

Constitutional Court Rules, 2016

As amended by: SI 193/2019; SI 206/2020; SI 78/2022; SI 199/2022

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IT is hereby notified that the Minister of Justice, Legal and Parliamentary Affairs has, in terms of subparagraph (4)(a) of paragraph 18 of the Sixth Schedule to the Constitution, approved the following rules of court made by the Chief Justice for regulating the proceedings of the Constitutional Court:—

PART I

PRELIMINARY

Title

1. These rules may be cited as the Constitutional Court Rules, 2016.

Interpretation

2.(1) In these rules, any word or expression to which a meaning has been assigned in the Constitution shall bear that meaning.

(2) In these rules—

“address” or “address for service” means the physical address or electronic address or postal address where that is the only known address;

[Definition inserted by s. 2(a) of SI 78/2022]

“affidavit” includes an affirmation or declaration administered by a commissioner of oaths in terms of the Justices of the Peace and Commissioners of Oaths Act [*Chapter 7:09*];

“authentication”, in relation to a document, means the verification of any signature thereon;

“Chief Justice” means the Chief Justice of Zimbabwe appointed in terms of section 180 of the Constitution;

“commissioner” means a commissioner of the Court appointed by the Court to take affidavits or examine witnesses in any place outside Zimbabwe;

“copies of documents”, where this term occurs in these rules and documents are filed or served electronically, there shall be no need to provide more than one copy;

[Definition inserted by s. 2(a) of SI 78/2022]

“Court” means the Constitutional Court established by section 166 of the Constitution;

“date of filing” means the date on which any pleading envisaged by these rules is lodged with the Registrar;

[Definition inserted by s. 2(a) of SI 78/2022]

“deliver” or “serve” means to either physically or electronically file a pleading or record with the Registrar and immediately thereafter to serve a copy on the other party electronically or by physical means;

[Definition inserted by s. 2(a) of SI 78/2022]

“directions” means directions given by the Chief Justice or a Judge with regard to the procedures to be followed in the conduct and disposition of cases generally or any particular case;

“document” for purposes of rule 61 means any deed, written contract, power of attorney, affidavit or other writing, but does not include an affidavit sworn before a commissioner;

“filing” means electronic filing or physical filing;

[Definition inserted by s. 2(a) of SI 78/2022]

“form” means a form set out in the First Schedule;

“hearing” means physical or virtual hearing;

[Definition inserted by s. 2(a) of SI 78/2022]

“IECMS account” means Integrated Electronic Case Management that is litigant’s account accessed through the internet which enables him or her to access the IECMS platform;

[Definition inserted by s. 2(a) of SI 78/2022]

“Judge” means a judge or acting judge of the Court appointed in terms of section 177 of the Constitution sitting otherwise than in open court;

“legal practitioner” means a legal practitioner registered in terms of the Legal Practitioners Act [Chapter 27:07];

“Minister” means the Minister of Justice, Legal and Parliamentary Affairs, or any Vice-President or other Minister to whom the President may from time to time assign the administration of the Act;

“party”, or any other reference to a litigant, includes a legal practitioner appearing on behalf of a party, as the context may require;

“Registrar” means the Registrar of the Court, and includes any acting or assistant registrar of the Court, or, in their absence any person designated by the Chief Justice;

“Registry” mean the registry of the Court;

“Sheriff” means the Sheriff for Zimbabwe and includes an additional sheriff and an assistant sheriff;

“sign” means to sign a document or process manually or electronically;

[Definition inserted by s. 2(a) of SI 78/2022]

“Speaker” means a person elected to be the Speaker of the National Assembly in terms of section 126 of the Constitution, and includes a person elected to be a Deputy Speaker in terms of section 127 of the Constitution.

(3) Any powers or authority vested in the Chief Justice in terms of these rules may be exercised by a Judge or Judges designated by the Chief Justice for that purpose.

Reckoning of time

3.(1) Whenever the time for doing anything in terms of the Constitution ends or falls on a Saturday, Sunday or public holiday, the time extends to, and the thing may be done on, the next day that is not a Saturday, Sunday or public holiday.

(2) In any other case, unless the contrary intention appears, where anything required by these rules or in any order of the Court to be done within a particular number of days or hours, a Saturday, Sunday or public holiday shall not be reckoned as part of such period.

Forms

4. An application, referral or appeal in terms of these rules shall be made in the appropriate form set out in the First Schedule.

Departure from rules and directions as to procedure.

5.(1) The Court or a Judge may, in relation to any particular case before it or him or her, as the case may be—

- (a) direct, authorise or condone a departure from any provision of these rules, including an extension of any period specified therein, where it or he or she, as the case may be, is satisfied that the departure is required in the interests of justice;

- (b) give such directions as to procedure in respect of any matter not expressly provided for in these rules as appear to it or him or her, as the case may be, to be just and expedient.
- (2) The Court or the Chief Justice or a Judge may—
- (a) of its, his or her own accord or on application and on sufficient cause shown, extend or reduce any time period prescribed in these rules and may condone non-compliance with these rules;
 - (b) give such directions in relation to matters of practice or procedure or the disposal of any appeal, application or other matter as the Court or the Chief Justice or Judge may consider just and expedient.

Additional proof or determination

6. Where the Court or the Chief Justice considers that any allegations or submissions contained in any application in terms of these rules require to be further investigated or established, it, he or she may—

- (a) direct the Registrar to place the records before the Prosecutor-General, the Zimbabwe Human Rights Commission, the Attorney-General, the Commissioner-General of Police or any other entity or person, for their consideration if the matter concerned is within the purview of the respective body or functionary mentioned;
- (b) direct the Judge President or Chief Magistrate to arrange that a judicial officer conducts a hearing of the matter and submit a report to the Court or Chief Justice within a specified period;
- (c) if the matter came as an appeal or as a referral, remit the matter to the court from which it emanated with directions on how to proceed.

Address for service

7.(1) Every applicant or appellant who files an application or appeal with the Registrar shall furnish, in the application or appeal, an email address or a physical address at which he or she will accept service in terms of these rules, which physical address shall be within twenty-five kilometres of the office of the Registrar.

[Subrule amended by s. 2(b) of SI 78/2022]

(2) If a person is legally represented, the address given in terms of subrule (1) shall be the address of his or her legal practitioner.

(3) Subject to rule 8(1), a legal practitioner may at any time renounce his or her agency, by giving notice to his or her client and to the Registrar but, until the client furnishes the Registrar with, and notifies the opposite party of, a new address for service, any process served on the retiring legal practitioner at his or her address for service shall be considered good service and the retiring legal practitioner shall notify his or her former client of the service of any such process by letter addressed to the client's last-known address.

(4) If an address for service has been given in terms of these rules other than the address of a legal practitioner in terms of subrule (2), and the person concerned changes such address, he or she shall notify the Registrar and the other parties to the proceedings, of the new address and should he or she fail to give such notification his or her address for service shall be deemed to be the address given in terms of subrule (1).

Renunciation of agency by legal practitioner

8.(1) Subject to this rule, a legal practitioner may for good cause renounce his or her agency at any time before the matter has been set down for hearing:

(2) No legal practitioner may renounce agency less than three weeks before the date of hearing except with the leave of the Registrar who may, if necessary, consult a Judge in chambers.

(3) Where a legal practitioner wishes to renounce his agency in terms of subrule (1), he or she shall, without delay, file a notice with the Registrar in Form CCZ 9, and as soon as possible thereafter, serve copies of the notice upon his or her client and all other parties relevant to the matter and proof of such service shall be filed with the Registrar in accordance with rule 9.

(4) A renunciation of agency in terms of subrule (1) shall be effective from the date on which the notice referred to in subrule (3) is filed with the Registrar.

(5) If a legal practitioner purports to renounce his agency otherwise than in terms of this rule or without leave granted in terms of subrule (2), as the case may be, the renunciation shall be ineffective and—

- (a) any process served upon him or her in relation to the matter shall be considered good service; and
- (b) he or she shall appear on behalf of the party at the hearing of the matter.

(6) A notice of renunciation of agency shall state the client's last known address where service of process may be effected.

Service, e-filing and related matters

9.(1) Any document required by these rules or by direction of the Court or a Judge to be served on any person shall be served as follows—

- (a) by personal delivery to that person or his or her duly authorised agent;
- (b) by delivery to a responsible person at the residence or place of business or employment of the person on whom service is to be effected or at his or her chosen address for service;
- (c) in the case of process other than process initiating proceedings or an order of court by delivery to that person's legal practitioner of record;
- (d) in the case of process to be served on a body corporate—
 - (i) by delivery to a responsible person at the body corporate's place of business or registered office; or
 - (ii) if it is not possible to serve the process in terms of subparagraph (i), by delivery to a director or to the secretary or public officer of the body corporate;
- (e) in the case of process to be served on a partnership—
 - (i) by delivery to a responsible person at the partnership's office or place of business; or
 - (ii) if it is not possible to serve the process in terms of subparagraph (i), by delivery to any of the partners;
- (f) in the case of process to be served on a syndicate, club, society, church or other unincorporated association—
 - (i) by delivery to a responsible person at the local office or place of business of the association; or
 - (ii) if it is not possible to serve the process in terms of subparagraph (i), by delivery to the chairperson or secretary or similar officer of the association;
- (g) if the person to be served is the President, Vice President, Speaker of Parliament, President of the Senate, Prosecutor-General, Attorney-General, Clerk of Parliament or any other public entity referred to in these rules, by delivery to his or her office;
- (h) if the person to be served is the Registrar, by delivery to him or her at his or her office.

(2) Proof of service in terms of subrule (1) shall be effected—

- (a) where service is effected at the office of a legal practitioner, by production of a receipt signed by the legal practitioner or his or her agent, accompanied by a certificate by the person effecting service to the effect that the document was served by him or her on the signatory of the receipt and stating the capacity of the signatory;

(b) where service is effected by a litigant himself or herself, by an affidavit by the litigant that the document concerned was served by him or her on the person concerned;

(c) where service is effected by the Sheriff, by way of a return of service.

(3) If any difficulty arises in serving a document in accordance with this rule, a Judge may, at the request of the Registrar, give special directions as to service and a document served in accordance with such directions shall be regarded as properly served.

(4) Notwithstanding anything to the contrary contained in this rule, any document required by these rules or by the direction of the Court or any Judge to be served on any person may be served in the manner prescribed in section 40 of the Interpretation Act [*Chapter 1:01*].

(5) Generally, where any document is to be served on such other party as these rules or any other law requires, the party so serving the document shall file with the Registrar, within two days of such service, a certificate of service to that effect.

(6) Where, for any reason, proof of service is not filed with the Registrar in the manner and time prescribed, a matter shall be deemed to be abandoned for that reason, and the Registrar shall accordingly notify the parties.

(7) All process initiating litigation in the Court shall be served by the Sheriff.

General provisions for e-filing of process

9A.(1) Litigants shall create an IECMS account before filing an application, appeal or any other civil process.

(2) Litigants shall provide the mandatory information required by the electronic filing system.

(3) If a litigant changes his or her contact details, he or she shall inform the Registrar of the new contact details within 48 hours.

(4) Every notice of appeal or application shall provide an alternative email address for the purposes of service or delivery of pleadings.

(5) All litigants shall provide telephone numbers from the following registered service providers, namely, Econet, NetOne or Telecel, or any other service provider specifically identified in Practice Directions issued from time to time.

(6) A user of the e-filing system shall be the custodian of his or her credentials.

[Rule inserted by s. 2(c) of SI 78/2022]

Electronic service

9B.(1) In addition to the methods of service provided for in these rules, service may be effected electronically by way of e-mail, web portal or other electronic means designated by the Chief Justice in a Practice Direction.

