

THE CONSTITUTIONAL COURT ACT, 2016

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY PROVISIONS

Section

1. Short title
2. Interpretation

PART II

CONSTITUTION AND GENERAL POWERS OF THE COURT

3. Constitution of Court
4. Sittings of Court
5. Powers of single judge of Court
6. Restriction regarding sitting on appeals
7. Seal
8. Jurisdiction of Court
9. Practice and procedure
10. Process and execution of judgment of Court
11. Right of audience
12. Friend of Court

PART III

EVIDENCE

13. Summoning and compelling attendance of witnesses
14. Refusal to be sworn or to give evidence
15. Evidence of bystander
16. Evidence of prisoner
17. Allowances to witnesses
18. Inspection
19. Evidence of Zambian customary law and assessors
20. Record of evidence, etc
21. Recording of proceedings
22. Perjury

PART IV

APPEALS

23. Right of appeal
24. Restrictions on appeals
25. Powers of Court on appeal

PART V

GENERAL PROVISIONS

26. Registrar and officers of Court
27. Establishment of Registry
28. Administration of oaths
29. Warrant for production of appellant before Court
30. Costs
31. Rules of Court
32. Transitional provisions

GOVERNMENT OF ZAMBIA

ACT

No. 8 of 2016

Date of Assent: 2nd May, 2016

An Act to provide for the procedure of the Constitutional Court; prescribe the powers of the Court; and provide for matters connected with, or incidental to, the foregoing.

[3rd May, 2016

ENACTED by the Parliament of Zambia

Enactment

PART I

PRELIMINARY PROVISIONS

1. This Act may be cited as the Constitutional Court Act, 2016. Short title
2. In this Act, unless the context otherwise requires— Interpretation
 - (a) the High Court relating to the election of a Member of Parliament; or
 - (b) a local government elections tribunal;
- “Consolidated Fund” means the Consolidated Fund established under Article 200 of the Constitution; Cap. 1
- “councillor” has the meaning assigned to it in the Constitution; Cap. 1
- “Court” means the Constitutional Court established under Article 127 of the Constitution; Cap. 1
- “Deputy President” means the Deputy President of the Court appointed under Article 127 of the Constitution; Cap. 1
- “Electoral Commission of Zambia” means the Electoral Commission of Zambia established under Article 229 of the Constitution; Cap. 1
- “High Court” means the High Court established under Article 133 of the Constitution; Cap. 1
- “judgment” includes a decree, order, ruling, declaration, conviction, sentence and decision;

Cap. 1	“Member of Parliament” has the meaning assigned to it in the Constitution;
Cap. 1	“oath” has the meaning assigned to it in the Constitution;
Cap. 1	“petitioner” includes a person who files a petition in the Court in relation to a matter under Article 128 of the Constitution;
Cap. 30	“practitioner” has the meaning assigned to it in the Legal Practitioners Act;
Cap. 1	“President” means the President of the Court appointed under Article 127 of the Constitution;
Cap. 1	“Public Protector” means the public protector appointed under Article 243 of the Constitution;
	“Registrar” means the Registrar of the Court appointed under section <i>twenty-six</i> ;
	“Republican President” means the President of the Republic; and
	“rules” means rules of Court made under section <i>thirty-one</i> .
Cap. 1	“tribunal” means a local government elections tribunal established in accordance with Article 159 of the Constitution;
	“Vice-President” means the Vice-President of the Republic;

PART II

CONSTITUTION AND GENERAL POWERS OF THE COURT

- Constitution of Court
- 3.** (1) Subject to subsections (2) and (3), the Court shall, when the Court is determining a matter, be constituted by an uneven number of not less than three judges.
- (2) The Court shall be constituted by one judge when hearing an interlocutory matter.
- (3) The full bench of the Court shall be constituted by an uneven number of not less than five judges when determining matters that require a full bench.
- (4) The Court shall be presided over by—
- (a) the President;
 - (b) in the absence of the President, the Deputy President; and
 - (c) in the absence of the Deputy President, the most senior judge of the Court, as constituted.

(5) The determination of any question before the Court shall be according to the opinion of the majority of the judges of the Court hearing the case.

4. (1) The sittings of the Court shall usually be held at Lusaka but may be held at such other place in accordance with a circuit schedule issued by the Chief Justice.

