

GOVERNMENT OF ZAMBIA

STATUTORY INSTRUMENT NO. 5 OF 2011

The University Act, 1999
(Act No. 11 of 1999)

The Mulungushi University (Staff Tribunal) Rules, 2011

ARRANGEMENT OF RULES

Rule

PART I

PRELIMINARY

1. Title
2. Interpretation

PART II

MAKING OF COMPLAINT

3. Initiation of proceedings
4. Power to require further particulars
5. Notice of hearing

PART III

PROCEEDINGS OF TRIBUNAL

6. Sittings of Tribunal
7. Proceedings of Tribunal
8. Quorum
9. Appearance before Tribunal
10. Default of appearance
11. Tribunal hearing
12. Evidence
13. Production of documents or information
14. Additional information
15. Interlocutory applications
16. Tribunal to observe principles of natural justice
17. Powers of Tribunal
18. Consent order
19. Correction of errors

PART IV
DECISION OF TRIBUNAL

- 20. Decision of Tribunal
- 21. Transmission of decision

PART V
GENERAL PROVISIONS

- 22. Change of address
- 23. Service of notices, documents, etc.
- 24. Appeal

Power to
require
further
particulars

4. (1) The Secretary may, subject to any direction by the Chairperson, at any time after receiving a complaint, require the complainant to furnish a statement setting out further and better particulars of the grounds on which the complainant intends to rely and any relevant facts and contentions.

(2) The complainant shall send the statement referred to in sub-rule (1) in duplicate to the Secretary within such time as the Chairperson may direct, not being more than fourteen days from the date of the requirement under sub-rule (1), together with copies of the statement to such other persons who are parties to the complaint as the Secretary may determine.

(3) The Secretary shall, upon receiving the statement referred to in sub rule (2), send the duplicate statement to the respondent.

Notice of
hearing

5. (1) The Secretary shall cause the notice of the date, time and place of the Tribunal to be served upon the complainant and the respondent.

(2) A party to whom notice is sent under sub-rule (1) may apply to the Secretary for an alteration of the place or date of hearing.

PART III

PROCEEDINGS OF TRIBUNAL

Sittings of
Tribunal

6. (1) The Tribunal shall sit at such place and times as the Chairperson may determine.

(2) Subject to the other provisions of these Rules and to any direction given by the Chairperson, the Tribunal may regulate its own procedure.

Proceedings
of Tribunal

7. The Tribunal shall hold its proceedings in camera.

Quorum

8. Three members of the Tribunal shall constitute a quorum:
Provided that a meeting shall not commence without the Chairperson.

Appearance
before
Tribunal

9. (1) The complainant shall appear in person before the Tribunal.

(2) The respondent shall be afforded an opportunity to appear in person and be heard by the Tribunal or be represented by a legal practitioner or union representative of the respondent's choice.

10. (1) If the complainant, respondent or any other party to the proceedings does not appear at the time and place appointed for the hearing, the Tribunal may—

Default of appearance

- (a) dismiss the complaint;
- (b) adjourn the hearing on such terms as the Tribunal considers appropriate; or
- (c) hear and determine the complaint in the absence of the party or parties and may make such order as to costs as it thinks fit.

(2) Where proceedings are dismissed or determined under this rule in the absence of a party, that party may, on an application made by that party within fourteen days of the dismissal or determination, apply to the Tribunal to set aside the dismissal or determination, and give the reasons for their absence from the hearing.

(3) Where the Tribunal is satisfied that the reasons given by a party under sub rule (2) are sufficient to set aside the dismissal or determination made under sub-rule (1), the Tribunal may set aside that dismissal or determination.

11. At the hearing—

Tribunal hearing

- (a) the complainant shall present the facts on which the complaint is based;
- (b) the respondent shall adduce evidence to rebut the evidence of the complainant;
- (c) the complainant may address the Tribunal by way of reply to the respondent's evidence;
- (d) the complainant and the respondent may call a witness to adduce evidence; and
- (e) both parties may, at the conclusion of the hearing, present oral or written submissions to the Tribunal.

12. (1) The Tribunal may receive, as evidence, any statement, document, information or other matter that may assist it to deal effectively with a complaint, whether or not the evidence would be admissible in a court of law.

Evidence

(2) The Tribunal may take judicial notice of any fact.

(3) Evidence before the Tribunal may be given orally or, if the parties to the proceedings consent or the Chairperson of the Tribunal so orders, by affidavit.

(4) The Tribunal may, at any stage of the proceedings, make an order requiring the personal attendance of any deponent for examination and cross-examination.