(2) Proof of such electronic service shall be simultaneously copied to the Registrar.

(3) For the avoidance of doubt, a sent status report shall be deemed to be *prima facie* proof of service.

(4) The Registrar or the Sheriff, as the case may be, shall at all times endeavour to effect service of any notice, process or other document electronically.

(5) The authentication of any electronic communication shall be effected by means of electronic signatures, and certified backup copies of the communication shall be kept in paper form or by such other acceptable means, as may be directed from time to time by the Chief Justice.

[Rule inserted by s. 2(c) of SI 78/2022]

Pagination and indexing of electronic documents

9C.(1) All documents filed electronically shall be indexed and paginated in accordance with the provisions of this rule.

(2) All documents filed in connection with a particular case shall be contained in a single PDF document which shall be identical to the hard copies of the document.

(3) The pagination of electronic documents shall be consecutive and appear at the top of each page on the right.

(4) The applicant or appellant shall create an index of all documents filed electronically, which index shall be identical to the index of the hard copies.

[Rule inserted by s. 2(c) of SI 78/2022]

Amicus curiae

10.(1) The Court may invite any person with particular expertise which is relevant to the determination of any matter before it to appear as *amicus curiae* and the *amicus curiae*, so invited shall file heads of argument within the time stipulated by the Court.

(2) A person with the expertise described in subrule (1) may apply to the Court or a Judge for an order to appear as *amicus curiae*.

(3) An application in terms of subrule (2) shall be made no later than five days after the filing of the respondent's heads of argument or after the time for filing such heads of argument has expired, and shall—

- (a) describe the particular expertise which the applicant possesses;
- (b) describe the interests of the applicant in the proceedings;
- (c) briefly identify the position to be adopted in the proceedings by the applicant; and
- (d) set out the submissions to be advanced by the applicant, their relevance to the proceedings and the applicant's reasons for believing that the submissions will be useful to the Court and different from those of the other parties.

(4) The Court or a Judge may, if it or he or she considers it to be in the interests of justice, grant the application upon such terms and conditions, including the date of filing the written argument, and with such rights and privileges as it or he or she may determine.

(5) An *amicus curiae* shall have the right to file heads of argument which raise new contentions which may be useful to the Court and do not repeat any submissions set forth in the heads of argument of the other parties.

(6) An *amicus curiae* shall be limited to the record on appeal, application or referral and shall not add thereto.

(7) Except in the most exceptional circumstances, no order of costs shall be made either for or against any person appearing as *amicus curiae*.

PART II

REGISTRAR

Office hours of the Registrar

11.(1) The office of the Registrar shall be open from 08:30 to 13:00 hours and from 14:00 to 16:00 hours on every day which is not a Saturday, Sunday or public holiday.

(2) The Registrar may, in exceptional circumstances, accept a document at a time outside office hours, and shall do so when so directed by a Judge.

(3) Litigants may electronically file documents at any time of the day.

[Subrule inserted by s. 2(d) of SI 78/2022]

(4) Notwithstanding the provisions of subrule (3), the office hours of the Registrar and the *dies induciae* within which any act must be done shall be observed for the purpose of acceptance of process and documents by the Registrar.

[Subrule inserted by s. 2(d) of SI 78/2022]

General duties of the Registrar

12.(1) An application or appeal to the Court shall be numbered by the Registrar with a consecutive number for the year during which it is filed.

(2) Every document afterwards filed in such a case or in any subsequent case in continuation thereof shall be marked with that number by the party filing it and shall not be received by the Registrar until so marked.

(3) All documents delivered to the Registrar to be filed in a case shall be duly filed by him or her.

(4) Subject to subrule (9), the Registrar may permit any person with an interest in the matter to make copies of a record for a prescribed fee.

(5) The Registrar shall, at the request of a party, make a copy of any Court document on payment of the prescribed fee for every photocopy of an A4 size page or part thereof and shall, against payment of the prescribed fee, certify the photocopy to be a true copy of the original.

(6) Where the Court has given judgment in a case and the effect of the judgment is that—

- (a) the election of the President or a Vice-President has been set aside; or
- (b) any provision of an Act or a statutory instrument infringes a fundamental human right or freedom enshrined in Chapter 4 of the Constitution; or
- (c) the Court has confirmed a declaration of invalidity of any Act of Parliament or any part thereof;

the Registrar shall cause to be published, in the *Gazette* or other appropriate medium, a copy of the judgment or Court order within fourteen days of the handing down of the judgment or Court order in a notice setting out the determination of the Court in that regard.

(7) The Registrar shall publish a case list, which shall be affixed to the notice board at the Court.

(8) Any direction given by the Court or a Judge with regard to any proceedings shall be furnished by the Registrar to the parties concerned within five days of such direction having been given:

Provided that the Judge may, with regard to service of the direction, make an order of costs in the direction so given.

(9) The Registrar shall maintain the Court records and shall not permit any of them to be removed from the Court building.

(10) Any document filed with the Registrar and made part of the Court records shall not thereafter be withdrawn permanently from the official Court files.

(11) After the conclusion of the proceedings in the Court, any original records and papers transmitted to the Court by any other court shall be returned to the court from which they were received.

(12) The Registrar may refuse to accept any document which, in his or her opinion, does not comply with these rules.

(13) Any party aggrieved by any decision of the Registrar in terms of these rule may apply to a Judge in chambers for a review of such decision within five days of the party having been notified of the decision.

Set-down of cases

13.(1) This rule applies to the setting down of matters other than matters where the set-down procedure is provided for elsewhere in these rules or in the Act.

(2) Once the requirements of these rules have been satisfied, the Registrar shall, within thirty days, and after consulting the Chief Justice, allocate a date for the case to be heard, and shall give notice to the parties of the date, which shall be such as to give all parties to the case not less than two weeks' notice of the date of hearing unless they agree to a shorter period.

(3) Where separate cases have been instituted and it appears to the Chief Justice or a Judge appropriate to do so, he or she may, after notice to all interested parties, make an order consolidating such cases, whereupon the cases shall proceed as one case.

(4) The Registrar may, for good cause, and after consultation with the parties, alter a date of set-down allocated in terms of subrule (2), and shall give the parties notice of such alteration.

(5) Notice given by the Registrar in terms of subrule (2), (3) or (4) shall—

- (a) be delivered by the Registrar to each party's legal practitioner; or
- (b) in the case of a party who is not represented by a legal practitioner, be delivered by the Registrar at the address for service or last known address of the party.

(6) At the request of one or more of the parties, the Registrar may, in consultation with the Chief Justice, allocate a date for the hearing of a case, during term or otherwise.

(7) Where no request is made for the set down of a matter, the Registrar may set the matter down for hearing and shall notify the relevant parties of the date of such hearing.

PART III

APPLICATIONS GENERALLY

General provisions for all applications

14.(1) Subject to the provisions of these rules, every written application, notice of opposition or supporting or answering affidavit shall—

- (a) be legibly printed on A4 size paper on one side only;
- (b) be divided into paragraphs numbered consecutively, each paragraph containing, wherever possible, a separate allegation; and
- (c) have each page, including every annexure and affidavit, numbered consecutively, the page numbers, in the case of documents filed after the first set, following consecutively from the last page number of the previous set, allowance being made for the page numbers of the proof of service filed for the previous set.

(2) Every written application and notice of opposition shall—

- (a) state the title of the matter and a description of the document concerned;
- (b) be signed by the applicant or respondent, as the case may be, or by his or her legal practitioner;
- (c) give an address for service which shall be within a radius of twenty-five kilometres from the registry;
- (d) where it comprises more than five pages, contain an index clearly describing each document included and showing the page number or numbers at which each such document is to be found.

(3) Every written application or referral shall contain a draft of the order sought.

(4) An affidavit filed with a printed application—

- (a) shall be concise and not contain any irrelevant matter;
- (b) shall be made by the applicant or respondent, as the case may be, or by a person who can swear positively to the facts or averments set out therein;
- (c) may be accompanied by documents verifying the facts or averments set out in the affidavit, and any reference in this Part to an affidavit shall be construed as including all such documents;
- (d) shall contain all essential averments that are necessary to clarify and verify the cause of action;
- (e) shall lay down the facts or law forming the basis of the jurisdiction of the Court;
- (f) shall not contain any inadmissible evidence; and
- (g) shall not contain any objectionable matter.

(5) Where, by any law, a certificate or other document is required to be attached to or filed with any application, it shall be sufficient to attach or file a certified photocopy or other facsimile of the certificate or document:

Provided that, if required to do so by the Court or by a Judge at the hearing, the party concerned shall produce the original certificate or document.

Urgent applications

15.(1) Where a person wishes to file an application in terms of these rules and he or she considers that the matter is one of urgency, he or she may file the application accompanied by an affidavit requesting that the application be treated as an urgent application.

(2) An affidavit submitted in terms of subrule (1) shall set out the facts of the matter, the name of any other person who might be affected by the order sought by the applicant and the circumstances that justify treating the matter as an urgent application, and shall be accompanied by a certificate by a legal practitioner that the matter is urgent.

(3) The Chief Justice may direct the applicant to serve the application on any person who might be affected by the order sought and the applicant shall comply with such direction.

(4) If the Chief Justice considers that the application should be treated as an urgent application, he or she may issue a directive dispensing with the Forms and service provided for in these rules and may give directions for the matter to be dealt with at such time and in such manner and in accordance with such procedure, which shall, as far as is practicable, be in accordance with these rules, as he or she considers appropriate.

Court applications

16.(1) Save where otherwise provided, in any matter in which an application is necessary for any purpose, such application shall be by way of a court application in Form CCZ 1, which shall be served on the other parties.

(2) Where a court application is not to be served on any person, it shall be in Form CCZ 1 with appropriate modifications.

(3) A court application shall—

- (a) be supported by an affidavit deposed to by a person who can swear positively to the facts, which details the facts and the basis on which the applicant seeks relief; together with any supporting documents which are relevant; and
 - (b) state a physical address or email address at which the applicant will accept service of all process and documents in the proceedings; and
- [Paragraph amended by s. 2(e) of SI 78/2022]
- (c) be addressed to the Registrar and served on all the respondents; and
 - (d) request the respondent to file and serve his or her notice of opposition within ten days of being served with the application; and
 - (e) be signed by the party making it or his or her legal practitioner; and
 - (f) where leave is required and has been obtained, state the date when such leave was granted.

Notice of opposition

17.(1) The respondent shall, within the time stipulated in the application, file with the Registrar and serve on the other parties a notice of opposition in Form CCZ 2.

(2) The notice of opposition shall be supported by affidavit deposed by a person who can swear positively to the facts, which details the facts and the basis on which the respondent opposes the application, together with any supporting documents which are relevant.

(3) The notice shall provide an email or physical address for service which is within twenty-five kilometres of the office of the Registrar.

[Paragraph amended by s. 2(f) of SI 78/2022]

(4) As soon as possible after filing a notice of opposition and opposing affidavit in terms of subrules (1) and (2), the respondent shall serve copies upon the applicant and thereafter file with the Registrar proof of such service within two days after service upon the applicant.

(5) A respondent who fails to file a notice of in terms of subrules (1) and (2) shall be barred and the Registrar to require the applicant to file heads of argument and then proceed to set the matter down for hearing.

(6) The Court may require the applicant to address it on the merits notwithstanding that the respondent has been barred.

Answering affidavit

18.(1) The applicant may file with the Registrar an answering affidavit together with any supporting documents, within ten days of service upon him or her of the notice of opposition.

(2) As soon as possible after filing an answering affidavit in terms of subrule (1), the applicant shall serve a copy of it upon each respondent and file with the Registrar proof of any such service within two days of the service.

(3) After an answering affidavit has been filed, no further affidavits may be filed without the leave of the Court or a Judge.

