

Zambia

## Subordinate Courts Act, 1933

### Chapter 28

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Subordinate Courts Act, 1933  
 Contents

Part I – Preliminary ..... 1

    1. Short title ..... 1

    2. Interpretation ..... 1

Part II – Constitution of Subordinate Courts ..... 2

    3. Establishment of Subordinate Courts ..... 2

    4. General and territorial jurisdiction of Subordinate Courts ..... 2

    5. Appointment of magistrates ..... 2

    6. Simultaneous sittings of a Subordinate Court ..... 2

    7. Power and jurisdiction of magistrates ..... 2

    8. Trial with assessors ..... 2

    9. Seals ..... 3

    10. Place of sitting ..... 3

Part III – Jurisdiction and law ..... 3

    11. Courts of Record ..... 3

    12. Practice and procedure ..... 3

    13. Power to transfer to Local Courts ..... 3

    14. Rules as to application of British Acts ..... 3

    15. Law and equity to be concurrently administered ..... 4

    16. Application of African customary law ..... 4

    17. General power of magistrates ..... 4

    18. No power to issue writs of habeas corpus ..... 5

    19. Criminal jurisdiction ..... 5

    20. Civil jurisdiction of Subordinate Courts of the first class ..... 5

    21. Civil jurisdiction of Subordinate Courts of second class ..... 6

    22. Civil jurisdiction of Subordinate Courts of third class ..... 6

    23. Where question of title to land is in issue ..... 7

    24. Extension of jurisdiction ..... 7

Part IV – Sittings and distribution of business ..... 7

    25. Sittings ..... 7

    26. Adjournment in absence of magistrate ..... 7

    27. Power of courts to transfer cases ..... 7

    27A. Completion of proceedings ..... 8

Part V – Appeals ..... 8

    A – Appeals in civil cases ..... 8

28. Civil appeals .....	8
29. Wrong ruling as to sufficiency of stamp .....	8
30. Power to reserve question of law for opinion of High Court .....	9
31. Conditions precedent to appeal .....	9
32. Discretionary power of High Court .....	9
B – Appeals in criminal cases .....	9
33. Right of appeal in criminal cases .....	9
Part VI – Officers of Subordinate Courts .....	9
34. Clerk of the court .....	9
35. Duties of clerk of the court .....	9
36. Taxing Master .....	9
37. Oath .....	10
Part VII – Contempt of court .....	10
38. Power of High Court .....	10
39. When punishment imposed by magistrate .....	10
40. Misconduct in court .....	10
Part VIII – Evidence .....	10
41. Summoning witnesses .....	10
42. Compelling attendance-Penalty on non-attendance .....	10
43. Refusal to be sworn or to give evidence .....	11
44. Bystander may be required to give evidence .....	11
45. Prisoner may be brought up by warrant to give evidence .....	11
46. Allowances to witnesses .....	11
47. How defrayed .....	11
48. Inspection .....	11
49. Witnesses as to African customary law .....	12
50. A person not entitled to inspection or copy of record of evidence .....	12
51. Evidence before Subordinate Courts, recording of .....	12
52. Perjury .....	13
Part IX – Composition orders .....	13
53. Power of Subordinate Courts of first and second class to make composition orders .....	13
Part X – Miscellaneous .....	14
54. Magistrates subject to directions of High Court .....	14
55. Protection from actions .....	14
56. Return of criminal cases .....	15

Part XI – Rules of court ..... 15  
57. \*Rules of court ..... 15

## Zambia

# Subordinate Courts Act, 1933

## Chapter 28

Commenced on 1 April 1934

*[This is the version of this document as it was at 31 December 1996 to 10 April 2018.]*

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**An Act to provide for the constitution, jurisdiction and procedure of Subordinate Courts; to provide for appeals from such courts to the High Court; and to provide for matters incidental to or connected with the foregoing.**

### Part I – Preliminary

#### 1. Short title

This Act may be cited as the Subordinate Courts Act.

#### 2. Interpretation

In this Act, unless the context otherwise requires—

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

"**clerk of the court**" includes an assistant clerk of the court or other officer performing, or assisting a clerk of the court in, his duties;

"**court messenger**" means a person authorised to serve process and levy executions and otherwise execute the orders of the High Court or a Subordinate Court;

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

"**judgment**" and "decree" shall be deemed synonymous terms;

"**matter**" includes every proceeding in a Subordinate Court not in a cause;

"**perjury**" means perjury as defined in section one hundred and four of the Penal Code;

*[Cap. 87]*

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

"**suit**" includes action, and means a civil proceeding commenced by writ of summons, or in such other manner as may be prescribed by rules of court, but does not include a criminal proceeding.

