercise of such power.