Set-down of applications

19.(1) Where the respondent has been barred in terms of sub-rule (5) of rule 17, the applicant may, without notice to the respondent, request the Registrar, in writing, to set the matter down for hearing.

(2) Where the respondent has filed a notice of opposition and an opposing affidavit and the applicant has filed an answering affidavit, the applicant may request the Registrar, in writing, to set the matter down for hearing.

(3) Where the respondent has filed a notice of opposition and an opposing affidavit and, within ten days thereafter the applicant has not filed an answering affidavit, the respondent, on notice to the applicant, may either—

- (a) request the Registrar, in writing, to set the matter down for hearing; or
- (b) make a chamber application to dismiss the matter for want of prosecution.

(4) Where the respondent has neither requested that the application be set down nor applied for the matter to be dismissed for want of prosecution, the Registrar shall set the matter down for hearing and notify the parties accordingly.

Chamber applications

20.(1) A chamber application shall be in Form CCZ 3 and—

- (a) be an electronic or printed application to the Chief Justice or a Judge in chambers;

[Paragraph amended by s. 2(g) of SI 78/2022]

- (b) be supported by an affidavit detailing the facts and the basis upon which the applicant seeks relief;

- (c) state a physical address or email address at which the applicant will accept service of all process and documents in the proceedings;

[Paragraph amended by s. 2(g) of SI 78/2022]

- (d) be addressed to the Registrar and served on all respondents, if any;
- (e) state a period of time, being not less than five days, within which the respondent is required to file a notice of opposition;
- (f) be signed by the party making it or his or her legal practitioner; and
- (g) be served on the respondent within two days of being filed with the Registrar.

(2) Proof of service of the application on the respondent shall be filed by the applicant with the Registrar within two days of such service.

(3) The respondent, shall, within the time stipulated in the application, file and deliver to the other parties a notice of opposition, supported by an affidavit deposed to by a person who can swear positively to the facts, and such other documents as are relevant.

(4) Where a respondent fails to enter or serve a notice of opposition within the prescribed period, he or she shall be barred and the applicant may request the Registrar to place the matter before the Chief Justice for determination and the Chief Justice may make such order as he or she deems fit.

(5) The applicant may file with the Registrar and serve on the respondent an answering affidavit, within three days of service upon him or her of a notice of opposition, and file with the Registrar proof of such service on the respondent, and thereafter no further affidavit may be filed without the leave of a Judge.

(6) Upon the applicant having complied with subrule (5), the Registrar shall place the application before the Chief Justice for determination and he or she may make such order as he or she deems fit.

(7) A judge may require parties to file heads of argument and may give such directions as to the filing thereof as he or she deems appropriate.

PART IV

MATTERS WITHIN THE EXCLUSIVE JURISDICTION OF THE COURT

Applications for direct access

21.(1) The following matters shall not require leave of the Court—

- (a) disputes concerning an election to the office of President or Vice-President;
- (b) disputes relating to whether or not a person is qualified to hold the office of President or Vice-President;
- (c) referrals from a court of lesser jurisdiction;
- (d) determinations on whether Parliament or the President has failed to fulfil a constitutional obligation;
- (e) appeals in terms of section 175(3) of the Constitution against an order concerning the constitutional validity or invalidity of any law;
- (f) where the liberty of an individual is at stake;
- (g) challenges to the validity of a declaration of a State of Public Emergency or an extension of a State of Public Emergency.

(2) An application for direct access as set-out in subsection (5) of section 167 of the Constitution shall be supported by an affidavit, setting out the facts upon which the applicant relies for relief.

(3) An application in terms of subrule (2) shall be filed with the Registrar and served on all parties with a direct or substantial interest in the relief claimed and shall set out—

- (a) the grounds on which it is contended that it is in the interests of justice that an order for direct access be granted; and
- (b) the nature of the relief sought and the grounds upon which such relief is based; and
- (c) whether the matter can be dealt with by the Court without the hearing of oral evidence or, if it cannot, how such evidence should be adduced and any conflict of facts resolved.

(4) The applicant shall attach to the application a draft of the substantive application he or she seeks to file with the Court.

(5) Any person wishing to oppose the application shall, within ten days after being served with or notified of the application, notify the applicant and the Registrar, in writing, of his or her intention to oppose the application and the grounds upon which he or she opposes the application.

(6) Where notice of intention to oppose has been received by the Registrar or the time for the filing of such notice has expired, the matter shall be disposed of in accordance with directions given by the Chief Justice, which may include—

- (a) a direction calling upon a respondent to file with the Chief Justice, within a specified time, heads of argument dealing with the question of whether or not direct access should be granted; or
- (b) a direction indicating that no written submissions or affidavit needs to be filed.

(7) An application for direct access may be dealt with summarily, without hearing oral or written argument other than that contained in the application itself:

Provided that where a respondent has indicated, in terms of subrule (5), his or her intention to oppose the application, the application shall only be granted after the provisions of subrule (6) have been complied with.

(8) In determining whether or not it is in the interest of justice for a matter to be brought directly to the Court, the Court or Judge may, in addition to any other relevant consideration, take the following into account—

- (a) the prospects of success if direct access is granted;
- (b) whether the applicant has any other remedy available to him or her;
- (c) whether there are disputes of fact in the matter.

(9) An application for leave to appeal against a judgment of a subordinate court may be heard by a Judge in chambers or by such number of Judges as the Chief Justice may direct.

(10) If a Judge refuses an application for leave, he or she shall seek the concurrence of two other Judges.

(11) An application which, in the opinion of the Chief Justice, is frivolous or vexatious or to has been brought for purposes of delay may be determined summarily in chambers by the Chief Justice:

Provided that no such application may be dismissed by the Chief Justice without the concurrence of two other Judges.

(12) Where an application for direct access has been granted in terms of this rule, the order shall be served on all interested parties and the applicant shall thereafter proceed in terms of the relevant rule.

Applications in terms of Chapter 4 of the Constitution

22.(1) An application under Chapter 4 of the Constitution shall be by way of a court application and shall be supported by an affidavit setting out the facts upon which the applicant relies for relief.

(2) The application shall be signed by the applicant or his or her legal practitioner and it shall state—

- (a) where relevant, the date on which direct access was granted; and
- (b) the nature of the violation being alleged; and
- (c) the basis upon which the applicant seeks relief; and
- (d) the nature of the relief which is sought; and
- (e) a physical [address] at which the applicant will accept service of all process and documents in the proceedings.

(3) The application shall be filed with the Registrar and served on the Attorney-General and all other interested parties and shall require that the respondent files his or her notice of opposition within ten days of having been served with the application.

(4) The applicant shall file with the Registrar, within two days of service of the application upon the respondent, proof of such service.

(5) Any person who opposes the granting of an order sought in the application shall, within a period of ten days of the application having been served upon him or her, file his or her notice of opposition, together with an opposing affidavit and any relevant documents, which may include supporting affidavits.

(6) Within two days after filing a notice of opposition and an opposing affidavit, the respondent shall serve copies thereof on the applicant and shall file with the Registrar proof of such service within two days of such service.

(7) A respondent who fails to file a notice of opposition and opposing affidavit shall be barred.

(8) The applicant may, within ten days of service upon him or her of a notice of opposition and supporting documents, file an answering affidavit with the Registrar and serve it on the respondent.

(9) Thereafter, no further affidavit may be filed without the leave of a Judge.

(10) After the filing of the answering affidavit or the expiry of the period referred to in subrule (8), the Registrar shall call upon the parties to file their heads of argument.

Dispute relating to the election to the office of President or Vice President

23.(1) An application where the election of a President or Vice President is in dispute shall be by way of court application.

(2) The application shall be filed with the Registrar and shall be served on the respondent within seven days of the date of the declaration of the result of the election.

(3) If a respondent intends to oppose the application, he or she shall file with the Registrar a notice of opposition and shall serve such notice on the applicant within three days of service upon him or her of the application, failing which he or she shall be barred.

(4) The applicant may, within three days of being served with the notice of opposition, file an answering affidavit with the Registrar and shall serve the same on the respondent.

(5) The applicant shall file heads of argument simultaneously, with his or her answering affidavit and serve them on the respondent:

Provided that, where he or she does not file an answering affidavit, the heads of argument shall be filed and shall be served at least three days before the hearing of the application.

(6) The respondent shall file heads of argument with the Registrar and shall serve them on the applicant within three days of being served with the applicant's heads of argument, and in any case, not later than one day before the application is heard:

Provided that any party not represented by a legal practitioner shall not be required to file heads of argument.

(7) The Registrar shall set the matter down for determination within fourteen days of the filing of the application.

Referral of constitutional matter in proceedings before a court

24.(1) Where a person presiding over a subordinate court wishes to refer a matter to the Court *mero motu* in terms of subsection (4) of section 175 of the Constitution, he or she shall—

- (a) request the parties to make submissions on the constitutional issue or question to be referred for determination; and
- (b) state the specific constitutional issue or question he or she considers should be resolved by the Court.

(2) Where the person presiding over a court of lesser jurisdiction is requested by a party to the proceedings to refer the matter to the Court and he or she is satisfied that the request is not frivolous or vexatious, he or she shall refer the matter to the Court.

(3) A referral under subrule (1) or (2) shall be in Form CCZ 4 and be accompanied by a copy of the record of proceedings and of the affidavits or statements from the parties setting out the arguments they seek to make before the Court.

(4) Where there are factual issues involved, the court seized with the matter shall hear evidence from the parties and determine the factual issues:

Provided that where there are no disputes of fact, the parties shall prepare a statement of agreed facts.

(5) The record of proceedings referred to in subrule (3) shall contain the evidence led by both sides, and where applicable, specific findings of fact by the person presiding over the court and the issue or question for determination by the Court.

(6) Where there is a statement of agreed facts in terms of the proviso to subrule (4), it shall suffice for the statement to be incorporated in the record in place of the evidence and specific findings of fact.

(7) The person presiding over the court shall direct the clerk or registrar, as the case may be, to prepare and transmit the record so prepared to the Court within fourteen days of the date such direction:

Provided that, before transmission, the registrar or clerk of the referring court shall ensure and certify that the record is correct and accurate and in the case of a referral in terms of subrule (2) that it contains an appropriate draft order.

(8) Where the Registrar receives a referral in terms of this rule he or she shall call upon the parties to file their heads of argument. After the filing of the heads of argument, or should either party fail to file heads of argument, the Registrar shall set the matter down for hearing.

Reservations regarding a Bill

25.(1) A referral of a Bill to the Court by the President in terms of section 131(8)(b) of the Constitution for advice on its constitutionality shall be in writing and shall be addressed to the Registrar and to the Speaker.

(2) The referral shall specify—

- (a) the provision or provisions of the Bill in respect of which the President has reservations; and
- (b) the constitutional provision or provisions relating to such reservations; and
- (c) the grounds or reasons for such reservations.

(3) The referral shall be filed with the Registrar within twenty-one days of the Bill having been presented to the President in terms of section 131(7) of the Constitution and shall be served on the Speaker within two days after it is filed with the Registrar.

(4) The Speaker shall, within twenty-one days of the application having been served on him or her, file with the Registrar an affidavit confirming that the Bill was passed by a two-thirds majority of the total membership of the National Assembly and making such other submissions regarding the constitutionality of the Bill as he or she considers to be appropriate, and shall serve a copy of the affidavit on the President at his or her office within two days of the date of filing with the Registrar.

(5) The President may, within ten days of being served with the affidavit in terms of subrule (4), file with the Registrar and serve on the respondents an affidavit in reply, setting out such matters as he or she considers to be relevant.