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

## Part II – Constitution of Subordinate Courts

### 3. Establishment of Subordinate Courts

There shall be and are hereby constituted courts subordinate to the High Court in each District as follows:

- (a) a Subordinate Court of the first class to be presided over by a principal resident magistrate, a senior resident magistrate, resident magistrate or a magistrate of the first class;
- (b) a Subordinate Court of the second class to be presided over by a magistrate of the second class;
- (c) a Subordinate Court of the third class to be presided over by a magistrate of the third class.

*[As amended by No. 28 of 1965 and Act [No. 11 of 1990](#)]*

### 4. General and territorial jurisdiction of Subordinate Courts

Each Subordinate Court shall have the jurisdiction and powers provided by this Act and any other written law for the time being in force and shall ordinarily exercise such jurisdiction only within the limits of the District for which each such court is constituted.

*[No. 28 of 1965]*

### 5. Appointment of magistrates

The Judicial Service Commission acting in the name of and on behalf of the President may appoint persons to hold or act in the office of principal resident magistrate, senior resident magistrate, resident magistrate or magistrate of any class.

*[As amended by Act [No. 28 of 1965](#) and No. 11 of 1990]*

### 6. Simultaneous sittings of a Subordinate Court

A Subordinate Court may sit at different places simultaneously when it is expedient that there should be two or more divisions of that Court presided over by different magistrates.

*[As amended by No. 28 of 1965]*

### 7. Power and jurisdiction of magistrates

Subject to the operation of any express statutory provision providing otherwise, and to the provisions of this Act and the Criminal Procedure Code, all magistrates shall have and may exercise, in all respects, equal power, authority and jurisdiction; and, subject as aforesaid, any magistrate may exercise all and any part of the jurisdiction by this Act or otherwise vested in a Subordinate Court, and, for such purpose, shall be and form a court.

*[Cap.88]*

### 8. Trial with assessors

The trial of any civil cause or matter may, if the presiding magistrate so decides, be held with the aid of assessors, the number of whom shall be two or more, as to the presiding magistrate seems fit. If such trial is to be held with the aid of assessors, all the provisions relating to assessors, as contained in the Criminal Procedure Code, shall, so far as the same are applicable, apply to such trial.

*[Cap. 88]*

## 9. Seals

All Subordinate Courts shall use seals of such nature and pattern as the Chief Justice may, by statutory order, direct.

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

## 10. Place of sitting

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

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

## Part III – Jurisdiction and law

### 11. Courts of Record

All Subordinate Courts shall be Courts of Record.

### 12. Practice and procedure

The jurisdiction vested in Subordinate Courts shall be exercised (so far as regards practice and procedure) in the manner provided by this Act and the Criminal Procedure Code, or by such rules and orders of court as may be made pursuant to this Act and the Criminal Procedure Code, and, in default thereof, in substantial conformity with the law and practice for the time being observed in England in the county courts and courts of summary jurisdiction.

*[Cap. 88]*

### 13. Power to transfer to Local Courts

(1) Notwithstanding the provisions of any other written law regulating the transfer of proceedings between courts and subject to any general or special directions of the High Court, it shall be lawful for any Subordinate Court, in any civil or criminal proceedings and at any stage of the proceedings before judgment, to order such proceedings to be transferred for trial to any Local Court having power to entertain the proceedings and exercising jurisdiction within the area of jurisdiction of such Subordinate Court. Before making any such order the Subordinate Court shall satisfy itself that the making of such order will not be contrary to the interests of justice or cause undue inconvenience to the parties, and shall record its reasons for ordering such transfer. The fact of such transfer shall be recorded in the court register.

(2) For the purposes of this section, "Local Court" means a court recognised under the Local Courts Act.

*[Cap. 29]*

*[No. 6 of 1944]*

### 14. Rules as to application of British Acts

All British Acts declared by any Act to extend or apply to Zambia shall be in force so far only as the circumstances of Zambia permit; and, for the purpose of facilitating the application of the said British Acts, it shall be lawful for a Subordinate Court to construe the same with such verbal alterations, not affecting the substance, as may be necessary to make the same applicable to the proceedings before the court; and every magistrate or officer of court, having or exercising functions of the like kind or analogous

to the functions of a magistrate or officer referred to in any such law, shall be deemed to be within the meaning of the enactments thereof relating to such last-mentioned magistrate or officer.