Sittings of Court

(2) Subject to the provisions of this Act, the Court shall, at a sitting, be composed of such judges of the Court as the President may direct.

5. A single judge of the Court may exercise a power vested in the Court not involving the decision of an appeal or a final decision in the exercise of its original jurisdiction.

Powers of single judge of Court

6. A judge of the Court shall not sit on the hearing of an appeal or exercise power under section *five* in respect of an appeal from a judgment given by that judge or a judgment given by a court of which that judge sat as a member.

Restriction regarding sitting on appeals

7. The Court shall have a seal approved by the Chief Justice.

Seal

8. (1) Subject to Article 28 of the Constitution, the Court in exercise of its original and final jurisdiction may determine—

Jurisdiction of Court
Cap. 1

(a) a matter relating to the interpretation of the Constitution;

Cap. 1

(b) a matter relating to a violation or contravention of the Constitution;

Cap. 1

(c) a petition to challenge the nomination of a candidate for election as Republican President;

(d) a matter relating to the Republican President, VicePresident or the election of a Republican President;

(e) appeals relating to election of Members of Parliament and councillors;

(f) an application to review a decision of the Electoral Commission of Zambia in the delimitation of constituencies and wards;

(g) a matter referred to the Court by the Republican President pursuant to the Constitution; and

Cap. 1

(h) whether or not a matter falls within the jurisdiction of the Court.

(2) Subject to Article 28 (2) of the Constitution, where a question relating to the Constitution arises in a court, the person presiding in that court shall refer the question to the Court.

Cap. 1

- Cap. 1 (3) Subject to Article 28 of the Constitution, a person who alleges that—
- (a) an Act of Parliament or statutory instrument;
 - (b) an action, measure or decision taken under any written law; or
 - (c) an act, omission, measure or decision by a person or an authority;
- Cap. 1 contravenes the Constitution, may petition the Court for redress.
- (4) The Court shall hear and determine—
- (a) appeals from the High Court to challenge the election of a Member of Parliament;
 - (b) appeals from a tribunal; and
 - (c) any other matter as may be conferred upon it by or under the Constitution or any other written law.
- Cap. 1
- Practice and procedure **9.** The jurisdiction vested in the Court shall, as regards practice and procedure, be exercised in the manner provided by this Act and the rules.
- Process and execution of judgment of Court **10.** Service of the process of the Court may be effected throughout Zambia and a judgment of the Court shall be executed and enforced in like manner as if it were a judgment of the High Court.
- Right of audience **11.** (1) The parties to a matter before the Court may appear in person or be represented and appear by a practitioner.
- (2) Subject to subsection (1), a Court proceeding may be instituted by—
- (a) a person acting on behalf of another person who cannot act in their own name;
 - (b) a person acting as a member of, or in the interest of, a group or class of persons;
 - (c) a person acting in the public interest; or
 - (d) an association acting in the interest of one or more of its members.
- Cap. 1 (3) The Public Protector may bring an action before the Court in accordance with the Constitution.
- Friend of Court **12.** (1) The Court may allow a person with expertise in a particular matter which is before the Court to appear as a friend of the Court.

(2) Leave to appear as a friend of the Court may be granted to a person on application orally or in writing.

(3) The Court may, on its own motion, request a person with expertise to appear as a friend of the Court in a matter before it.

PART III

EVIDENCE

13. (1) The Court may, in any suit or matter in which the Court is exercising original jurisdiction—

(a) summon a person to give evidence or produce a document in that person's possession or power; and

(b) examine a person as a witness and require the person to produce any document in that person's possession or power.

Summoning
and
compelling
attendance
of witnesses

(2) The Court may, at any stage of a suit or matter, exercise the power in subsection (1) on its own motion or on the application of a party to the suit or matter.

(3) A person who is summoned and given reasonable notice of the time and place at which that person is required to attend, in accordance with subsection (1), but fails to attend without reasonable excuse commits contempt of court and may be proceeded against by warrant to compel that person's attendance.

14. (1) A person who appears before the Court in obedience to a summons or under warrant and being required to give evidence refuses to—

(a) take an oath;

(b) answer a question lawfully put to that person; or

(c) produce a document in that person's possession or power;

commits contempt of court and may, by warrant, be committed to prison by the Court.