(6) Upon receipt of the statement or reply from the President in terms of subrule (5), the matter shall be dealt with in accordance with directions given by the Chief Justice, which may include a direction—

- (a) requesting the Speaker to provide such additional information as the Chief Justice may consider to be necessary or expedient to deal with the matter; and

- (b) calling upon all interested political parties or independent members of the National Assembly who may wish to do so, to make such written submissions as are relevant to the determination of the issue within a period specified in such direction.

Bill that contravenes the Constitution

26.(1) An application to the Court by a Vice-President or Minister in terms of paragraph 8(6) of the Fifth Schedule to the Constitution, for a declaration that a provision of the Bill that [a] House of Parliament has resolved would, if enacted, contravene the Constitution would, in fact, if enacted, be in accordance with the Constitution, shall be brought by way of a court application, supported by an affidavit specifying the grounds upon which he or she considers that the provision of the Bill, if enacted, would be in accordance with the Constitution, and shall be filed with the Registrar within the period of fourteen days specified in paragraph 8(6) of the Fifth Schedule to the Constitution.

(2) An application in terms of subrule (1) shall cite the Speaker or the President of the Senate, as the case may be, as the respondent and shall be served on him or her within two days after it has been filed with the Registrar.

(3) The respondent shall, within twenty-one days of the application having been served on him or her, file with the Registrar an affidavit in response, setting out the reasons why the House resolved that the provision in question, if enacted, would contravene the Constitution, and may attach to the affidavit any submissions made by a Member of Parliament, the Parliamentary Legal Committee or a political party represented in Parliament, and shall serve a copy of the affidavit and attachments on the applicant within two days after the filing of the affidavit.

(4) The applicant may, within ten days of being served with an affidavit in terms of subrule (3), file a statement in reply making such submissions as he or she considers to be relevant.

(5) Upon the expiry of the period mentioned in subrule (4), the Registrar shall place the application before the Chief Justice who shall give directions as to how the matter should proceed.

Failure to fulfil a constitutional obligation

27.(1) An application to the Court in terms of section 167(2)(d) of the Constitution alleging that Parliament or the President has failed to fulfil a constitutional obligation shall be brought by way of a court application, supported by an affidavit setting out the constitutional obligation in question and what Parliament or the President has failed to do in respect of such obligation.

(2) An application in terms of subrule (1) shall be filed with the Registrar and served on all interested parties within two days after the date of such application having been filed with the Registrar.

(3) A respondent may, within twenty-one days of the application having been served on him or her, file with the Registrar an opposing affidavit, making such submissions regarding the alleged failure to fulfil a constitutional obligation as he or she considers appropriate, and shall serve a copy of the affidavit and attachments on the applicant within two days of the filing of the affidavit.

(4) Where the respondent files an opposing affidavit he or she may attach to it any submissions made by a Member of Parliament.

(5) The applicant may, within ten days of being served with the opposing affidavit, file with the Registrar an answering affidavit, setting out such matters as he or she considers to be relevant and shall serve a copy of the answering affidavit on the respondent within two days of the filing of the affidavit.

(6) Upon the expiry of the period specified in subrule (5), the Registrar shall place the application before the Chief Justice who shall give directions on how the matter is to proceed.

Validity of declaration of state of public emergency

28.(1) An application to the Court in terms of section 113(7) of the Constitution challenging the validity of a declaration of a State of Public Emergency or an extension of a State of Public Emergency shall be brought by way of court application, supported by an affidavit, setting out the basis on which the applicant is an interested person, as required by section 113(7), and the grounds on which he or she alleges that the declaration of a State of Public Emergency or the extension thereof is invalid, and shall be filed with the Registrar within ten days after the proclamation of the declaration or extension of the declaration of a State of Public Emergency was published in the *Gazette*.

(2) An application in terms of subrule (1) shall be served on the respondent within two days of the application having been filed with the Registrar.

(3) The respondent shall, within ten days of the application having been served on him or her, file an affidavit making such responses to the allegations made by the applicant regarding the declaration or extension of the declaration of a State of Public Emergency as he or she considers to be appropriate.

(4) The applicant may, within five days of being served with the affidavit in terms of subrule (3), file with the Registrar an answering affidavit, setting out such matters as he or she considers relevant and shall serve a copy of the affidavit on the respondent within two days of the affidavit having been filed with the Registrar.

(5) Upon the expiry of the period specified in subrule (4), the Registrar shall place the application before the Chief Justice who shall give directions as to how the matter should proceed.

Declaration of invalidity of statutory instrument

29.(1) An application in terms of paragraph 9(2) of the Fifth Schedule to the Constitution for a declaration that a statutory instrument is in accordance with the Constitution, shall be made by way of court application and shall be supported by an affidavit from the authority which enacted the instrument specifying—

- (a) the relevant provision or provisions of the Constitution relied upon for such challenge; and
- (b) the provision or provisions of the statutory instrument being challenged; and
- (c) the grounds upon which the authority considers that the statutory instrument is in accordance with the Constitution, to which may be attached statements from the Attorney-General or his or her representative; and
- (d) the relief, including any interim relief, sought.

(2) An application referred to in subrule (1) shall be filed with the Registrar within twenty one days of the date upon which the Clerk of Parliament reported the resolution of the Senate or the National Assembly to the authority which enacted the statutory instrument.

(3) An application referred to in terms of subrule (1) shall cite the Speaker or the President of the Senate, as the case may be, as the respondent and shall be filed with the Registrar and, served on the respondent within two days after it was filed.

(4) The respondent shall, within ten days of the application having been served upon him or her, file with the Registrar an opposing affidavit setting out the reasons why Parliament resolved that the provision in the statutory instrument contravenes the Constitution and attach to the statement any submissions made by a Member of the House of Assembly or Senate, as the case may be, and shall serve a copy thereof on the applicant within two days after it was filed.

(5) The applicant may, within ten days of service of the opposing affidavit upon him, or her file an answering affidavit with the Registrar, making such submissions as he or she considers to be relevant, and shall serve a copy thereof on the respondent within two days after it was filed.

(6) Upon the expiry of the period specified in subrule (5), the Registrar shall place the application before the Chief Justice who shall give directions as to how the matter should proceed.

Review of decision by President to dissolve Parliament

30.(1) An application to the Court by a Member of Parliament in terms of subsection (4) of section 143 of the Constitution for a review of a decision by the President to dissolve Parliament shall be by way of a court application, supported by an affidavit setting out the grounds upon which the review of the decision is sought.

(2) The application shall—

- (a) cite the President as the first respondent and the Attorney-General as the second respondent; and
- (b) be filed with the Registrar within seven days after the publication of the decision; and
- (c) be served on the respondents within two days after being filed with the Registrar.

(3) If a respondent intends to oppose the application, he or she shall file with the Registrar a notice of opposition and the grounds on which he or she opposes the application within three days of the service on him or her of the application, and shall serve a copy thereof on the applicant failing which he or she shall be barred.

(4) The applicant may, within one day of service of the notice of opposition on him or her,, file an answering affidavit with the Registrar and shall serve a copy thereof on the respondent within one day of filing with the Registrar.

(5) The applicant shall file with the Registrar and serve on the respondent heads of argument simultaneously with his or her answering affidavit:

Provided that, where he or she does not file an answering affidavit, the heads of argument shall be filed and served at least three days before the hearing of the application.

(6) The respondent shall file with the Registrar and serve on the applicant the heads of argument within two days of service upon him or her of the applicant's' heads of argument, and in any case, not later than one day before the hearing.

(7) Where an applicant fails to file heads of arguments he or she shall be deemed to have abandoned his or her application.

(8) Notwithstanding subrules (3) and (7), the Registrar shall set the matter down for determination on the merits within fourteen days of the publication of the decision to dissolve Parliament.

Confirmation of an order of constitutional invalidity

31.(1) The registrar or clerk, as the case may be, of a court which has made an order of constitutional invalidity as specified in section 175(1) of the Constitution shall, within fourteen days of the making of such order, file with the Registrar a copy of the record of proceedings including the court order for confirmation in Form CCZ 5.

(2) Upon receipt of such record, the Registrar shall call upon the parties to the proceedings to file heads of argument in accordance with rule 39 after which the matter shall proceed in terms of rule 13.

(3) Notwithstanding the provisions of rule 32, any person or entity of State desirous of appealing against the order and entitled to do so may, within fifteen days of the date of the order, file a notice of appeal with the Registrar and serve a copy thereof on the registrar or clerk of the court which made the order, as the case may be, whereupon the matter shall be disposed of in accordance with directions given by the Chief Justice.

(4) The appellant shall, in the notice of appeal, set forth clearly the grounds on which the appeal is brought, indicating which findings of fact or law are appealed against and the order that it is contended ought to be made.

(5) A person or entity of State desirous of applying for the confirmation of an order of the constitutional invalidity of any law or conduct of the President or Parliament and entitled to do so shall, within fifteen days of the date of the order, file an application for such confirmation with the Registrar, and serve a copy thereof on the registrar or clerk of the court which made the order, as the case may be, whereupon the matter shall be disposed of in accordance with directions given by the Chief Justice.

(6) If no notice of appeal or application as contemplated in subrule (2) or (4), respectively has been filed within the time prescribed, the matter shall be disposed of in accordance with directions given by the Chief Justice.

PART V

APPEALS

Leave to appeal

32.(1) Save as is provided for in rule 21(1) and rule 31(2), the procedure set out in this rule shall be followed in all appeals to the Court.

(2) A litigant who is aggrieved by the decision of a court of subordinate court on a constitutional matter only, and wishes to appeal against it to the Court, shall within fifteen days of the decision, file with the Registrar an application for leave to appeal and shall serve a copy of the application on the other parties to the case in question, citing them as respondents.

(3) An application in terms of subrule (2) shall be signed by the applicant or his or her legal practitioner and shall contain or have attached to it—

- (a) a draft notice of appeal; and
- (b) the decision against which the appeal is brought and the grounds upon which such decision is disputed; and
- (c) a statement setting out clearly and concisely the constitutional matter raised in the decision and any other issues, including issues that are alleged to be connected with a decision on the constitutional matter; and
- (d) such supplementary information or submissions as the applicant considers should be brought to the attention of the Court.

(4) Within ten days from the date upon which the application in terms of subrule (2) is served on him or her, the respondent may file with the Registrar a notice of opposition, detailing the grounds for such opposition and supported by an affidavit deposed to by a person who can swear positively to the facts, and any other documents as may be relevant, and serve the notice of opposition on the applicant.

(5) The notice of opposition shall be signed by the respondent or his or her legal practitioner.

(6) A respondent who wishes to file a cross-appeal to the Court on a constitutional matter shall, within ten days from the date upon which the application in terms of subrule (2) was served on him or her, file with the Registrar an application for leave to cross-appeal, in which event the provisions of these rules with regard to appeals shall apply, with necessary modifications, to the cross-appeal.

(7) Where a respondent fails to file a notice of opposition, he or she shall be barred and the applicant may request the Registrar to place the matter before the Chief Justice for directions and, where no such request has been made, after the expiry of the period mentioned in subrule (4) the Registrar shall place the matter before the Chief Justice for directions.

(8) The applicant may file with the Registrar and serve on the respondent an answering affidavit, within five days of service upon him or her, of the notice of opposition and supporting documents and thereafter no further affidavit shall be filed without the leave of the Chief Justice.

(9) Upon compliance by the applicant with subrule (8), or after the expiry of the period referred to in subrule (8), the Registrar shall place the application before the Chief Justice who shall give directions as to how the matter is to proceed.

(10) An application for leave to appeal may be dealt with summarily, without receiving oral or written arguments other than those contained in the application.

(11) The Chief Justice may—

- (a) order that the application for leave to appeal be set down for argument; and/or
- (b) direct that the heads of argument of the parties deal not only with the question whether the application for leave to appeal should be granted, but also with the merits of the dispute.