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

## **15. Law and equity to be concurrently administered**

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

## **16. Application of African customary law**

Subject as hereinafter in this section provided, nothing in this Act shall deprive a Subordinate Court of the right to observe and to enforce the observance of, or shall deprive any person of the benefit of, any African customary law, such African customary law not being repugnant to justice, equity or good conscience, or incompatible, either in terms or by necessary implication, with any written law for the time being in force in Zambia. Such African customary law shall, save where the circumstances, nature or justice of the case shall otherwise require, be deemed applicable in civil causes and matters where the parties thereto are Africans, and particularly, but without derogating from their application in other cases, in civil causes and matters relating to marriage under African customary law, and to the tenure and transfer of real and personal property, and to inheritance and testamentary dispositions, and also in civil causes and matters between Africans and non-Africans, where it shall appear to a Subordinate Court that substantial injustice would be done to any party by a strict adherence to the rules of any law or laws other than African customary law:

Provided that—

- (i) no party shall be entitled to claim the benefit of any African customary law, if it shall appear, either from express contract or from the nature of the transactions out of which any civil cause, matter or question shall have arisen, that such party agreed or must be taken to have agreed that his obligations in connection with all such transactions should be regulated exclusively by some law or laws other than African customary law;
- (ii) in cases where no express rule is applicable to any matter in issue, a Subordinate Court shall be guided by the principles of justice, equity and good conscience.

## **17. General power of magistrates**

Every magistrate shall have power to issue writs of summons for the commencement of actions in a Subordinate Court, to administer oaths, and take solemn affirmations and declarations, and to make such decrees and orders, and issue such process and exercise such powers, judicial and ministerial, in relation to the administration of justice, as shall, from time to time, be prescribed by any written law or by rules of court.

*[As amended by No. 58 of 1966]*



## 18. No power to issue writs of *habeas corpus*

No writ of *habeas corpus* or order in the nature thereof for the production before the court of any person alleged to be wrongfully imprisoned or detained shall be issued by any Subordinate Court.

*[As amended by No. 30 of 1956]*

## 19. Criminal jurisdiction

In the exercise of their criminal jurisdiction, Subordinate Courts shall have all the powers and jurisdiction conferred on them by the Criminal Procedure Code, this Act or any other law for the time being in force.

*[Cap. 88]*

## 20. Civil jurisdiction of Subordinate Courts of the first class

- (1) In civil causes and matters a Subordinate Court of the first class shall, subject to this Act and in addition to any jurisdiction which it may have under any other written law, within the territorial limits of its jurisdiction, have jurisdiction—
- (a) in all personal suits, whether arising from contract, or from tort or from both, where the value of the property, debt or damage claimed, whether as balance of accounts or otherwise is—
    - (i) where the court is presided over by a principal resident magistrate, not more than five million kwacha;
    - (ii) where the court is presided over by a senior resident magistrate, not more than three million kwacha;
    - (iii) where the court is presided over by a resident magistrate, not more than one million kwacha; and
    - (iv) where the court is presided over by a magistrate of the first class, not more than six hundred thousand kwacha;
  - (b) to enforce by attachment any order made by the court;
  - (c) to hear and determine any action for the recovery of land where either the value of the land in question or the rent payable in respect thereof does not exceed the sum of five million kwacha by the year, or, in the case of a Subordinate Court presided over by a principal resident magistrate or a senior resident magistrate, six million kwacha by the year;
  - (d) to make any order which may be made by a court of summary jurisdiction under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1925 and section eleven of the Matrimonial Causes Act, 1937, of the United Kingdom:

Provided that for the purposes of this section—

- (i) paragraph (c) of section five of the Summary Jurisdiction (Married Women) Act, 1895, of the United Kingdom shall be read as if for the expression "such weekly sum not exceeding one thousand kwacha or such monthly sum not exceeding four thousand kwacha" there were substituted the expression "such weekly sum not exceeding ten thousand kwacha or monthly sum not exceeding fifty thousand kwacha"; and
- (ii) any reference to the term "married woman" or "wife" in the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1925, Matrimonial Causes Act, 1937, and Married Women Maintenance Act, 1920 shall be read as a reference to "spouse";

Provided further, that the allowance payable in respect of the spouse may be increased by fifty *per centum* of the amount by which the earnings or other income of the other spouse exceed one

hundred thousand kwacha per month so that the total allowance shall not in any event exceed eighty thousand kwacha per month:

Provided that a Subordinate Court of the first class shall not have jurisdiction in or cognizance of any suit or matter of the nature following, that is to say where:

- (i) the title to any right, duty or office is in question;
  - (ii) the validity of any will or other testamentary writing or of any bequest or limitation under any will or settlement is in question;
  - (iii) the legitimacy of any person is in question; or
  - (iv) the validity or dissolution of any marriage is in question.
- (2) In addition to the jurisdiction conferred by subsection (1), a Subordinate Court presided over by a senior resident magistrate or a resident magistrate shall, within the local limits of its jurisdiction, have jurisdiction to enforce any judgment of the High Court for the payment of any money to a person where such judgment or order has been transferred by the High Court to such court as if it were a judgment of such court, and the provisions relating to the execution of judgments in Subordinate Courts (including the provisions relating to the staying of execution) shall have effect accordingly.

*[As amended by No. 29 of 1949, No. 20 of 1954, No. 25 of 1956, No. 17 of 1959, No. 39 of 1960, No. 28 of 1965, No. 58 of 1966, Act [No. 11 of 1990](#), No. 41 of 1994 and No. 5 of 1995]*

## 21. Civil jurisdiction of Subordinate Courts of second class

In civil causes and matters, a Subordinate Court of the second class shall, within the territorial limits of its jurisdiction, have all the jurisdiction conferred by section twenty upon a Subordinate Court of the first class, subject to the limitations contained in that Section:

Provided that in personal suits whether arising from contract or from tort, or from both, the value of the property, debt or damage claimed whether as a balance of account or otherwise, shall not be more than four hundred thousand kwacha.

*[As amended by Act [No. 11 of 1990](#) and 41 of 1994]*

## 22. Civil jurisdiction of Subordinate Courts of third class

In civil causes and matters, a Subordinate Court of the third class shall, subject to the provisions hereinafter contained, and in addition to any jurisdiction which it may have under any other written law, within the territorial limits of its jurisdiction, have jurisdiction—

- (a) Debt or damage  
in all personal suits, whether arising from contract or from tort or from both, where the value of property or the debt or damage claimed, whether as balance of account or otherwise, is not more than two hundred thousand kwacha.
- (b) Infants  
to appoint guardians of infants and to make orders for the custody of infants;
- (c) Attachment  
to enforce by attachment any order made by the court:

Provided that a Subordinate Court of the third class shall not have jurisdiction in or cognizance of any suit or matter of the nature following, that is to say:

- (i) Title to office  
wherein the title to any right, duty or office is in question; or

- (ii) Wills  
wherein the validity of any will or other testamentary writing or of any bequest or limitation under any will or settlement is in question; or
- (iii) Legitimacy  
where the legitimacy of any person is in question; or
- (iv) Marriage  
wherein the validity or dissolution of any marriage (other than a polygamous marriage contracted under African customary law) is in question.

*[As amended by No. 58 of 1966, 11 of 1990 and 41 of 1994]*

### **23. Where question of title to land is in issue**

If, in any civil cause or matter before a Subordinate Court, the title to any land is disputed, or the question of the ownership thereto arises, the court may adjudicate thereon, if all parties interested consent; but, if they do not all consent, the presiding magistrate shall apply to the High Court to transfer such cause or matter to itself.

### **24. Extension of jurisdiction**

The Chief Justice may, by order under his hand and the seal of the High Court, authorise an increased jurisdiction in civil causes and matters to be exercised by the magistrate named in the order, within the District prescribed in the order, and to the extent specified in the order. Such order may, at any time, be revoked by the Chief Justice by an instrument under his hand and the seal of the High Court.

*[As amended by No. 16 of 1937, G.N. No. 444 of 1964 and No. 28 of 1965]*

## **Part IV – Sittings and distribution of business**

### **25. Sittings**

Subordinate Courts shall ordinarily be held at such places as the Chief Justice may direct, but, should necessity arise, they may also legally be held at any other place within the limits of their jurisdiction.

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

### **26. Adjournment in absence of magistrate**

In case the magistrate before whom any cause or matter is to be heard shall, for any reason, be unable or fail to attend on the day appointed, and no other magistrate shall attend in his stead, the court shall stand adjourned de die in diem until a magistrate shall attend, or until the court shall be adjourned or closed by order under the hand of a magistrate.