Refusal to
be sworn or
to give
evidence

(2) A person committed to prison under subsection (1) shall remain in prison until that person consents to take the necessary oath, answer the question or produce the document required under that subsection.

(3) A person's liability under subsection (1) does not affect any other liability that may attach to that person for a contravention of that subsection.

- Evidence of bystander **15.** A person who is present in Court, whether as a party in a matter or not, may be compelled by the Court to give evidence or to produce a document in that person's possession or power, in the same manner and subject to the same rules as if that person had been duly summoned to attend and give evidence or to produce that document, and may be dealt with under the provisions of section *fourteen* for any refusal to obey the order of the Court.
- Evidence of prisoner **16.** A judge may issue a warrant under the judge's hand to bring up a person confined as a prisoner under a sentence or otherwise, to be examined as a witness in any matter pending in the Court, and the jailer or person in whose charge that prisoner is shall obey the warrant by bringing up the prisoner in custody and delivering that prisoner to an officer of the Court.
- Allowances to witnesses **17.** (1) The Court may order, and allow to be paid to a person required to attend or be examined, as a witness, such sum of money as the Chief Justice may, with the approval of the Minister responsible for finance, prescribe for defraying the reasonable expenses of that person.
- (2) A sum of money allowed under subsection (1) shall be paid by the party on whose behalf the witness is called, and shall be recoverable as ordinary costs of the hearing unless the Court orders otherwise.
- Inspection **18.** The Court may, in any matter, make an order for inspection by the Court, the parties or witnesses, of any real or personal property, the inspection of which may be material to the determination of the matter in dispute, and may give such directions with regard to that inspection as the Court considers necessary.
- Evidence of Zambian customary law **19.** (1) The Court may, in any matter in which a question of Zambian customary law is material to the matter—
- (a) call as a witness a person whom the Court considers to have special knowledge of Zambian customary law;
- (b) call a chief or person, to the Court's assistance, as an assessor of Zambian customary law; or
- (c) consult and, to the extent necessary, give effect to any book or publication which the Court considers to be an authority on Zambian customary law.
- (2) An assessor called as a witness under subsection (1) shall advise the Court on all matters of Zambian customary law, which may arise in the matter concerned, and tender the assessor's opinion to the Court on the matter generally, but in reaching its decision the Court is not bound by the assessor's opinion.

(3) An assessor called under subsection (1) shall be paid such fees and allowances as the Chief Justice may prescribe, with the approval of the Minister responsible for finance.

(4) The fees and allowances under subsection (3) shall be paid out of the Consolidated Fund unless the Court orders otherwise.

(5) An assessor called under this section shall take an oath prescribed in the rules.

20. (1) A party to a matter before the Court is, on payment of such fee as may be prescribed by the rules, entitled to a copy of the record of evidence given in that matter.

Record of evidence

(2) Despite subsection (1), a person is not entitled, as of right at any time or for any purpose, to inspect a copy of a record of evidence given in a matter before the Court, or to a copy of the notes of the Court, except where expressly provided by the rules.

21. The proceedings in a matter before the Court shall be taken down and recorded in a manner prescribed by the rules.

Recording of proceedings

22. (1) Where it appears to the Court that a person has committed perjury in any proceeding before the Court, the Court may call that person to show cause why the person should not be convicted for perjury.

Perjury

(2) Where a person fails to show cause why the person should not be convicted for perjury, the Court shall convict the person.

(3) A person convicted under subsection (2) is liable to a fine not exceeding fifty thousand penalty units or imprisonment for a term not exceeding six months, or to both.

(4) A penalty imposed under this section is a bar to any other criminal proceedings in respect of the same offence.

PART IV

APPEAL

23. (1) Subject to Article 28 of the Constitution and section *twenty-four*, an appeal shall lie to the Court from a judgment of the High Court in a constitutional matter.

Right of appeal
Cap. 1

(2) An appeal shall lie to the Court from a judgment of a tribunal.