(12) Applications for leave to appeal may be heard by a Judge in chambers provided that applications for leave to appeal from a decision of the Supreme Court shall be heard by a Judge with the concurrence of two other Judges.

(13) The provisions of rule 20 regulating chamber applications shall apply, with necessary modifications, to an application for leave to appeal.

Notice of appeal

33.(1) An appeal shall be noted in the form of a notice of appeal signed by the appellant or his or her legal practitioner.

(2) The notice of appeal in terms of subrule (1) shall state—

- (a) the date on which, and the court by which, the judgment appealed against was given; and
- (b) if leave to appeal was granted, the date of such grant; and
- (c) whether the whole or part only of the judgment is appealed against; and, if part only, which part of the judgment is appealed against; and
- (d) the grounds of appeal in accordance with the provisions of rule 36; and
- (e) the relief sought; and
- (f) the address for service of the appellant or his or her legal practitioner.

(3) The notice of appeal shall be filed with the Registrar and the registrar or clerk of the court whose decision is being appealed against, and served on the respondents.

Time for entry of appeal

34.(1) An appellant shall note an appeal within the following times —

- (a) if leave to appeal is not necessary, by filing the notice of appeal with the Registrar within fifteen days after the date that the judgment appealed against was handed down;
- (b) if leave to appeal is necessary and has been granted, by filing the notice of appeal with the Registrar within ten days of the date of the grant of leave to appeal.

Application for condonation and extension of time within which to appeal

35.(1) An application for condonation for the late noting of an appeal or for an extension of time within which to appeal shall be by chamber application and shall be signed by the applicant or his or her legal practitioner and shall be accompanied by a copy of the judgment against which it is sought to appeal.

(2) An application for condonation shall have attached to it —

- (a) a draft notice of appeal in accordance with rule 33;
- (b) an affidavit setting out the facts upon which applicant the applicant intends to rely.

(3) An application for an extension of time within which to appeal shall—

- (a) have attached to it a notice of appeal in accordance with rule 33(1) and (2) and an affidavit setting out the reasons why the appeal was not entered in time or leave to appeal was not applied for in time and any relevant facts; and
- (c) where it relates to a matter in which leave to appeal is necessary, comply with the requirements of subrule (2).

(4) An application in terms of this rule and the accompanying documents shall be filed with the Registrar and served on the respondent within the prescribed time.

(5) The respondent shall be entitled, within three days of service upon him or her of the application, to file with the Registrar an opposing affidavit, which shall be served on the applicant, and the applicant shall thereafter be entitled, within three days of service of the opposing affidavit upon him or her, to file with the Registrar his answering affidavit and shall serve it on the respondent within two days of the affidavit having been filed.

(6) The Registrar shall give notice of the date of the hearing in writing to the parties.

(7) A Judge may make such order on the application as he or she thinks fit and shall, if an extension of time is granted, also deal with any question of leave to appeal which may be involved.

Grounds of appeal

36.(1) The grounds of appeal shall be set forth concisely and in separate numbered paragraphs.

(2) The appellant, whether on appeal or on cross-appeal, shall not, without the leave of the Court, argue or be heard in support of any ground of appeal not set out when the appeal was filed, but the Court, in deciding the appeal, shall not be confined to the grounds so stated.

(3) An application to amend the grounds of appeal may be made at the hearing of the appeal subject to adequate notice being given to the other party.

Cross-appeal and abandonment of judgment

37.(1) When an appeal has been instituted the respondent shall subject to rule 39(6), be entitled, within ten days of the filing of the appeal, to file a cross-appeal with the Registrar and serve it on the appellant within two days of filing.

(2) The notice of cross-appeal shall be signed by the respondent or his or her legal practitioner and shall state in respect of which appeal the cross-appeal is made and shall comply with rule 33.

(3) At any time the respondent, in an appeal or in a cross-appeal, may, by notice given to the Registrar and to the other party, abandon the whole or any part of the judgment appealed against and the provisions of rule 53 in relations to costs shall apply.

Procedure on appeal

38.(1) If leave to appeal is granted in terms of rule 32, the appellant shall note an appeal in the manner prescribed and the following shall apply—

- (a) the appellant shall prepare, or cause the preparation of, the appeal record and file it with the Registrar;
- (b) subject to the provisions of paragraph (c), the appeal record shall consist of the judgment of the court from which the appeal is noted, together with all the documentation filed by the parties in that court and all the evidence adduced in the proceedings which may be relevant to the issues for determination;
- (c) the parties shall endeavour to reach agreement on what should be included in the record and, in the absence of such agreement, any party may apply to the Chief Justice by way of chamber application for directions to be given in regard to the compilation of the record;

(d) the respondent may respond to the application within ten days of service of the application on him or her and shall set out the reasons for his or her contentions.

(2) An application in terms of subrule (1)(c) shall be printed and shall set out the nature of the dispute between the parties in regard to the compilation of the record and the reasons for the appellant's contentions.

(3) The Chief Justice may assign the application to one or more Judges, who may deal with the matter on the papers or require the parties to appear before him or her or them on a specified day and at a specified time to debate the compilation of the record.

(4) The Judge or Judges concerned shall give directions in regard to the compilation of the record, the time within which the record is to be filed with the Registrar and any other matters deemed by him or her or them to be necessary for the purpose of enabling the Court to deal with the appeal, which directions may include that—

- (a) the matter be referred back to the court *a quo* for the hearing of additional evidence specified in the direction; or
- (b) additional evidence be placed before the Court by way of an affidavit or otherwise, for the purpose of the appeal.

(5) All copies of the record filed with the Registrar shall be certified as correct by the registrar of the court appealed from and such records shall comply with the provisions of rule 43.

(6) If a record has been filed in accordance with subrules (1) and (2), the rules relating to the filing of heads of argument shall apply with necessary changes.

(7) Where a record is prepared by the Registrar, he or she shall request the parties to inspect the record and the parties shall comply with the request.

(8) If the appellant or his or her legal practitioner does not inspect the record as provided in subrule (7) within ten days after being requested to do so, or within any further time granted by the Registrar—

- (i) the appellant shall be deemed to have abandoned his or her appeal; and
- (ii) the Registrar shall notify the respective parties accordingly; and
- (iii) the notification in terms of this subrule shall be treated as notice by the appellant that he or she has abandoned his or her application.

PART VI

MISCELLANEOUS

Heads of argument

39.(1) This rule shall apply to all appeals, referrals and court applications, except where provision for the filing of heads of arguments is made elsewhere in these rules.

(2) Where an applicant or appellant in any matter before the Court is represented by a legal practitioner, the Registrar shall send written notification to that legal practitioner, as soon as the requirements for the filing of pleadings in that case have been completed, calling upon the legal practitioner to file and serve heads of argument on the other party within fifteen days after the date of such notification.

(3) Within fifteen days after being called upon in terms of subrule (2) to file heads of argument, or within such longer period as a Judge may for good cause allow, the applicant's or appellant's legal practitioner shall file with the Registrar a document setting out the main heads of his or her argument, together with a list of authorities to be cited in support of each head, and immediately thereafter shall serve a copy on the respondent or the respondent's legal practitioner.

(4) Where a respondent in any matter before the Court is represented by a legal practitioner, that legal practitioner shall, within ten days of service upon him or her of the applicant's or appellant's heads of argument in terms of subrule (3), file with the Registrar a document setting

out the main heads of his or her argument, together with a list of authorities cited in support of each head, and immediately thereafter shall serve a copy on an applicant or appellant or his or her legal practitioner:

Provided that, where—

- (a) the respondent's legal practitioner has not been served with the applicant's or appellant's heads of argument in terms of subrule (3), whether because the applicant or appellant is not represented or for any other cause; or
- (b) the matter is set down for hearing less than fifteen days after the respondent's legal practitioner has been served with the applicant's or appellant's heads of argument in terms of this subrule;

the respondent's legal practitioner shall file his or her heads of argument with the Registrar and serve a copy on the other party as soon as possible, and in any event not less than four days before the hearing of the matter.

(5) If, within the period prescribed in subrule (3), the Registrar does not receive heads of argument from an applicant or appellant who is represented by a legal practitioner, the matter shall be regarded as abandoned and shall be deemed to have been dismissed:

Provided that the application, referral or appeal may be reinstated by a Judge in chambers on good cause shown.

(6) Where a matter is deemed to have been dismissed in terms of subrule (5), the Registrar shall forthwith notify the respondent of that fact and, in the case of an appeal, shall also notify the registrar or clerk of the court whose decision is being appealed against.

(7) A respondent who has failed to file heads of argument in terms of this rule shall be barred the Court or Judge may deal with the matter on the merits.

In forma pauperis procedure

40.(1) Any person who desires to bring or defend proceedings *in forma pauperis* may apply to the Registrar, who, if it appears to him or her that the applicant may be a person who cannot afford the services of a legal practitioner, shall refer the applicant to a legal practitioner selected from a roster of names furnished by the Law Society of Zimbabwe or the Legal Aid Directorate.

(2) If the Registrar is in doubt as to whether or not an applicant qualifies for assistance in terms of subrule (1), he or she may refer the matter to a district officer of the Department of Social Services for a report on the financial means of the applicant.

(3) A legal practitioner to whom an applicant is referred in terms of subrule (1) shall inquire into the person's financial means and the merits of his or her case and, upon being satisfied that the matter is one in which he or she may properly act *in forma pauperis*, he or she shall proceed to take instructions from the applicant.

(4) If the applicant files with the Registrar—

- (a) an affidavit setting forth fully his or her financial position and stating that, excepting household goods, wearing apparel and tools of trade, he or she is not possessed of property to the value of five thousand United States dollars and will not be able, within a reasonable time, to provide such sum from his earnings; and
- (b) a statement signed by the legal practitioner concerned that he or she is acting for the applicant gratuitously in the proceedings;

the applicant shall be entitled to proceed *in forma pauperis*, and the Registrar shall issue all documents in the proceedings to the applicant without charge.

(5) All pleadings, process and documents filed of record by a party proceeding *in forma pauperis* shall be headed accordingly.

Hearing of matters

41.(1) Any application under these rules may be heard either in chambers or in open court and at such time as the Court or a Judge determines.

(2) Where parties have filed heads of argument, the parties shall take into account that the Court would have read the arguments and shall endeavour not to repeat the same during the hearing.

(3) Each party may take not more than twenty minutes in addressing the Court in the main and the applicant or appellant, as the case may be, shall be allowed five minutes to address the Court in reply:

Provided that the Court or Judge, as the case may be, may extend the time periods on good cause shown.

(4) There is hereby established an electronic platform hosted by the court for the virtual hearing of applications and actions to be called Virtual Court Platform.