### **27. Power of courts to transfer cases**

Any civil cause or matter may at any time before or after the hearing thereof, either with or without application from any of the parties thereto, be transferred from a court presided over by a magistrate of the first class and having jurisdiction to entertain such civil cause or matter to another court presided over by a magistrate having such jurisdiction, by an order of the magistrate before whom such cause or matter has come or been set down or in the court where the same is pending, whether on a previous transfer under this section or otherwise:

Provided that any party to such cause or matter may at any time within fourteen days of the making of such order make application to the magistrate who made the same or to the court for an order setting

aside the transfer, and the magistrate or court shall upon such application make such order as in the circumstances may be just and reasonable.

[No. 22 of 1958]

## 27A. Completion of proceedings

- (1) Where the presiding magistrate is, on account of illness, death, relinquishment or cesser of jurisdiction or any other similar cause, unable to deliver a judgment already prepared by him, then the Chief Justice may direct that another magistrate of co-ordinate jurisdiction shall deliver in open court the judgment prepared by the presiding magistrate and shall, thereafter, complete the proceedings of the case as if he had himself heard and determined the case:

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

- (2) In any case where a magistrate has been appointed (whether before or after the \*commencement of Act [No. 4 of 1972](#)) to be a magistrate of a higher class or to be or to act as a Judge, he shall complete any proceedings already commenced before him, and for this purpose he shall be deemed to retain the position and powers which he held immediately before his being so appointed.

\*30th March, 1972.

- (3) Where a magistrate is transferred to another District, he shall complete any proceedings already commenced before him.

[No. 4 of 1972]

## Part V – Appeals

### A – Appeals in civil cases

#### 28. Civil appeals

- (1) An appeal shall lie to the High Court from any judgment, order or decision of a Subordinate Court whether interlocutory or final:

*Ex parte* consent or costs orders

Provided that no appeal shall lie except by special leave of the Subordinate Court, or of the High Court, from an order made *ex parte* or by consent, or as to costs only.

- (2) Appeal before one Judge

Appeals from Subordinate Courts shall be heard by one Judge of the High Court, except where in any particular case the Chief Justice shall direct that the appeal be heard by two Judges.

- (3) Division of opinion between Judges

Where an appeal is heard by a Bench of two Judges and they are divided in opinion, the appeal shall be dismissed.

[G.N. No. 444 of 1964]

#### 29. Wrong ruling as to sufficiency of stamp

The High Court shall not grant a new trial or reverse any judgment, by reason of the ruling of any Subordinate Court that the stamp upon any document is sufficient, or that the document does not require a stamp.

**30. Power to reserve question of law for opinion of High Court**

In addition and without prejudice to the right of appeal conferred by this Act, a Subordinate Court may reserve for consideration by the High Court, on a case to be stated by it, any question of law which may arise on the trial of any suit or matter, and may give any judgment or decision, subject to the opinion of the High Court, and the High Court shall have power to determine, with or without hearing argument, every such question.

**31. Conditions precedent to appeal**

Subject to the provisions of the next succeeding section, the High Court shall not entertain any appeal, unless the appellant has fulfilled all the conditions of appeal imposed by the Subordinate Court or by the High Court, as prescribed by rules of court.

**32. Discretionary power of High Court**

Notwithstanding anything hereinbefore contained, the High Court may entertain any appeal from a Subordinate Court, on any terms which it thinks just.

**B – Appeals in criminal cases****33. Right of appeal in criminal cases**

Appeals in criminal cases shall lie from Subordinate Courts in accordance with the provisions contained in the Criminal Procedure Code.

*[Cap. 88]*

**Part VI – Officers of Subordinate Courts****34. Clerk of the court**

The clerk of the court attached to a Subordinate Court shall perform such duties in execution of the powers and authorities of the court as may, from time to time, be assigned to him by rules of court, or, subject thereto, by any special order of the court.

**35. Duties of clerk of the court**

Subject to any rules of court or special orders of the court, every clerk of the court shall issue all summonses, warrants and writs of execution, and shall register all orders and judgments, and shall keep a record of all proceedings of the Subordinate Court to which he is attached, and shall have the custody and keep an account of all fees and fines payable or paid into court, and of all moneys paid into or out of court, and shall keep proper accounts thereof, and shall, from time to time, submit his accounts to be audited, and shall pay over to the Government the amount of fines and fees in his custody, as and when directed by any rules of court, or as specially directed by the court.

**36. Taxing Master**

Every clerk of the court shall be Taxing Master for the Subordinate Court to which he is attached, and shall tax all bills of costs, in accordance with the scale of fees for the time being in force and any rules of court, subject to the review of such taxation by such court.

