

Zambia

## Evidence Act, 1973

### Chapter 43

Legislation as at 31 December 1996

FRBR URI: /akn/zm/act/1967/8/eng@1996-12-31

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PDF created on 21 February 2024 at 19:40.

*Collection last checked for updates: 31 December 1996.*

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# Zambia

## Evidence Act, 1973 Chapter 43

Commenced on 27 January 1967

*[This is the version of this document at 31 December 1996.]*

*[8 of 1967; 3 of 1968]*

### An Act to amend the law of evidence.

#### 1. Short title

This Act may be cited as the Evidence Act.

#### 2. Interpretation

In this Act, unless the context otherwise requires—

"**business**" includes any public transport, public utility or similar undertaking carried on by a local authority and the activities of the General Post Office;

"**document**" includes any device by means of which information is recorded or stored, and books, maps, plans and drawings;

"**proceedings**" includes arbitration and references, and "court" shall be construed accordingly;

"**statement**" includes any representation of fact, whether made in words or otherwise.

*[As amended by No. 3 of 1968]*

#### 3. Admissibility of documentary evidence as to facts in issue

- (1) In any civil proceedings where direct oral evidence of a fact would be admissible, any statement made by a person in a document and tending to establish that fact shall, on production of the original document, be admissible as evidence of that fact if the following conditions are satisfied, that is to say:
  - (a) if the maker of the statement either—
    - (i) had personal knowledge of the matters dealt with by the statement; or
    - (ii) where the document in question is or forms part of a record purporting to be a continuous record, made the statement (in so far as the matters dealt with thereby are not within his personal knowledge) in the performance of a duty to record information supplied to him by a person who had, or might reasonably be supposed to have, personal knowledge of those matters; and
  - (b) if the maker of the statement is called as a witness in the proceedings:

Provided that the condition that the maker of the statement shall be called as a witness need not be satisfied if he is dead, or unfit by reason of his bodily or mental condition to attend as a witness, or if he is outside Zambia and it is not reasonably practicable to secure his attendance, or if all reasonable efforts to find him have been made without success.
- (2) In any civil proceedings, the court may, at any stage of the proceedings, if having regard to all the circumstances of the case it is satisfied that undue delay or expense would otherwise be caused,

order that such a statement as is mentioned in subsection (1) shall be admissible as evidence or may, without any such order having been made, admit such a statement in evidence—

- (a) notwithstanding that the maker of the statement is available but is not called as a witness;
  - (b) notwithstanding that the original document is not produced, if in lieu thereof there is produced a copy of the original document or of the material part thereof certified to be a true copy in such manner as may be specified in the order or as the court may approve, as the case may be.
- (3) For the purposes of this section, a statement in a document shall not be deemed to have been made by a person unless the document or the material part thereof was written, made or produced by him with his own hand, or was signed or initialed by him or otherwise recognised by him in writing as one for the accuracy of which he is responsible.
- (4) For the purposes of deciding whether or not a statement is admissible as evidence by virtue of the foregoing provisions, the court may draw any reasonable inference from the form or contents of the documents in which the statement is contained, or from any other circumstances, and may, in deciding whether or not a person is fit to attend as a witness, act on a certificate purporting to be the certificate of a medical practitioner, and, where the proceedings are with the aid of assessors, the court may in its discretion reject the statement notwithstanding that the requirements of this section are satisfied with respect thereto, if for any reason it appears to it to be inexpedient in the interests of justice that the statement should be admitted.

#### **4. Admissibility of certain trade or business or professional records in criminal proceedings**

- (1) In any criminal proceedings where direct oral evidence of a fact would be admissible, any statement contained in a document and tending to establish that fact shall, on production of the document, be admissible as evidence of that fact if—
- (a) the document is, or forms part of, a record relating to any trade or business or profession and compiled, in the course of that trade or business or profession, from information supplied (whether directly or indirectly) by persons who have, or may reasonably be supposed to have, personal knowledge of the matters dealt with in the information they supply; and
  - (b) the person who supplied the information recorded in the statement in question is dead, or outside of Zambia, or unfit by reason of his bodily or mental condition to attend as a witness, or cannot with reasonable diligence be identified or found, or cannot reasonably be expected (having regard to the time which has elapsed since he supplied the information and to all the circumstances) to have any recollection of the matters dealt with in the information he supplied.
- (2) For the purpose of deciding whether or not a statement is admissible as evidence by virtue of this section, the court may draw any reasonable inference from the form or content of the document in which the statement is contained, and may, in deciding whether or not a person is fit to attend as a witness, act on a certificate purporting to be a certificate of a fully registered medical practitioner.

*[No. 3 of 1968]*

#### **5. Weight to be attached to evidence**

- (1) In estimating the weight, if any, to be attached to a statement admissible as evidence by virtue of this Act, regard shall be had to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement, and in particular to the question whether or not the person who supplied the information contained or recorded in the statement did so contemporaneously with the occurrence or existence of the facts stated, and to the question whether or not that person, or any person concerned with making or keeping the record containing the statement, had any incentive to conceal or misrepresent the facts.

- (2) For the purpose of any rule of law or practice requiring evidence to be corroborated or regulating the manner in which uncorroborated evidence is to be treated, a statement rendered admissible as evidence by this Act shall not be treated as corroboration of evidence given by the maker of the statement.

*[As amended by No. 3 of 1968]*

## **6. Proof of instrument to validity of which attestation is necessary**

Subject as hereinafter provided, in any proceedings, whether civil or criminal, an instrument to the validity of which attestation is requisite may, instead of being proved by an attesting witness, be proved in the manner in which it might be proved if no attesting witness were alive:

Provided that nothing in this section shall apply to the proof of wills or other testamentary documents.

## **7. Presumptions as to documents twenty years old**

In any proceedings, whether civil or criminal, there shall, in the case of a document proved, or purporting, to be not less than twenty years old, be made any presumption which immediately before the commencement of this Act would have been made in the case of a document of like character proved, or purporting, to be not less than thirty years old.

## **8. Rules of court**

It is hereby declared that section forty-four of the High Court Act and section fifty-seven of the Subordinate Courts Act authorise the making of rules of court providing for orders being made at any stage of any proceedings directing that specified facts may be proved at the trial by affidavit with or without the attendance of the deponent for cross-examination, notwithstanding that a party desires his attendance for cross-examination and that he can be produced for that purpose.

*[Cap. 27; Cap. 28]*

## **9. Savings**

Nothing in this Act shall—

- (a) prejudice the admissibility of any evidence which would apart from the provisions of this Act be admissible; or
- (b) enable documentary evidence to be given to any declaration relating to a matter of pedigree, if that declaration would not have been admissible as evidence if this Act had not been passed.