[Subrule inserted by s. 2(h) of SI 78/2022]

(5) The Virtual Court Platform shall operate on the following principles—

- (a) the platform will facilitate the expeditious, effective, seamless and real time conduct of court proceedings;
- (b) the court as the host of the platform is responsible for furnishing the technology, software and equipment needed to make the platform operational, but each party hosted on it is responsible for, and bears the cost and burden of, providing the technology software and equipment needed by the party to make its participation on the platform effective;
- (c) subject to this rule, self-actors, legal practitioners and their clients and witnesses, may access the Virtual Court Platform from different locations or together, and from locations within or outside Zimbabwe;
- (d) the participation of the parties on the platform can be so arranged that any of the following forms of participation is possible—
 - (i) one party and his or her witnesses may be physically present at the location where the court is sitting, while the other party accesses the platform from a different location; or
 - (ii) both parties may be present at the same remote location if—
 - A. the location is another court at which the police officer is present; or
 - B. in the case where the location is not a court, the court hosting the platform is able, by prearrangement of the parties with the Registrar, to assign a police officer to be present at the location at all times during the hearing;
- (e) the platform is availed for parties to use on a voluntary and consensual basis, subject however to the Court's power to direct that, in the interests of justice, a particular case must be heard virtually;
- (f) the platform will ensure the security, authenticity, and where necessary, the confidentiality of virtual proceedings, with provision being made, however, for the live streaming of those cases that the judge deems to be of particular public interest;
- (g) the filing of process and electronic payment of court fees shall be effected using the IECMS platform whether or not the hearing is conducted virtually;
- (h) the platform will ensure that virtual hearings will be conducted as seamlessly as possible without interruption and will resolve any technical challenges in that respect which are the responsibility of the platform as speedily as possible;
- (i) the platform will enable witnesses to participate virtually in the hearings at any court nearest to their place of residence or at any other location by pre-arrangement with the Registrar;

Provided that a party and his or her witnesses may access the platform from the same location subject to the following conditions—

- (i) if there are two or more terminals at the location, the party and his or her witnesses must communicate from different terminals;
- (ii) if there is only one terminal at the location, the party must not be seen in close proximity with his or her witness while the witness's testimony is being given or tested;
- (iii) to ensure that witnesses will not be influenced or influence other witnesses, the witnesses who are yet to give testimony and who have given testimony must be absent from the location until their testimony is required;
- (iv) in any of the foregoing circumstances (paragraphs (i) to (iii)) the police officer present at the location must ensure that no communication (except with the express leave of the court) takes place between the party and his or her witnesses or between the witnesses themselves;
- (j) the platform affords to the parties before and during the hearing the assistance of technically qualified officers of the court to ensure that the parties hosted thereon are able to participate seamlessly and effectively;
- (k) the Registrar is ultimately responsible, subject to the directions of the Court, for the smooth operation of the Virtual Court Platform, and any or all of the parties to the virtual hearing shall have access to him or her during normal office hours for the purpose of ensuring beforehand that the hearing will be conducted seamlessly, efficiently, cost effectively and expeditiously;
- (l) if a party fails to attend a virtual hearing, having agreed or been directed to participate in the hearing, and there being no technical default attributable to the platform itself, such party shall be subject to default judgement proceedings, and it shall not be competent for it to plead lack of the requisite technical resources if it had not raised that issue with the Registrar before the start for the virtual hearing.
- (m) to ensure the continuity and seamlessness of virtual court proceedings, the platform incorporates backup facilities in case of power outages and interruptions of connectivity, but is not responsible for any defaults in that respect in the technology, software or equipment furnished by the parties to enable them to access the platform (accordingly it is incumbent on each party to make the necessary backup provision against power outages and interruption of internet connectivity at their location);
- (n) the platform affords a quality of connectivity, resolution and definition sufficient to permit legal practitioners, their clients, the judge and the witnesses to observe each other's expression, reactions and demeanour as much as possible as if the participants are present together in an actual court setting.

[Subrule inserted by s. 2(h) of SI 78/2022]

(6) The agreement of the parties to have a virtual hearing of their matter must be embodied in writing and signed jointly by them and lodged with the Registrar no later than 10 days before the proposed virtual hearing.

[Subrule inserted by s. 2(h) of SI 78/2022]

(7) If, despite the lack of agreement of the parties, the Registrar forms the opinion, on his or her own or at the instance of the parties concerned, that it is in the interests of justice for a particular case to be held virtually, then the Registrar shall refer the matter to a judge in chambers for an appropriate determination.

[Subrule inserted by s. 2(h) of SI 78/2022]

(8) Upon a referral in terms of subsection (4)¹ the judge may give a direction that, despite the lack of agreement between the parties on this issue, their case shall be held virtually subject to such directions to facilitate the hearing as the judge may give.

[Subrule inserted by s. 2(h) of SI 78/2022]

¹ The reference should be to subrule (7).

(9) Before making a direction the judge shall—

- (a) invite the parties to make representations to him or her in chambers;
- (b) require any party alleging any incapacity to participate in a virtual hearing an affidavit setting forth the particulars of such incapacity.

[Subrule inserted by s. 2(h) of SI 78/2022]

Security for costs

42.(1) An applicant or appellant may be required to give security for the respondent's costs if—

- (a) the respondent demands security; or
- (b) the applicant or appellant, as the case may be, has applied or appealed directly to the Court.

(2) No security need be furnished by the Government or by a municipal or city council or a town management board.

(3) Where an applicant or appellant is required by this rule to furnish security for the respondent's costs, such security shall be furnished within one month of the date of the filing of the application or the notice of appeal, as the case may be, with the Registrar.

(4) The nature of the security and the amount thereof shall be fixed by the Registrar with leave to either party may apply to a Judge in chambers for a review of the Registrar's decision.

(5) Where the applicant or appellant fails to pay security for costs in terms of this rule, the other party may apply to a Judge in chambers for the dismissal of the application or appeal and the Judge may make such order as he or she deems fit.

Documents to be filed with the Registrar

43.(1) Five copies of an application to obtain the leave of the Court shall be filed with the Registrar, in addition to as many copies as there are respondents to be served.

(2) In all cases other than those referred to in subrule (1), eleven copies of the application or appeal, as the case may be, shall be filed with the Registrar, in addition to as many copies as there are respondents to be served.

(3) The Registrar shall only accept written documents which comply with the following requirements—

- (a) all documents shall be on A4-size paper of good quality, unless the nature of the document renders that impracticable;
- (a1) Notwithstanding the provisions of any other rule, the format of the documents presented for filing to the court shall be in paragraphs, and the "Times New Roman" font type, size twelve (12), and a line spacing of 1.5 shall be used for all pleadings and documents;

[Paragraph inserted by s. 2(i) of SI 78/2022]

(b) documents shall be clear and easily legible, typewritten or printed in black ink, and double-spaced, on only one side of the paper, with a margin of not less than fifty millimetres being left on the left- hand side of each sheet.

(c) documents shall be legible documents that were typed or printed in their original form, such as cheques and similar documents, shall not be retyped and clear photocopies on A4-size paper shall be provided instead;

(d) all pages shall be numbered clearly and consecutively, and every tenth line on each page shall be numbered and the pagination used in the court a quo shall be retained where possible;

(e) bulky records shall be divided into separate conveniently-sized volumes of approximately 150 pages each, shall be securely bound in book format to withstand constant use and shall be so bound that, upon being used, they will lie open without manual or other restraint;

- (f) all records shall be securely bound in suitable covers displaying the case number, names of the parties, the volume number and the numbers of the pages contained in that volume, the total number of volumes, the court and the names of the legal practitioners of the parties;
- (g) if the record consists of more than one volume, the first volume shall contain an index of all the volumes so prepared, and each volume shall also have an index of the documents contained therein;
- (h) the volumes referred to in paragraph (g) shall be consecutively numbered and shall state the number of the volume in relation to the other volumes so prepared and filed;
- (i) the binding required by this rule shall be sufficiently secure to ensure the stability of the papers contained within the volume and, where the record consists of more than one volume, the number of each volume and the number of the pages contained in the volume shall appear on the upper third of the spine of the volume.

(4) Where documents are filed with the Registrar and such documents are recoded on a computer disk, the party filing the document shall, where possible, also make available to the Registrar a disk or drive containing the file in which the document is contained, or transmit to the Registrar an electronic copy of the document concerned by e-mail in a format determined by the Registrar which is compatible with software that is used by the Court at the time of filing, at: registrar@concourt.org.zw:

Provided that the transmission of such copy shall not relieve the party concerned from the obligation to file the prescribed number of hard copies of the documents so filed.

(5) If a disk or drive is made available to the Registrar the file shall be copied and the disk shall be returned to the party concerned.

(6) Where a disk or an electronic copy of a document other than a record is provided, the party need file only 10 copies of the document concerned with the Registrar.

(7) The Registrar, as well as the parties and their legal practitioners, shall endeavour to—

- (a) exclude from the record all documents which are purely formal, or are not relevant to the appeal; and
- (b) reduce the bulk of the record as far as practicable to avoid duplication of documents, the unnecessary repetition of headings and other formal parts of documents, and the inclusion of evidence of witnesses which is not relevant to the appeal.

(8) The Registrar shall invite the parties, or their legal practitioners, to inspect the record before it is bound in order to ensure that —

- (i) all necessary documents are included in the record and are in the proper order;
- (ii) any unnecessary documents have been omitted from the record;
- (iii) the record has been compiled in accordance with this rule;
- (iv) the papers are all properly paginated and indexed; and
- (v) the record is legible.

(9) Notwithstanding the provisions of subrule (1), any particulars on or attached to a notice of appeal filed in terms of rule 34, or on or attached to an application for leave to appeal made in terms of rule 33, which has been filed or made by a person who is in prison may be set out in legible handwriting.

(10) Pleadings and documents shall not be unreasonably long, voluminous or convoluted.

[Subrule inserted by s. 2(i) of SI 78/2022]

(11) The Registrar shall reject any document or pleading that does not comply with the provisions of these rules.

[Subrule inserted by s. 2(i) of SI 78/2022]

(12) Any party aggrieved by any decision of the Registrar in terms of these rules may apply to a Judge in chambers for a review of such decision within five days of the party having been notified of the decision.

[Subrule inserted by s. 2(i) of SI 78/2022]

E-filing of documents

43A.(1) A document that is sent by electronic communication to the Registry for filing shall be—

- (a) sent using the official websites of the Court;
- (b) in an electronic format approved by the Registrar; and
- (c) capable of being printed in the form in which it was created, without modification or loss of content.

(2) A document in an existing proceeding shall be sent to the Registrar using the Court's websites.

(3) A person who sends a document in terms of these rules shall—

- (a) keep a hard or electronic copy of the document prepared in accordance with these rules; and
- (b) if ordered to do so by the Court, produce the hard copy of the document.

(4) Where a document that must be signed or stamped is sent to the Registrar by electronic means in accordance with these rules, the Registrar shall electronically stamp the document.

[Rule inserted by s. 2(j) of SI 78/2022]

Substitution of parties

44.(1) Should a party die or otherwise become incapable of continuing the proceedings, the other party may not proceed with the matter until such time as an authorised representative or other competent person has been appointed to represent such party or his or her estate, or when such incapability ceases to exist:

Provided that the process to appoint such other person shall be commenced within three months of the date of such incapability or death, failing which the other party may move for the dismissal of the application, appeal, cross-appeal or opposition, as the case may be.

(2) The period stipulated in subrule (1) may, subjected to rule 12(13) be extended by the Registrar on good cause shown.

(3) Where the party referred to in subrule (1) has been appointed, the Chief Justice or the Court, as the case may be, may, on application, order that such person be substituted for the party who died or became incapable:

Provided that the application may not, without the leave of a Judge, be made more than one month after the person in question is appointed.

(4) Where a party does not make an application in terms of subrule (3), the other party may apply for the dismissal of the other party's appeal, cross-appeal, application or opposition, as the case may be.

Application of Supreme Court Rules

45. In any matter not dealt with in these rules, the practice and procedure of the Court shall, subject to any direction to the contrary by the Court or a Judge, follow, as near as may be, the practice and procedure of the Supreme Court or where the rules of the Supreme Court are silent, of the High Court.

Stated case

46.(1) A stated case shall contain agreed facts only, and shall be in consecutively numbered paragraphs.

(2) Each paragraph shall be confined, as far as possible, to a separate portion of the subject matter.

(3) The stated case shall contain paragraphs setting out the contentions of the parties and the findings of the court *a quo*.

