

## GOVERNMENT OF ZAMBIA

## ACT

No. 23 of 1992

Date of Assent: 27th July, 1992

An Act to provide for the establishment, constitution, jurisdiction, powers and procedure of small claims courts; and to provide for matters connected with or incidental to the foregoing.

[31st July, 1992]

ENACTED by the Parliament of Zambia.

Enactment

## PART I

## PRELIMINARY

1. This Act may be cited as the Small Claims Courts Act, 1992, and shall come into operation on such date as the Minister may, by statutory order, appoint.

Short title  
and  
commence-  
ment

2. (1) In this Act, unless the context otherwise requires—

Inter-  
pretation

"arbitrator" means any person appointed by the Commission under section six;

"award" means the decision made by the arbitrator under section *twenty* in favour of one of the parties to a claim;

"Commission" means the Judicial Service Commission established under Article *one hundred and nine* of the Constitution;

"practitioner" shall have the meaning assigned to it by section *two* of the Legal Practitioners Act; and "legal practitioner" shall be construed accordingly;

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"small claims court officer" means an officer appointed under section *ten*;

"small claims court" means a court established under section *three*;

"subordinate court" means a subordinate court constituted under the Subordinate Courts Act.

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## PART II

### ESTABLISHMENT OF SMALL CLAIMS COURTS

Establishment of small claims courts

3. There is hereby established small claims courts which shall be situated in such areas as the Chief Justice may consider necessary, having regard to the needs of a particular area.

Composition of a small claims court

4. One arbitrator, sitting alone, shall constitute a small claims court.

Jurisdiction of a small claims court

5. The jurisdiction of a small claims court shall be limited to liquidated claims of not more than one hundred thousand kwacha and shall be exercised by way of arbitration.

Appointment of arbitrators

6. The Commission acting in the name of, and on behalf of, the President may appoint such number of persons as it considers necessary to be arbitrators over small claims courts.

Qualifications for appointment as arbitrator

7. No person shall be qualified to be appointed as an arbitrator unless he is a legal practitioner of not less than five years standing.

Tenure of office

8. An arbitrator shall be appointed on a part-time basis and shall be paid such allowance as may be prescribed under this Act.

Conflict of interest

9. No person shall sit as an arbitrator in any matter in which he is a party or, in which he has a direct or indirect pecuniary or personal interest.

Appointment of small claims courts officers

10. (1) The Commission may appoint such number of small claims courts officers as it considers necessary for the purpose of carrying out the provisions of this Act.

(2) The small claims courts officers shall exercise such powers and perform such duties as are conferred or imposed upon them by or under the provisions of this Act.

Sittings

11. A small claims court shall sit at such times and places as may be necessary for the convenient and speedy despatch of business.

## PART III

### PROCEEDINGS IN A SMALL CLAIMS COURT

Proceedings to be in open court

12. (1) Proceedings in a small claims court shall be held in open court.

(2) The proceedings shall be simple and informal.

13. (1) No legal practitioner, other than a practitioner who is a party acting solely on his own behalf, may appear or act before a small claims court on behalf of any party to the proceedings.

Parties to  
appear in  
person

(2) Subject to subsection (1), a small claims court may permit any person who is the spouse, guardian or other member of the household of a party in any proceedings before the court to appear or act for that party, if he satisfies the court that he has the authority of the party to so appear or act.

(3) Subject to subsection (1) a body corporate or an unincorporated body which is a party to the proceedings before a small claims court may be represented by any person or agent who is authorised by that body to appear on its behalf.

14. A small claims court shall, when adjudicating, aim at the reconciliation of the parties and it shall be the primary function of the court to do substantial justice between the parties.

Aim of  
small  
claims  
court when  
adjudi-  
cating

15. (1) The business of a small claims court shall be conducted in English or in such other language as, in the opinion of the court, is convenient for the court and all the parties before it.

Language  
to be used

(2) Where a party to the proceedings is not conversant with the language being used in the court, the party shall be allowed, or provided with, an interpreter.

(3) Whenever any language other than English is used in any proceedings, the court shall cause to be made an English translation of the proceedings before it, but shall not maintain a case record of the proceedings.

16. (1) The court shall not be bound by rules of evidence, but shall apply the law and equity.

Court not  
to be  
bound by  
formal  
rules of  
evidence

(2) Evidence in a small claims court shall be given on oath or affirmation.

#### PART IV

##### POWERS OF A SMALL CLAIMS COURT

17. A small claims court shall hear the facts of the case and receive any documents relating to the claim before it and do all such things as are authorised by this Act or, as are necessary for the exercise of its functions under this Act.

General  
powers

18. (1) A small claims court may summon any person who is a defendant or witness in any matter before it.

Issue of  
summons

(2) The costs of serving or attempting to serve any summons issued by a small claims court relating to any matter shall be borne by the party at whose instance the summons was issued.

(3) Where a defendant is summoned under subsection (1), and has reasonable notice of the time and place at which he is required to attend, but fails to attend without any reasonable cause, the court may arrest him for contempt of court if it is satisfied that the summons was properly served on him.