**37. Oath**

Every clerk of the court shall, before entering upon the duties of his office, take an oath for the faithful performance of his duty in the form following:

"I do swear I will truly, faithfully and honestly execute the office of clerk of the court without fear, favour or affection for anyone. So help me God."

**Part VII – Contempt of court****38. Power of High Court**

The power and jurisdiction of the High Court, in dealing with cases of contempt of its authority, shall extend to the up-holding of the authority of Subordinate Courts.

**39. When punishment imposed by magistrate**

Whenever any punishment as for a contempt of court shall be imposed by a magistrate, he shall make and keep a minute recording the facts of the offence and the extent of the punishment; and he shall, forthwith, send a copy of such minute to the High Court, which may, thereupon, without hearing any argument, vary or set aside the order of the magistrate.

**40. Misconduct in court**

- (1) If any person shall wilfully insult a magistrate during his sitting in court, or any clerk, court messenger or any other officer of a Subordinate Court during his attendance therein, or shall wilfully interrupt the proceedings of such court, or otherwise misbehave in court, any police officer or private person may, by order of the magistrate, take the offender into custody and detain him till the rising of the court.
- (2) The magistrate is hereby empowered, if he shall think fit, by warrant under his hand, to commit any person so offending to prison for a period not exceeding seven days, or to impose upon such person a fine not exceeding one hundred and fifty penalty units, for each offence, and, in default of payment thereof, to commit the offender to prison for any time not exceeding seven days, unless the fine be sooner paid, in each such case as for a contempt of court.
- (3) Whenever any order is made by a magistrate under this section, the provisions of the last preceding section shall apply thereto.

*[As amended by Act [No. 13 of 1994](#)]*

**Part VIII – Evidence****41. Summoning witnesses**

In any suit or matter, and at any stage thereof, a Subordinate Court, either of its own motion or on the application of any party, may summon any person within Zambia to attend to give evidence, or to produce any document in his possession or power, and may examine such person as a witness, and require him to produce any document in his possession or power, subject to just exceptions.

**42. Compelling attendance-Penalty on non-attendance**

If the person summoned as in the last preceding section provided, having reasonable notice of the time and place at which he is required to attend, after tender of his reasonable travelling expenses to and from the Subordinate Court, fails to attend accordingly, and does not excuse his failure to the satisfaction

of the court, he shall, independently of any other liability, be guilty of a contempt of court, and may be proceeded against by warrant to compel his attendance.

#### **43. Refusal to be sworn or to give evidence**

If, in any suit or matter, any person, whether appearing in obedience to a summons or brought up under warrant, being required to give evidence, refuses to take an oath, or to answer any question lawfully put to him, or to produce any document in his possession or power, and does not excuse his refusal to the satisfaction of a Subordinate Court, he shall, independently of any other liability, be guilty of a contempt of court, and the court may, by warrant, commit him to prison, without hard labour, there to remain for not more than one month, unless he, in the meantime, consents to take an oath, or to answer duly, or to produce any such document, as the case may be; and he shall also be liable to a fine not exceeding seven hundred and fifty penalty units.

*[As amended by Act No. 13 of 1994]*

#### **44. Bystander may be required to give evidence**

Any person present in court, whether a party or not in a cause or matter, may be compelled by a Subordinate Court to give evidence, or produce any document in his possession or in his power, in the same manner and subject to the same rules as if he had been summoned to attend and give evidence, or to produce such document, and may be punished in like manner for any refusal to obey the order of the court.

#### **45. Prisoner may be brought up by warrant to give evidence**

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

#### **46. Allowances to witnesses**

It shall be lawful for the presiding magistrate, in civil as well as criminal proceedings, to order and allow to all persons required to attend, or examined, as witnesses, such sum or sums of money as shall seem fit, as well as for defraying the reasonable expenses of such witnesses as for allowing them a reasonable compensation for their trouble and loss of time. But it shall not be lawful, in any criminal proceeding, for any person to refuse to attend as a witness or to give evidence, when so required by process of the court, on the ground that his expenses have not been first paid or provided for.

#### **47. How defrayed**

All sums of money allowed under the provisions of the last preceding section shall be paid, in civil proceedings, by the party on whose behalf the witness is called, and shall be recoverable as ordinary costs of suit, if a Subordinate Court shall so order, and, in criminal proceedings, they shall, where not ordered to be paid by the party convicted or the prosecution, be paid out of the general revenues of the Republic.