- (4) The stated case shall set out clearly—
- (a) the findings of fact of the court *a quo*;
 - (b) any inferences or conclusions of fact which can be drawn from those findings; and
 - (c) the question(s) of law to be determined;
- and shall be signed by all the parties or their legal practitioners.
- (5) There shall be annexed to the stated case copies of documents necessary to enable the Court to decide upon the questions in dispute.
- (6) Upon receipt of the stated case, the Registrar shall refer the matter to the Chief Justice for directions.
- (7) Any directions given by the Chief Justice in terms of subrule (6) shall be complied with, failing which the Registrar shall not set the matter down for hearing.

Models, diagrams and exhibits

- 47.(1) Any model, diagram or exhibit which will be adduced in evidence in a case and brought to the Court for its inspection, shall be placed in the custody of the Registrar at least ten days before the case is heard.
- (2) Any model, diagram or exhibit that is placed in the custody of the Registrar shall be removed by the parties within forty days after the case is determined and, where that is not done, the Registrar shall notify the party concerned to remove the articles forthwith, and if they are not removed within six months thereafter, the Registrar shall destroy them or otherwise dispose of them in an appropriate manner.

Dismissal of matters for want of prosecution

- 48.(1) Where a respondent has filed and served a notice of opposition and an opposing affidavit and, within the prescribed time, the applicant has neither filed an answering affidavit nor requested the Registrar to set the matter down for hearing, the respondent, on notice to the applicant, may—
- (a) request the Registrar to set the matter down for hearing in terms of rule 19; or
 - (b) make a chamber application for the dismissal of the case for want of prosecution
- and the Chief Justice may order that the matter be dismissed with costs or make such other order on such terms as he or she deems fit.
- (2) Where the applicant has filed an answering affidavit in response to the respondent's opposing affidavit but has not, within one month thereafter, requested the Registrar to set the matter down for hearing, the respondent, on notice to the applicant, may—
- (a) request the Registrar to set the matter down for hearing in terms of rule 19; or
 - (b) make a chamber application for the dismissal of the case for want of prosecution;
- and the Chief Justice may order that the matter be dismissed with costs or make such other order on such terms as he or she deems fit.

Barring

- 49.(1) A party who has failed to file an opposing affidavit or heads of argument within the time prescribed in these rules or as directed by the Court or a Judge shall be deemed to have been automatically barred.
- (2) While a bar is in operation—
- (a) the Registrar shall not accept for filing any pleadings or other document from the party barred, and where such documentation is erroneously accepted, the documentation shall be disregarded by the Court or the Judge concerned; and
 - (b) except for the purpose of applying for the removal of the bar, the party concerned shall not be permitted to appear personally or by a legal practitioner in any subsequent proceedings in the matter.

(3) A party who has been barred may—

- (a) make a chamber application to remove the bar; or
- (b) with leave of the Court or a Judge make an oral application at the hearing, if any, of the matter concerned to remove the bar;

and the Court or Judge, as the case may be may allow the application on such terms as to costs and otherwise as he or she or it deems fit.

(4) The withdrawal or removal of a bar shall not preclude a subsequent bar for any subsequent default.

Joinder of parties and causes

50. Two or more persons may be joined together in an application or an appeal as applicants, appellants or respondents, whether in convention or in reconvention, where—

- (a) if separate applications or appeals were brought by or against each of them, as the case may be, some common question of law or fact would arise in all the matters; and
- (b) all rights to relief claimed in the application or appeal, whether they are joint, several or alternative, are in respect of, or arise out of, the same transaction or series of transactions.

Misjoinder or non-joinder of parties

51.(1) No cause or matter shall be dismissed or removed from the roll merely by reason of the misjoinder or non-joinder of any party and the Court may, in any cause or matter, determine the issues or questions in dispute so far as they affect the rights and interests of the persons who are parties to the cause or matter.

(2) At any stage of the proceedings in any cause or matter the Court may, on such terms as it deems just, and either of its own motion or on application, order that any person who—

- (a) has been improperly or unnecessarily made a party or who has for any reason ceased to be a proper or necessary party, to cease to be a party;
- (b) ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the cause or matter may be effectively and completely determined and adjudicated upon, be added as a party:

Provided that no person shall be added as an applicant without his consent, signified in writing or in such other manner as may be authorised.

(3) A court application by any person for an order under subrule (2) adding him or her as a respondent shall be supported by an affidavit showing his or her interest in the matters in dispute in the cause or matter.

Consolidation of applications or appeals

52.(1) Where separate applications or appeals have been filed and it appears to the Court convenient to do so, it may, upon the application of any party thereto and after notice to all interested parties, make an order consolidating such matters, whereupon—

- (a) the said applications or appeals shall proceed as one application or appeal, as the case may be;
- (b) the Court may make any order which it deems proper with regard to further procedure, and may give one judgment disposing of all matters in dispute in the said applications or appeals.

(2) With the consent of the parties to the matter, the Chief Justice may make an order consolidating the applications or appeals and any other order which he or she deems proper with regard to the further conduct of the case.

Withdrawal

53.(1) Except as otherwise provided in the Constitution, whenever all the parties, at any stage of the proceedings, file with the Registrar an agreement in writing that a case be withdrawn, specifying the terms relating to the payment of costs and payment to the Registrar of any fees that may be due, the Registrar shall, if the Chief Justice so directs, enter the withdrawal, whereupon the Court shall no longer be seized with the matter.

(2) A person instituting any proceedings may, at any time before the matter has been set down and thereafter, by consent of the parties or leave of the Court, withdraw such proceedings, in either of which event he or she shall deliver a notice of withdrawal and shall embody in such notice an undertaking to pay costs.

(3) An undertaking to pay costs referred to in subrule (2) shall have the effect of an order of Court for such costs and, if no such undertaking to pay costs is embodied in the notice of withdrawal, the other party may apply to the Court, on notice, for an order for costs.

(4) A respondent may, during the hearing of any appeal or application and before the close of argument, apply to the Court or the Judge for the withdrawal of his or her opposition.

(5) The Court or Judge, as the case may be, may either grant or refuse the application and make an appropriate award as to costs.

(6) Where a respondent withdraws his opposition before the matter is heard, the Registrar may set the matter down as an unopposed application or appeal, as the case may be.

Judgment

54.(1) After the completion of the hearing of an application, appeal or other matter, judgment may be given forthwith or at such date as the Court or Judge thinks fit and by the issue, thereafter, of an order by the Registrar.

(2) A judgment, if not given immediately after the conclusion of the hearing of the matter or at a time specified by the Court or a Judge, shall be given at such date and time as may be notified to the parties by the Registrar.

(3) A judgment shall be pronounced in such manner as may be determined by the Court or by the Judge, as the case may be whether or not he or she was present at the hearing.

(4) The Registrar shall certify all judgments issued by him or her

Costs

55.(1) Generally no costs are awarded in a constitutional matter:

Provided that, in an appropriate case, the Court or the Judge, as the case may be, may make such order of costs as it or he or she deems fit.

(2) If the Court or the Judge considers that the conduct of a party has been such as to warrant such an order, the Court or a Judge may make any one or more of the following orders—

- (a) depriving a successful party of all or part of his or her costs in the appeal or application;
- (b) ordering a successful party to pay all or part of the costs of the other party;
- (c) ordering a party to pay costs on a legal practitioner-and-client scale or any other appropriate scale.

(3) If the Court or a Judge considers that the conduct of a legal practitioner representing a party has been such as to warrant order in terms of subrule (2), the Court or Judge may make any one or more of the following orders—

- (a) that the legal practitioner personally pays all or part of the costs on such scale as the Court or Judge determines;
- (b) that the legal practitioner refunds to the client all or any of the fees the client had paid him or her in respect of the matter;

(c) that the legal practitioner shall not charge his or her client any fee in respect of all or part of the work done by him or her in respect of the matter.

(4) Before making an order in terms of subrule (2) or (3), the Court or the Judge shall give the party or legal practitioner concerned an opportunity to make representations as to whether or not the order should be made.

(5) This rule shall not derogate from the power of the Court or a Judge to make any other order to or give any direction, whether as to costs or otherwise, arising out of the conduct of a party or legal practitioner.

Taxation of costs

56.(1) Where costs are allowed they shall be taxed by the Registrar in accordance with the relevant provisions of the tariff set out in the Fifth Schedule to the High Court Rules, 1971.

(2) Any party aggrieved by the taxation shall give notice of review to the Registrar and to the opposite party, within fifteen days of the taxation, setting out his or her grounds of objection.

(3) The Registrar shall make a report, in writing, setting forth any relevant facts found by him or her and stating his or her reasons for any decision, a copy of which shall be placed before the Chief Justice and shall be served on the parties to the taxation.

(4) Thereafter the Registrar shall fix a date for the hearing of the review by the Chief Justice.

(5) On the review the Chief Justice shall make such order as seems to him or her to be just.

Execution of judgments

57.(1) The process of the Court shall run throughout Zimbabwe, and its judgments and orders shall, subject to the rules, be executed in any area in like manner as if they were judgments or orders of the High Court or the Magistrates Court having jurisdiction in such area.

(2) A copy of a judgment or order of the Court duly certified by the Registrar and delivered by him or her to the Registrar of the High Court or clerk of the Magistrates Court shall constitute authorisation to such court to institute execution of the judgment or order.

Non-appearance of a party

58.(1) Where an applicant or appellant does not appear at a hearing, the Court or Judge, as the case may be, may make an order that such application or appeal be dismissed for want of prosecution:

Provided that where a respondent who is in attendance applies for the matter to be heard on the merits, the Court or Judge may deal with the merits and make such order as it, he or she deems fit.

(2) Where an appeal or application is dismissed in terms of subrule (1), the applicant or appellant may, within thirty days thereafter, apply to a Judge for reinstatement of the appeal or application.

(3) Where a respondent does not appear at a hearing, the Court or Judge, as the case may be, may nevertheless proceed to hear the matter on the merits and, in the absence of the respondent, may make such order as to costs as he or she deems fit.

Conduct and dress of persons appearing and attending Court

59. The Chief Justice may, through a Practice Direction, regulate the conduct and dress of persons appearing before or attending the Court.

Authentication of documents

60.(1) Any document executed outside Zimbabwe shall be deemed to be sufficiently authenticated for the purpose of production or use in the Court if it is authenticated—

- (a) by a notary public, mayor or person holding judicial office; or
- (b) in the case of countries or territories in which Zimbabwe, has its own diplomatic or consular representative, by the head of a Zimbabwean diplomatic mission, the deputy or acting head of such mission, a counsellor, first, second or third secretary, a consul-general, consul or vice-consul.

(2) An affidavit sworn before and attested by a commissioner outside Zimbabwe shall require no further authentication, and may be used in all cases and matters in which affidavits are admissible as freely as if it had been duly made and sworn to within Zimbabwe.

(3) Nothing contained in these rules shall prevent the acceptance as sufficiently authenticated by the Court of any document which is shown, to its satisfaction to have been actually signed by the person purporting to have signed the same.

Examination of witnesses

61.(1) In any appeal, the Court may, where it appears necessary for the proper administration of justice, make an order for the examination upon oath before the Court of any witness who would have been a compellable witness before the subordinate court notwithstanding that such witness was not called at the trial or proceedings.

(2) In addition to the power under subrule (1), the Court or a Judge may appoint a judge of a subordinate court or a magistrate to examine any witness upon oath.

(3) Where any witness or person is ordered to be examined under subrule (2), the judge or magistrate taking the examination shall conduct the proceedings in accordance with the laws of evidence applicable at the relevant time and ensure that the examination takes place in the presence of the parties, their legal practitioners or agents, and the witnesses shall be subject to cross-examination and re-examination.

(4) The judge or magistrate appointed under subrule (2) shall immediately after the examination is concluded, file with the Registrar the findings made during the examination proceedings and the Court or Judge may regard the findings as evidence before him or her.

