

GOVERNMENT OF ZAMBIA

STATUTORY INSTRUMENT NO. 31 OF 2009

The Small Claims Court Act  
(Laws, Volume 4, Cap.47)

The Small Claims Court Rules, 2009

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IN EXERCISE of the powers contained in section *five* of the Small Claims Court Act, the following Rules are hereby made:

## PART I

## PRELIMINARY

- |    |  |                |
|----|--|----------------|
| 1. | These Rules may be cited as the Small Claims Court Rules, 2009.  | Title          |
| 2. | (1) In these Rules, unless the context otherwise requires—<br>“claim ” means a civil proceeding brought under rule 3;<br>“Clerk of Court ” means a person appointed as such under section<br><i>ten</i> of the Act, and includes an assistant Clerk of Court or other officer performing, or assisting the Clerk of Court in, the Clerk’s duties;<br>“commissioner ” has the meaning assigned to it in section <i>two</i> of the Act;<br>“court ” means a small claims court established under section <i>three</i> of the Act;<br>“defendant ” means a person against whom a claim has been filed in court;<br>“expenses” includes allowances;<br>“fee” means money paid to a court on filing a document;<br>“judgment” has the meaning assigned to it in section <i>two</i> of the Act;<br>“plaintiff ” means a person who has filed a claim in court otherwise than by way of a counterclaim or as a defendant;<br>“process” means any document issued by the court;<br>“Register ” means a claims register maintained by the Clerk of the Court under section <i>twenty-six</i> of the Act;<br>“Registrar” means the Registrar of the High Court, a Deputy Registrar, District Registrar and Assistant Registrar;<br>“sheriff” has the meaning assigned to it in section <i>two</i> of the Sheriffs Act; and<br>“writ of execution” means a writ of execution issued by the court under section <i>twenty-four</i> of the Act. | Interpretation |
|    | (2) Where in these Rules anything is required to be done within a specified number of days from the happening of any event, the period shall start to run from the day on which the event occurs.  | Cap. 37        |

## PART II

## COMMENCEMENT OF CLAIMS

Filing of  
claim

3. (1) A person wishing to file a claim shall commence the claim by completing and filing with the Clerk of Court a notice of claim, with the letter of demand attached, in Form I set out in the First Schedule.

(2) The Clerk of Court shall, before issuing a notice of claim, stamp the claim, give the claim a cause number and record the particulars of the claim and the names of the parties in the Register.

(3) A person shall not file a claim unless the person has caused to be issued and served upon the defendant a letter of demand stating the nature of the claim and requiring the defendant within fourteen days of receipt of such letter, to admit or deny the claim in accordance with section *sixteen A* of the Act.

(4) A claim made under sub-rule (1) shall be accompanied by the prescribed fee.

Notice of  
admission,  
defence or  
counterclaim

4. The defendant shall, within fourteen days of receipt of the notice of claim, complete and file with the Clerk of Court, a notice of admission, defence or counterclaim in Form II set out in the First Schedule.

Service of  
claim

5. (1) A notice of claim shall be served personally upon the defendant by the plaintiff or any other person designated to effect service.

(2) A person effecting service under sub-rule (1) shall, once service has been effected on a defendant, cause the defendant to acknowledge service by endorsing on a copy of the notice of claim as proof of service.

(3) Where the defendant refuses to acknowledge service, the person effecting the service shall endorse such refusal on a copy of the notice, which endorsement shall suffice for purposes of proving service.

(4) A certificate of service shall be in Form III set out in the First Schedule.

Notice of  
hearing

6. The Clerk of Court shall, upon receipt of a notice of admission, defence and counterclaim, issue and cause a notice of hearing to be served upon the parties in Form IV set out in the First Schedule.

## PART III

## HEARING OF CASES

Parties to  
attend  
hearing in  
person

7. (1) The parties to a case shall attend the hearing in person.

(2) The court shall dismiss the claim if neither of the parties to a case attend the hearing, or if the plaintiff fails to attend the hearing, without sufficient cause being shown:

Provided that where there is a counterclaim, the court shall hear the defendant and enter judgment in the defendant's favour.

(3) Where the defendant fails to attend the hearing, the court shall enter judgment against the defendant and dismiss the counterclaim.

(4) A party in whose absence a judgment is made or claim dismissed may, within seven days of entry of the judgment or dismissal of the claim, on sufficient cause being shown, apply to the court to set aside the judgement or re-open and restore the dismissed claim to the active list.

(5) An application to set aside a judgment or restore a claim to the active list shall be made in Forms V and VI, respectively, set out in the First Schedule.

8. (1) Where both parties to a case attend the hearing, the plaintiff shall open the plaintiff's case and call witnesses, if any.