**Counter-claims**

19. A counterclaim by the defendant may be made in a claim brought against him the claimant.

**Powers relating to orders**

20. (1) A small claims court, upon concluding the hearing of a matter, may do the following:

- (a) dismiss the claim;
- (b) make an award with or without interest;
- (c) order the restitution of any property;
- (d) order the specific performance of a contract, other than a contract of personal service, between the parties before the court; or
- (e) make any other order which the justice of the matter requires;

(2) Every award or dismissal, as the case may be, made by the arbitrator under this section shall be registered in the High Court registry and shall state the following:

- (a) in the case of a dismissal, the reasons therefor;
- (b) in the case of a monetary award, when the award is due and payable, the manner of payment, whether by instalments or by one lumpsum and the period of payment;
- (c) in the case of restitution, the period within which the restitution of property should be made; and
- (d) in the case of specific performance of a contract the period within which such performance should be done.

**Powers relating to enforcement of awards**

21. A small claims court shall have the powers to enforce any award made under this Act including the issue of a warrant of distress under section *twenty-four*.

**Finality of awards**

22. The awards of a small claims court shall be final, but appeal to the High Court shall be allowed on points of law only.

**Costs**

23. The court shall not order costs in any matter before it.

24. (1) A small claims court may issue a warrant of distress against any person who has failed to pay a sum due and payable to a party in proceedings before it.

Powers  
relating to  
warrants  
of  
distress

(2) A warrant of distress issued under this Act shall be in the prescribed form.

(3) A warrant of distress shall not apply to the following property:

- (a) personal clothing, beds and beddings and household utensils for the use of the owner and his family;
- (b) implements of husbandry and tools of trade of the owner; and
- (c) foodstuffs required for the feeding of the owner and his dependants.

(4) A warrant of distress shall not apply to property which is claimed by a third party, or in respect of which any third party has an interest.

(5) Where a warrant of distress issued under this section is to be executed at a place more than fifty kilometres from the place where the small claims court sat, that court may forward the warrant by post, by hand or otherwise, to the sheriff's office within whose territorial jurisdiction it is to be executed.

(6) Where there is no property to be seized, the sheriff shall apply to the subordinate court within that territorial jurisdiction and the court shall summon the debtor and order payment to the claimant.

## PART V

### OFFENCES RELATING TO ADMINISTRATION OF JUSTICE

25. Any person who is subject to the jurisdiction of a small claims court and who, without reasonable excuse—

Contempt  
of a small  
claims  
court

- (a) fails to obey any summons issued by the court;
- (b) threatens, intimidates or insults that court while sitting in that capacity;
- (c) intentionally interrupts the proceedings of that court or otherwise behaves in a disorderly manner before that court;
- (d) deliberately omits to deliver up any document or thing in accordance with an order of the court;
- (e) refuses to answer any question asked by the court;
- (f) while any proceedings are in progress in the court, makes use of any speech or writing misrepresenting any proceedings of that court in such a way as to prejudice the arbitrator in favour of, or against, any party to those proceedings;

- (g) having the means to pay any sum awarded against him, or due from him, refuses or wilfully fails to make the payment after due notice; or
- (h) wilfully disobeys or fails to comply with any other lawful order of that court;

shall be guilty of an offence and shall be liable, upon conviction to a fine not exceeding ten thousand kwacha or to a term of imprisonment not exceeding six months, or to both.

Obstruction of officers of small claims courts

26. Any person who obstructs, any officer of a small claims court or other person executing a warrant of distress or an order issued or made in the exercise of the powers conferred by this Act, shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding ten thousand kwacha or to a term of imprisonment not exceeding six months, or to both.

Adjudication without authority

27. Any person who, without lawful authority, purports to exercise judicial functions as an arbitrator or, falsely holds himself out to be an arbitrator, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding twenty thousand kwacha or to a term of imprisonment not exceeding twelve months, or to both.

## PART VI

### MISCELLANEOUS

Funds of a small claims court  
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28. The following moneys shall be paid into, or paid out of a revolving fund created for that purpose under section eight of the Finance (Control and Management) Act:

- (a) prescribed fees paid to a small claims court in respect of proceedings before it;
- (b) money paid into a small claims court in the form of awards ordered to be paid to the other party; and
- (c) such other funds as the Permanent Secretary responsible for finance may determine to be paid into, or out of, the funds of a small claims court.

Administrative expenses

29. (1) The administrative expenses of a small claims court shall be a charge on the general revenues of the Republic.

(2) A claimant shall pay such fees as may be prescribed when lodging the claim.

Immunity of arbitrators and officers of small claims courts

30. No action or other proceedings shall lie or be instituted against an arbitrator or any other officer of a small claims court for, or in respect of, any act or thing done or omitted to be done in good faith in the exercise or purported exercise of his functions under this Act.

31. The Chief Justice may, by statutory instrument, make Rules rules for the better carrying out of the provisions of this Act, and, in particular, but without prejudice to the generality of such power, such rules may—

- (a) regulate the practice and procedure of small claims courts;
- (b) prescribe the fees to be charged under this Act;
- (c) prescribe forms;
- (d) prescribe the duties of officers of small claims courts;
- (e) prescribe allowances and expenses to be paid to the arbitrator; and
- (f) prescribe anything which is authorised or required to be prescribed under this Act.