Production
of document
or
information

13. A party may, at any time during the hearing, give to the other party notice to produce any document to which the complaint relates alleged to be in possession of that party.

(2) A party to the proceedings shall, on request, produce to the Secretary, any document or other information which the Tribunal may require and which is in the power of that party to produce, and shall afford to every party to the proceedings an opportunity to inspect those documents or copies of the documents and to take copies of the documents.

Additional
information

14. The Tribunal may, during the hearing receive such additional information relating to the complaint as it may consider necessary to enable it dispose of a matter.

Interlocutory
applications

15. (1) Except where these Rules otherwise provide, an application for directions of an interlocutory nature in connection with any proceedings shall, unless otherwise ordered by the Chairperson, be made to the Secretary.

(2) An interlocutory application shall be made in writing and shall state the title of the proceedings and the grounds upon which the application is made.

(3) Where an interlocutory application is made with the consent of all the parties it shall be accompanied by consents signed by, or on behalf of, the parties.

(4) Where an interlocutory application is not made with the consent of every party, a copy shall, before it is made, be served on every other party and the interlocutory application shall state that this has been done.

(5) A party who objects to an interlocutory application may, within fourteen days after the service of a copy on the party, send written notice of objection to the Secretary and a copy to the applicant.

(6) The Secretary shall, before making an order on an interlocutory application, consider all the objections received in relation to the interlocutory application and, if any party wishes to be heard, the Secretary shall give the party and every other party an opportunity to be heard.

(7) The Secretary may, and shall, if required by the applicant or by a party objecting to an interlocutory application under this rule, refer an interlocutory application to the Chairperson for decision.

(8) A party aggrieved with a decision of the Secretary on an interlocutory application under this rule may appeal to the Chairperson by giving notice, in writing, to the Secretary and to every other party, within fourteen days after service on the party of the notice of the decision or within such further time as may be allowed by the Secretary.

(9) An appeal from a decision of the Secretary shall not act as a stay of proceedings unless so ordered by the Chairperson.

(10) The powers of the Chairperson under this rule may be exercised and discharged in relation to the application by any member of the Tribunal authorised by the Chairperson.

16. The Tribunal shall observe the principles of natural justice and shall hear all the evidence tendered and representations made by, or on behalf of, the parties.

Tribunal to observe principles of natural justice

17.(1) The Tribunal may summon any member of staff of the University or request any other person to appear before it to—

Powers of Tribunal

- (a) testify to all matters within that person's knowledge;
- (b) produce any document, book or record in that person's possession or control; or
- (c) be examined or cross-examined in relation to the complaint.

(2) The Tribunal may administer oaths or affirmations for the purpose of proceedings.

18. Where the parties agree upon the terms of an order to be made by the Tribunal, particulars of the terms, signed by all the parties or by their legal representatives or agents, shall be sent to the Secretary, and an order may be made by the Tribunal in accordance with those terms in the absence of the parties.

Consent order

19. The Tribunal may, at any time before a decision is made, by certificate signed by the Chairperson, correct any error or omission in the record of proceedings.

Correction of errors

PART IV

DECISIONS OF TRIBUNAL

20. A decision of the Tribunal shall be in writing and shall contain the following:

Decision of Tribunal

- (a) the finding of the Tribunal on each issue of fact or law raised in the proceedings; and
- (b) the reason for the Tribunal's findings.

Transmission of decision 21. (1) The Secretary shall, within seven days of the date of the decision of the Tribunal, send the decision of the Tribunal to the parties and to the Registrar.

(2) The Secretary shall send a copy of the decision of the Tribunal to the Council for implementation.

PART V
GENERAL PROVISIONS

Change of address 22. Where a party changes their address they shall, by notice, in writing, to the Secretary and to every other party inform the Secretary and the parties of the change.

Service of notices, documents, etc. 23. (1) A document required by these Rules to be served shall be served by delivering it personally to the person to be served, or by sending it by registered post to that person's last known address.

(2) An application or communication to be made to the Tribunal in respect of any matter before the Tribunal shall be addressed to the Secretary.

(3) Where a person to whom any notice or other document is required to be sent for the purpose of these Rules cannot be found, is dead, has no personal representative or is out of Zambia, or if for any other reason service upon the party cannot be readily effected in accordance with these Rules, the Chairperson may make an order for substituted service upon such other person or in such other form as the Chairperson may think fit.

Appeal 24. A person aggrieved with the decision of the Tribunal may, within thirty days of receiving the decision, appeal to the Industrial Relations Court.

E. L. SAKALA,
Chief Justice

LUSAKA
30th December, 2010
[MOE/101/4/56]