Hearing of case

(2) The defendant may cross examine the plaintiff where a commissioner so directs, upon the request of the defendant.

(3) The plaintiff may cross-examine the defendant where the Commissioner so directs, upon the request of the plaintiff.

(4) The defendant shall, at the close of the plaintiff's case, present a defence and counterclaim, if any, and call witnesses, if any.

(5) The evidence of the parties and witness shall be taken on oath or affirmation.

(6) No party shall address the court at the close of the proceedings.

#### PART IV

##### JUDGMENTS

9. The court shall not maintain a case record of the proceedings but shall keep notes of such proceedings.

Notes of proceedings

10. (1) The court shall render a judgment in which it may either uphold or dismiss a claim on the issues before it.

Judgment

(2) A judgment of the court shall not be reserved to another day and shall be delivered in open court immediately after the hearing in Form VII set out in the First Schedule.

11. (1) A commissioner shall render an appropriate judgment where

Judgments in default of defence

(a) the defendant fails to file a defence after fourteen days of service of the notice of claim upon the defendant in accordance with subsection (3) of section *eighteen* of the Act; or

(b) the claim or part of it is admitted by the defendant.

(2) A commissioner may set aside a judgment made under this rule, on sufficient cause being shown by the defendant.

(3) An application to set aside a judgment made under subrule (1) shall be made in Form V set out in the First Schedule.

Particulars of judgment or dismissal of claim

12. (1) The Clerk of Court shall enter every judgment or dismissal of claim in the Register, which shall be open to inspection by the parties during office hours.

(2) The Clerk of Court shall record the particulars of every claim and judgment in Form VIII set out in the First Schedule and transmit it to the Registrar.

Settlement of judgement

13. The parties to a case shall comply with a judgement within three days of its being delivered.

#### PART V

##### REVIEWS

Writ of execution

14. (1) The court shall, where a judgment is not satisfied within three days, issue a writ of execution upon the defendant in accordance with section *twenty-four* of the Act.

(2) A writ of execution shall be in Form IX set out in the First Schedule and shall be executed by a court messenger or the Sheriff of Zambia.

Application for review

15. (1) A party aggrieved with any decision of the court may, within thirty days of the decision, apply for review in accordance with section *twenty A* of the Act.

(2) An application for review shall not operate as a stay of execution of the judgment.

(3) A notice of application for review shall be issued in Form X set out in the First Schedule.

(4) An applicant may, at any time after lodging a notice of application for review and before it is heard, withdraw it by filing a notice of withdrawal in Form XI set out in the First Schedule.

(5) Three commissioners appointed by the Registrar shall determine an application for review of the decision of a court.

(6) A decision of the panel on review shall be final.

#### PART VI

##### GENERAL

Fees

16. (1) The fees set out in the Second Schedule shall be paid by the person at whose instance the document concerned is filed or issued.

(2) The Clerk of Court shall cause to be issued a receipt for the fee paid by a person filing a document.

17. A witness's traveling expenses and subsistence allowance shall be borne by the party calling the witness. Witnesses expenses

18. A commissioner shall be paid, out of the general revenues of the Republic, a sitting allowance equivalent to that paid to the Chairperson of a Commission of inquiry appointed under the Inquiries Act. Sitting allowance  
Cap.41

19. A commissioner who has to spend a night away from home on account of a sitting shall be paid subsistence allowance at a rate determined by the Secretary to the Cabinet: Subsistence allowance

Provided that where the hotel bill is more than the allowance, the Commissioner shall be paid the actual cost of board and accommodation.

20. A commissioner who uses private transport shall be paid a kilometre allowance at a rate determined by the Secretary to the Cabinet. Travelling allowance

21. The duties and functions of the Clerk of Court at each Registry of the court shall, in addition to any other duties and functions imposed by these Rules or any other written law, be to Duties and functions of Clerk of Court

(a) issue and stamp all documents filed in court;

(b) verify all court fees payable on all documents filed in court;

(c) keep and maintain a Claims Register in which the following particulars shall be entered;

(i) the case number;

(ii) the names of the parties;

(iii) the particulars of the notice of claim;

(iv) the date of filing a notice of admission, defence or counterclaim; and

(v) the outcome of the claim;

(d) issue and stamp notices of hearing, notice of review, writs of execution and summons to witnesses;

(e) seal all judgments;

(f) remit particulars of any judgment or dismissal of claim to the Registrar; and

(g) prepare and remit records of reviews to the High Court.

FIRST SCHEDULE

(Rules 3(1),4,5(4),7(5), 10, 11, 12, 14 (2) and .15)

COURT FORMS

Form I

(Rules 3(1), 4 and 5(4))

NOTICE OF CLAIM

In the Small Claims Court at ..... Case No. ....