Reference of a question for investigation

62.(1) 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 Court, be conveniently conducted before that Court, the Court may order the reference of the question to a special commissioner appointed by the Court.

(2) The commissioner so appointed by the court may be sworn on oath by the court.

(3) The commissioner shall, after examination under subrule (1), submit a report detailing his or her findings to the Court.

Assessors

63.(1) In any matter before the Court or a Judge, it or he or she may summon to its or his or her assistance to act as assessors one or more persons who are willing so to act and who have skill and experience in any matter which may have to be considered in the case.

(2) Any assessor summoned in terms of subrule (1) shall act in an advisory capacity only and shall not be entitled to a vote in the decision of the Court or Judge.

(3) Whenever the services of an assessor are required in any matter before the Court or Judge, the Court or Judge shall administer an oath to the assessor:

Provided that before such oath is administered, either party to the matter shall be allowed to address the Court or Judge on the propriety or otherwise of the intended appointment of the assessor and the Court or Judge may make such order it or he or she deems appropriate.

Issue of warrants

64.(1) The Court or Judge may issue any warrant necessary for enforcing any order or sentence of the Court or Judge as the case may be.

(2) Any warrant in terms of subrule (1) shall be executed by the officer to whom it is directed, and may also be executed by any other officer whose name is endorsed upon the warrant by the officer to whom it is directed or endorsed.

(3) Where a person is charged with contempt of court, a warrant of his or her arrest shall be made out in Form CCZ 7 under the signature of the Registrar.

(4) Where a person charged with contempt is adjudged guilty and is sentenced to suffer imprisonment, a warrant of committal shall be made out in Form CCZ 8 under the signature of the Registrar.

(5) Every warrant in terms of this rule shall remain in force until it is cancelled by order of the Court or a Judge or until it is executed.

E-court status of the Court

65. Six months after the coming into operation of the electronic filing system, the Court shall become a fully paperless Court, save in exceptional circumstances authorised by a Judge of the Court.

[Rule inserted by s. 2(k) of SI 78/2022]

FIRST SCHEDULE (RULES 2(1) AND 4)

FORMS

**FORM CCZ 1
Court Application
Rule 16**

CASE NO. CCZ

IN THE CONSTITUTIONAL COURT OF ZIMBABWE
HELD AT

In the matter between

..... APPLICANT

AND

..... RESPONDENT

COURT APPLICATION

TAKE notice that the applicant intends to apply to the Constitutional Court for the Order in terms of the Draft annexed to this notice and that the accompanying affidavits and documents will be used in support of the application.

If you intend to oppose this application you will have to file a Notice of Opposition in Form CCZ 2, together with one or more opposing affidavits. With the Registrar of the Constitutional Court at within days after the date on which this notice was served upon you. You will also have to serve a copy of the Notice of Opposition and affidavit/s on the applicant at the address for service specified below. Your affidavits may have annexed to them documents verifying the facts set out in the affidavits.

Leave to apply was granted on the day of 20.....

Leave to apply is not necessary.

(delete whichever is inapplicable)

DATED at..... this day of20.....

.....
Applicant/Applicant's Legal Practitioners
Applicant's address for service
*[which must be a physical address within a
radius of 25 kilometres from the registry]*

TO: The Registrar, Constitutional Court,
Harare

AND TO: Respondent/Respondent's Legal Practitioners
Respondent's address

**FORM CCZ 2
Notice of Opposition
Rule 17**

CASE NO. CCZ

IN THE CONSTITUTIONAL COURT OF ZIMBABWE
HELD AT

In the matter between

..... APPLICANT

AND

..... RESPONDENT

NOTICE OF OPPOSITION

TAKE NOTICE THAT the Respondent intends to oppose the application on the grounds set out in the supporting affidavit and supporting documents attached hereto and that his address for service (*which is within twenty-five kilometres of the office of the registry*) is specified below.

The court/chamber application was served on the Respondent on the day of 20.....

DATED at..... this day of20.....

.....
Respondent/Respondent's Legal Practitioners
Respondent's address for service

TO: The Registrar, Constitutional Court,
HARARE

AND TO: The Applicant
(Applicant's address for service)

**FORM CCZ 3
Chamber Application
Rule 20**

CASE NO. CCZ

IN THE CONSTITUTIONAL COURT OF ZIMBABWE
HELD AT

In the matter between

..... APPLICANT

AND

..... RESPONDENT

CHAMBER APPLICATION

Application is hereby made for an Order/Draft Order annexed hereto.

(set out in summary basis of Application)

The accompanying affidavit(s), and document(s) are tendered in support of the Application.

The respondent(s) is required to file his/her Notice of Opposition in Form CCZ 2 and any supporting documents within days (not less than 5 days) of service of this Application.

DATED at..... this day of20.....

.....
Applicant/Applicant's Legal Practitioners
Applicant's address for service
*[which must be a physical address within a
radius of 25 kilometres from the Registry]*

TO: The Registrar, Constitutional Court of Zimbabwe,
Harare

AND TO: Respondent
Respondent's address

FORM CCZ 4
Referral of constitutional matter
Rule 24

CASE NO.

IN THE CONSTITUTIONAL COURT OF ZIMBABWE
HELD AT

A REFERRAL FROM

.....in terms of section 175(4) of the Constitution.

In the matter between

..... Applicant

and

..... Respondent

Date of referral

Constitutional question referred

.....
.....
.....

I do hereby certify that the record attached
hereto is correct and accurate.

This record contains pages and the following items:

.....
.....
.....

Signed

Presiding Judicial Officer/Registrar/Clerk of Court

COURT STAMP

.....

FORM CCZ 5
Confirmation of Order of Constitutional Invalidity
Rule 31(1) as read with section 175(1) of the Constitution

CASE NO. CCZ

IN THE CONSTITUTIONAL COURT OF ZIMBABWE
HELD AT

In the matter between

..... APPLICANT

AND

..... RESPONDENT

CONFIRMATION OF AN ORDER OF CONSTITUTIONAL INVALIDITY

I,, being the Registrar of the Court / Clerk of Court, do hereby place the record of proceedings before the Court in terms of section 175(1) of the Constitution.

The High /Labour /Administrative/Magistrates/Court made the following order:

.....
.....
.....

The order was granted on the day of 20....

A copy of the order is annexed hereto and the record of proceeding consists of printed pages and the following items:

.....
.....
.....

.....
REGISTRAR CLERK OF COURT

TO: The Registrar, Constitutional Court,
HARARE

AND TO: The Parties

**FORM CCZ 6
Provisional Order
Rule 29(1)(d)**

CASE NO. CCZ

IN THE CONSTITUTIONAL COURT OF ZIMBABWE
HELD AT

In the matter between

..... Applicant

AND

..... Respondent

PROVISIONAL ORDER

TO:

TAKE note that the Court the Honourable Mr/Mrs Justice on
..... sitting at issued a provisional order as shown overleaf.

The annexed application, affidavit/s and documents were used in support of the application for this provisional order.

If you intend to oppose the confirmation of this provisional order, you will have to file a Notice of Opposition in Form No CCZ 2 together with one or more opposing affidavits, with the Registrar at Harare within days after the date on which this provisional order and annexures were served upon you. You will also have to serve a copy of the Notice of Opposition and affidavit/s on the applicant at the address for service specified in the application.

If you do not file an opposing affidavit within the period specified above, this matter will be set down for hearing in the Constitutional Court at Harare without further notice to you and will be dealt with as an unopposed application for confirmation of the provisional order.

If you wish to have the provisional order changed or set aside sooner than the Rules of Court normally allow and can show good cause for this, you may approach the applicant/applicant's legal practitioner to agree, in consultation with the Registrar, on a suitable hearing date. If this cannot be agreed or there is great urgency, you may make a chamber application, on notice to the applicant, for directions from Judges as to when the matter can be argued.

.....

REGISTRAR

TERMS OF FINAL ORDER SOUGHT

That you show cause to this Honourable Court why a final order should not be made in the following terms –

(set out the terms of the relief sought)

INTERIM RELIEF GRANTED

Pending determination of this matter, the Applicant is granted the following relief-

(set out the nature of any interim relief granted by the Court)

SERVICE OF PROVINCIAL ORDER

(set out any order of the Court regarding service of the provisional order)

**FORM CCZ 7
Warrant of Arrest
Rule 64**

CASE NO. CCZ

IN THE CONSTITUTIONAL COURT OF ZIMBABWE
HELD AT

To:
(Name and designation of the person or persons who is or are to execute the warrant)

Whereas of is charged with committing contempt of this Court, you are hereby directed to arrest the said and to produce him before this Court.

If the said shall pay recognizance in the sum of \$..... with one surety in the sum of \$..... (or two sureties each in the sum of \$.....) to attend before this Court on the day of 20..... and to continue so to attend until otherwise directed by this Court, the said be released.

Dated at HARARE this day of 20.....

.....

REGISTRAR
SEAL



FORM CCZ 8
Warrant of Committal for Contempt
Rule 64

CASE NO. CCZ

IN THE CONSTITUTIONAL COURT OF ZIMBABWE
HELD AT

To the Officer in Charge of the prison at

Whereas on this day (*name and description of the contemnor*) has been adjudged by the Court guilty of wilful contempt of Court, and has been sentenced to suffer imprisonment for the period (*here specify the term*) and/or to pay a fine of \$

This is to authorise and require you, the Officer in Charge of the said prison, to receive the said (*name of the contemnor*) into your custody, together with this warrant, and to keep him/her safely in the said prison for the period of (*term of imprisonment*) or for such shorter period as may hereafter be fixed by order of this Court and delivered to you.

You are hereby directed that, while the said is in your custody, you produce the said before the Court, at all times when the Court shall so direct.

Given under my hand and the seal of the Court, this day of 20....

.....

REGISTRAR

SEAL



FORM CCZ 9
Renunciation of Agency by a Legal Practitioner
Rule 8

CASE NO. CCZ

IN THE CONSTITUTIONAL COURT OF ZIMBABWE
 HELD AT

In the matter between

..... Applicant/Appellant

and

..... Respondent

RENUNCIATION OF AGENCY

TAKE NOTICE THAT ON THE day of 20 I/We the undersigned have renounced agency for the Applicant/Respondent/Appellant in the above matter.

The Application/Appeal is set down for the day of The Application / Appeal is yet to be set down (*delete the inapplicable*).

The notice takes effect from the date of filing this notice with the Registrar.

Dated at this day of 20

.....
 (*Signature of the retiring legal practitioner*)

TO: The Registrar, Constitutional Court,
 Harare

AND TO: The Client
 Client's address

AND TO: The other party
 Address

SECOND SCHEDULE

FEEs

	US\$
1. Constitutional application.....	10,00
2. Appeal from lower court	10,00
3. Application for condonation or extension of time or reinstatement.....	10,00
4. Application for review of taxation	10,00
5. Application for leave to appeal.....	5,00
6. Order of Court or certified copy thereof.....	5,00
7. Certificate by the Registrar.....	10,00
8. Affixing the seal of the Court to any document (per page)	10,00
(a) notice of taxation	30,00
(b) application for set-down for taxation.....	30,00

9. Making a copy of any document, other than a certified copy of an order of court—
- (a) by photocopy means, per page 0,20
 - (b) by original typing, per page 1,00
 - (c) by duplicate or printed copy, per page..... 1,00
10. Supplying transcript of shorthand notes, typed per page—
- (a) for the first copy requested by any party..... 1,00
 - (b) for the second and each subsequent copy made at the same time and supplied to the same party that requested the first copy 1,00
11. Search fee 1,00
12. Retrieving files from archives..... 300,00

NB. The fees may be payable in Zimbabwean dollars at the prevailing interbank rate.

[Schedule substituted by SI 193/2019, SI 206/2020 and SI 199/2022]