24. (1) An appeal shall not lie—

(a) from an order allowing an extension of time for appealing from a judgment;

Restrictions on appeals

- (b) from an order of a judge of the Court giving unconditional leave to defend an action;
 - (c) from a judgment given by the High Court in the exercise of its appellate or revisional jurisdiction without the leave of the High Court or, if that has been refused, without the leave of the Court;
 - (d) from an order made with the consent of the parties or from an order as to costs only which by law is left to the discretion of the court or tribunal without the leave of the court or of the judge who, or tribunal which, made the order or, if that has been refused, without the leave of a judge of the Court; or
 - (e) from an order made in chambers by a judge of the High Court or by a tribunal, or from an interlocutory order or interlocutory judgment made or given by a judge of the High Court or by a tribunal, without the leave of that judge or, if that has been refused, without the leave of a judge of the Court, except in the following cases:
 - (i) where the liberty of the subject or the custody of infants is concerned; or
 - (ii) where an injunction is granted or refused.
- (2) An order refusing unconditional leave to defend an action is not an interlocutory order or interlocutory judgment within the meaning of subsection (1)(e).

Powers of
Court on
appeal

25. (1) The Court may, on the hearing of an appeal—

- (a) confirm, vary, amend or set aside the judgment appealed from or give such judgment as the case may require;
- (b) where necessary or expedient in the interest of justice—
 - (i) order the production of a document, exhibit or other thing connected with the proceedings, the production of which appears to the Court necessary for the determination of the case;
 - (ii) order a witness who would have been a competent and compellable witness at the trial to attend and be examined before the Court, whether the witness was or was not called at the trial, or order the examination of the witness to be

conducted in the manner provided by the rules before any judge of the Court or before an officer of the Court or other person appointed by the Court for the purpose, and allow the admission of a deposition so taken before the Court;

- (iii) receive the evidence, if tendered, of any witness or party who is a competent but not compellable witness, and if a party makes an application for the purpose, of the spouse of that party in cases where the evidence of the spouse could not have been given at the trial except on application to the trial court or tribunal; or
- (iv) remit the case to the High Court or tribunal for further hearing, with instructions regarding the taking of further evidence or otherwise, as necessary; or

(c) set aside the judgment appealed against and order a new trial to be held where the Court determines that a new trial should be held.

(2) The Court shall, where the Court gives instructions for the taking of further evidence under subsection (1)(b)(iv), make an order to allow the parties to the proceedings to examine a witness whose evidence is taken.

PART V

GENERAL PROVISIONS

26. (1) The Judicial Service Commission shall appoint a Registrar of the Court and such other officers as may be necessary to give effect to the provisions of this Act.

Registrar
and officers
of Court

(2) The Registrar shall—

- (a) be responsible for the day-to-day administration of the Registry; and
- (b) administer oaths and perform such other functions as the Chief Justice may, by rules, prescribe or as may be directed by a special order of the Court.

27. The Registry of the Court shall be at Lusaka.

Establishment
of Registry

-
- Administration
of oaths **28.** (1) The Court or a judge of the Court may require and administer an oath for purposes of this Act.
- (2) The form of an oath shall be as prescribed in the rules.
- Warrant for
production
of appellant
before Court **29.** When the presence of an appellant who is in custody in a *habeas corpus* matter is necessary or desirable at the hearing of an appeal or where the appellant exercises the right to be present at the hearing of the appeal, a judge of the Court may issue a warrant for the production of the appellant at the appeal.
- Costs **30.** The Court has discretion to award costs in any proceedings under this Act.
- Rules of
Court **31.** (1) The Chief Justice may, by statutory instrument, make rules for regulating—
- (a) the practice and procedure of the Court and with respect to appeals to, or reviews by, the Court;
- (b) the time within which any requirement of the rules is to be complied with;
- (c) the costs of, and incidental to, any proceedings in the Court;
- (d) the fees to be charged in respect of proceedings; and
- (e) any other matter which is necessary for purposes of this Act.
- (2) The Chief Justice may issue practice directions for the better carrying out of the rules.
- Transitional
provisions
Cap. 1 **32.** (1) Proceedings pending before the High Court which, under the Constitution are required to be commenced before the Court, shall continue to be heard and determined by the High Court.
- Cap. 1 (2) An appeal pending before the Supreme Court which, under the Constitution, is required to be heard by the Court shall continue to be heard and determined by the Supreme Court.
-