Between:

1. ....Plaintiff

Name in full

Residential address

Business and Postal address

2. ....Defendant

Name in full

Business and Postal address

DETAILS OF CLAIM

3. Amount of money claimed or what is claimed .....

4. Nature of the claim .....

5. Details of documents in support of the claim

(attached copies)

1. ....

2. ....

3. ....

Signature .....

Date.....

NOTE TO DEFENDANT

Judgment may be obtained against you, and may be enforced without further notice unless within 14 days of the service of this Notice of Claim, inclusive of the day of service, you complete and file with this court the attached Notice of Admission, Defence or Counterclaim, stating your defence and counterclaim, if any or admission of the claim.

Dated this..... day of..... 20.....

(Court seal or stamp)

.....  
Clerk of Court

\*You may endorse further information on your claim overleaf



8th May, 2009

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Form II  
(Rules 4, 5(4) and 6)

NOTICE OF ADMISSION, DEFENCE OR COUNTER CLAIM

In the Small Claims Court at.....Case No.....

Between:

1. ....Plaintiff

Name in full

Residential address

Business and Postal address

2. ....Defendant

Name in full

Business and Postal address

Business and Postal address

The above named defendant

1. ADMIT the claimant's claim

2. DISPUTE the claimant's claim for the following reasons:.....\*

3. Have a counterclaim against the claimant for the sum ofK .....for (State nature of Counterclaim)

Signature.....

Date.....

NB. Delete what is not applicable

\*you may endorse further information on your claim overleaf.

Form III  
(Rule 5(4))

CERTIFICATE OF SERVICE

In the Small Claims Court at ..... Case No.....

Between:

1. ....Plaintiff

Name in full

Residential address

Business and Postal address

2. ....Defendant

Residential address

Business and Postal address

I certify that I personally did serve upon the defendant on the..... day of  
.....20..... the notice of claim issued out in this case.

.....  
*Plaintiff / Plaintiff's Representative*

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Form IV  
(Rule 6)

NOTICE OF HEARING

In the Small Claims Court at .....Case No.....

Between:

1. .... (Plaintiff)

and

2. ....(Defendant)

to both Parties

Take notice that this case will be heard on the .....day of  
.....20..... at .....Hours before  
Commissioner Mr/Mrs/Ms..... and that if you do not attend the time  
and place above-mentioned, such order will be made as the Court thinks just.

Dated the ..... day of .....20 .....

.....  
*Clerk of Court*

Form V  
(Rules 7(5) and 11(3))

APPLICATION TO SET ASIDE DEFAULT JUDGMENT

In the Small Claims Court at ..... Case No .....

Between:

1. ....(Plaintiff)

and

2. ....(Defendant)

To: The Clerk of Court  
The Claimant

Take notice that I .....apply to the Court that the default judgment which was made against me for failure to file any defence/in my absence at the hearing be set aside on the following grounds\*:

1. ....

2. ....

Take further notice that my application will be heard on the .....day of .....20..... at .....

Dated the .....day of 20 .....

Signed: Defendant

NB. Delete what is inappropriate

\* if there is insufficient space upon which to write the grounds, the additional grounds may be written on a plain piece of paper and attached overleaf.

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Form VI  
(rule 7(5))

APPLICATION TO RESTORE DISMISSED CLAIM

In the Small Claims Court at ..... Case No.....

Between:

1.....(Plaintiff)

and

2..... (Defendant)

To: The Clerk of Court

The Defendant

Take Notice that I .....apply to the Court that  
my claim which was dismissed at the hearing due to my absence be restored on the following  
grounds\*:

1.....

2.....

3.....

TAKE FURTHER NOTICE that my application will be heard on the .....day  
of .....20..... at .....(place)

Dated the .....day of .....20 .....

.....  
*Signed: Claimant*

\* if there is insufficient space upon which to write the grounds, the additional grounds may be  
written on a plain piece of paper and attached overleaf.

Form VII  
(Rule 11)

FORM OF JUDGMENT OR DISMISSAL OF CLAIM

In the Small Claims Court at ..... Case No.....

Between:

1 ..... (Plaintiff)

and

2 ..... (Defendant)

My decision, after considering what has been said, is as follows:

1. That the claim be dismissed for the following reasons\*:

(a) .....

(b) .....

2. That the judgment may be entered against the Defendant in favour of the Plaintiff for the amount of ..... Kwacha for the following reasons:

(a) .....

(b) .....

.....  
*Commissioner*

NOTICE TO DEFENDANT

The judgment of this Court once entered in the Register may be enforced against you by the Court issuing a Writ of Execution authorizing the Sheriff of Zambia or his officers to seize your goods and auction them.