#### **48. Inspection**

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

#### 49. Witnesses as to African customary law

A Subordinate Court may, in any cause or matter in which questions of African customary law may be material to the issue, call as witnesses thereto chiefs or other persons whom the court considers to have special knowledge of African customary law.

#### 50. A person not entitled to inspection or copy of record of evidence

A person shall not be entitled, as of right, at any time or for any purpose, to inspection or a copy of the record of evidence given in any case before any Subordinate Court, or to a copy of the notes of such court, save as may be expressly provided by any rules of court.

#### 51. Evidence before Subordinate Courts, recording of

- (1) In every case heard before a Subordinate Court, and at every stage thereof, the presiding magistrate shall, save as hereinafter provided, take down in writing the oral evidence given before the court:

Provided that, should the presiding magistrate, in any case, find himself temporarily incapacitated from taking down such evidence, it shall be lawful for the magistrate to direct that such evidence shall be taken down by the clerk of the court or officer performing his duties in court.

- (2) Before any clerk of the court or other officer shall take down in writing any oral evidence as aforesaid, an oath shall be tendered to and taken by such clerk of the court or officer for the accurate and faithful recording of such oral evidence, according to the true purport and meaning thereof; and such oath shall be in such terms as to such presiding magistrate may seem apt and sufficient:

Provided always that a clerk of the court or officer performing his duties in court, who shall once have duly taken such oath, shall not again be required to take such oath in respect of the same or of any subsequent case.

- (3) After taking such oath as aforesaid, the clerk of the court or other officer shall take down in writing such oral evidence in manner as aforesaid, under the supervision and control of the presiding magistrate, who may, at any time before appending his signature to such writing, amend anything therein which he may consider requires to be amended; and, before so appending his signature, such magistrate shall peruse and examine such writing, and satisfy himself that it is, in substance, an accurate and faithful record of the oral evidence given.
- (4) Notwithstanding the foregoing provisions of this section, the Chief Justice may authorise that the oral evidence given before a specified Subordinate Court, either generally or in a particular case, may be recorded in shorthand or by any other system of verbatim reporting and afterwards transcribed into longhand. Any such authority given by the Chief Justice shall be subject to the following conditions:
- (a) no person shall be employed for the purpose of so recording or transcribing unless the magistrate is satisfied that such person is competent, reliable and suitable for the purpose;
  - (b) before any person so records and transcribes, or so records or transcribes, he shall take an oath for the faithful and accurate recording and transcription, or recording or transcription, according to the true purport and meaning of the evidence. Such oath shall be in such terms as the Chief Justice may direct.

*[As amended by No. 24 of 1952]*



## 52. Perjury

- (1) A Subordinate Court of the first or second class, if it appears to it that a person has been guilty of perjury in any proceeding before it, may—
  - (a) after calling upon such person to show cause why he should not be punished as for a contempt of court, commit him to prison for any term not exceeding six months, with or without hard labour, or fine him any sum not exceeding one thousand five hundred penalty units, or impose both such penalties upon him, in each such case as for a contempt of court; or
  - (b) after preliminary inquiry, commit him for trial upon information for perjury, and bind any person by recognizance to give evidence at such trial.
- (2) On imposing any penalty as for a contempt of court under this section, a Subordinate Court shall, forthwith, send a copy of the proceedings to the High Court. The High Court may, thereupon, without hearing any argument, vary or set aside the order of the Subordinate Court.
- (3) Except where the order of the Subordinate Court is set aside by the High Court, any penalty imposed under this section shall be a bar to any other criminal proceedings in respect of the same offence.

*[As amended by Act [No. 13 of 1994](#)]*

## Part IX – Composition orders

### 53. Power of Subordinate Courts of first and second class to make composition orders

- (1) Where a judgment has been obtained in a Subordinate Court of the first or second class, and the debtor is unable to pay the amount forthwith, and alleges that his whole indebtedness amounts to a sum not exceeding eight hundred kwacha, inclusive of the debt for which the judgment is obtained, the Subordinate Court may make an order, to be called a composition order, providing for the administration of his estate, and for the payment of his debts by instalments or otherwise, and either in full or to such extent as to the Subordinate Court, in the circumstances of the case, appears practicable, and subject to any conditions as to his future earnings or income which the court may think just:

Provided that instalments shall not be ordered so as to be payable for a longer period than three years.
- (2) The order shall not be invalid by reason only that the total amount of the debts is found at any time to exceed eight hundred kwacha, but, in such case, the Subordinate Court may, if it thinks fit, set aside the order.
- (3) Where, in the opinion of the Subordinate Court in which the judgment is obtained, it would be inconvenient that that court should administer the estate, it shall cause a certificate of the judgment to be forwarded to the Subordinate Court in the District in which the debtor or the majority of the creditors resides or reside, and, thereupon, the last-named court shall have all the powers which it would have under this section, had the judgment been obtained in it.
- (4) If a debtor against whom a composition order has been made should leave Zambia before he has fully complied with such order, then the Subordinate Court administering his estate under this section may, if it thinks fit, set aside the order.
- (5) When the composition order is made, no creditor shall have any remedy against the person or property of the debtor in respect of any debt which the debtor has notified to a Subordinate Court, except with the leave of that court, and on such terms as that court may impose; and any Subordinate Court in which proceedings are pending against the debtor in respect of any such debt

shall, on receiving notice of the order, stay the proceedings, but may allow costs already incurred by the creditor, and such costs may, on application, be added to the debt notified.

- (6) If the debtor makes default in payment of any instalment payable in pursuance of any order under this section, he shall, unless the contrary is proved, be deemed to have had since the date of the order the means to pay the sum in respect of which he has made default and to have refused or neglected to pay the same.
- (7) The order shall be carried into effect in such manner as may be prescribed by rules of court.
- (8) Money paid into court under the order shall be appropriated, first, in satisfaction of the costs of the plaintiff in the action, next, in satisfaction of the costs of administration (which shall not exceed ten ngwee in the kwacha on the total amount of the debts), and then in liquidation of debts in accordance with the order.
- (9) Notice of the order shall be posted in the office of the Subordinate Court of the District in which the debtor resides, and sent to every creditor notified by the debtor or who has proved. Such order shall also be published in the *Gazette*.
- (10) Any creditor of the debtor, on proof of his debt before the clerk of the court of the Subordinate Court, shall be entitled to be scheduled as a creditor of the debtor for the amount of his proof.
- (11) Any creditor may, in the prescribed manner, object to any debt scheduled, or to the manner in which payment is directed to be made by instalments.
- (12) Any person who, after the date of the order, becomes a creditor of the debtor, shall, on proof of his debt before the clerk of the court, be scheduled as a creditor of the debtor for the amount of his proof, but shall not be entitled to any dividend under the order until those creditors who are scheduled as having been creditors before the date of the order have been paid to the extent provided by the order.
- (13) When the amount received under the order is sufficient to pay each creditor scheduled to the extent thereby provided, and the costs of the plaintiff and of the administration, the order shall be superseded, and the debtor shall be discharged from his debts to the scheduled creditors.
- (14) If a debtor, subsequent to the date of a composition order and while such order remains in force, obtains credit without informing the creditor or creditors that a composition order has been made in respect to his estate, he shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding seven hundred and fifty penalty units, or to imprisonment with or without hard labour for a period not exceeding three months, or to both.
- (15) A composition order shall be deemed to be an act of bankruptcy within the meaning of the Bankruptcy Act.

*[As amended by No. 12 of 1952 and Act No. 13 of 1994]*

*[Cap. 82]*

## Part X – Miscellaneous

### 54. Magistrates subject to directions of High Court

Every magistrate and every officer attached to a magistrate shall be subject to the orders and directions of the High Court; and every proceeding before a magistrate shall be subject to the directions and control of the High Court.

### 55. Protection from actions

No action shall be brought against any magistrate in respect of any act done or order made by him in good faith in the execution or supposed execution of the powers and jurisdiction vested in him.

**56. Return of criminal cases**

At the end of every month, every Subordinate Court shall forward to the High Court, in such form as the High Court may, from time to time, direct, a complete list of all criminal cases decided by or brought before such court during that month.

**Part XI – Rules of court****57. \*Rules of court**

The Chief Justice may, from time to time, by statutory instrument, make rules of court for regulating the procedure and practice of Subordinate Courts, the forms to be used therein, the fees payable, and the costs and charges to be allowed to legal practitioners practising therein, for regulating the procedure and practice relating to appeals from Subordinate Courts and, generally, for making any provisions proper or necessary for the proper or effectual exercise of jurisdiction by such courts; and may, from time to time, alter, amend or revoke all or any of such rules, as occasion may require.

\*See section 8 of the Evidence Act ([Cap. 43](#))

*[As amended by No. 41 of 1960]*