\* if there is insufficient space upon which to write the grounds, the additional grounds may be written on a plain piece of paper and attached overleaf.

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Form VIII  
(Rule 12)

PARTICULARS OF THE JUDGMENT OR DISMISSAL OF CLAIM

In the Small Claims Court at ..... Case No.....

Between:

1 .....(Plaintiff)

and

2 .....(Defendant)

To: The Registrar of the High Court

I, the Clerk of Court at the above Station, give you particulars of the decision of the Court in this case given on the day of the .....by.....

.....  
*Name of Commissioner*

as follows:

1. The claim was dismissed for the following reasons\*:

(a) .....

(b) .....

2. The defendant was ordered to pay the sum of K ..... by:

(i) Instalments of K..... each, the last of which is to be paid on the .....day of .....20.....

(ii) One lump sum to be paid by the ..... day of .....20.....

3. The Court ordered restitution of the property to be made by the .....day of .....20.....

4. The Court ordered specific performance of the contract, such performance to be done by the .....day of..... 20.....

Dated the .....day of .....20.....

.....  
*Clerk of Court*

\* if there is insufficient space upon which to write the grounds, the additional grounds may be written on a plain piece of paper and attached overleaf.

Form IX  
(Rule 14(2))

WRIT OF EXECUTION

In the Small Claims Court at ..... Case No.....

Between:

1.....(Plaintiff)

and

2.....(Defendant)

To: The Sheriff of Zambia

WHEREAS..... of ..... was on the  
..... day of ..... 20 ..... ordered by this Court  
to pay the sum of K .....  
to the Claimant by the..... day of  
..... 20..... and has not made such payment as ordered:

You are hereby ordered to seize and sell, without delay, the property of the said person to the extent of obtaining thereby the sum of K..... being the amount due from that person at this date under the said order to pay, together with the sum of K ..... being the fee of execution of this warrant showing the sum received for each article by such sale, to this Court, to be dealt with according to law.

If, before or during such sale, the amount which is or remains due from the said person as aforesaid is paid to you, the sale shall not be proceeded with.

The following forms of property shall not be liable for seizure:

- (a) personal clothing, beds and bedding and household utensils for the use of the owner and the family;
- (b) implements of husbandry and tools of the trade of the owner;
- (c) foodstuffs required for the feeding of the owner and the dependants;
- (d) any property claimed by a third party or in which a third party has an interest.

Dated the ..... day of ..... 20 .....

.....  
Clerk of Court



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ENDORSEMENT OF EXECUTION OR NON EXECUTION

This writ was executed by me on the ..... day of ..... 20..... at (place)  
and a list of articles sold and amounts received thereby is attached.

Dated the..... day of.....  
20 .....

.....  
*Sheriff*

Form X  
(Rule 15(3))

NOTICE OF APPLICATION FOR REVIEW

In the Small Claims Court at ..... Case No.....

Between:

1 .....(Applicant)

and

2 .....(Respondent)

Take Notice that I, ..... being dissatisfied with the dismissal of my claim/judgment against me given on the ..... day of ..... 20..... apply to the High Court for review on the following grounds\*:

1.....

2.....

Dated the ..... Day of ..... 20.....

Signed.....  
*Applicant/Respondent*

To: The Registrar of the High Court

Filed at .....this..... day of..... 20.....

.....  
*Registrar of the High Court*

\* if there is insufficient space upon which to write the grounds, the additional grounds may be written on a plain piece of paper and attached overleaf.

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Form XI  
(Rule 15(4))

NOTICE OF WITHDRAWAL OF APPLICATION FOR REVIEW

In the Small Claims Court at .....

Case No.....

Between:

1 .....(Applicant)

and

2 .....(Respondent)

To: The Registrar of the High Court  
Clerk of Court  
Defendant/Claimant

Take Notice that I .....have withdrawn my application for review  
against the dismissal of my claim/the judgment filed on the.....  
day of .....20 .....

Dated the..... day of .....20 .....

Signed.....

*Applicant*

NOTE: The applicant shall serve a copy of this notice on the respondent.

## SECOND SCHEDULE

*(Rule 16)*

## FEES

	<i>Fee Units</i>
1. On a claim	222.22
2. On a counterclaim	222.22
3. On an application to restore a claim	111.11
4. On an application to set aside a default judgment	111.11
5. On filing a notice of review	278
6. On filing a notice of withdrawal of application for review	111.11
7. On filing a writ of execution	83.33
8. On filing any order or process not otherwise provided for	83.33

E. L. SAKALA,  
*Chief Justice*

LUSAKA  
22nd April, 2009  
[J.101/8/23]