

Constitutional Court (Amendment) Rules, 2022 (No. 1)

IT is hereby notified that the Minister of Justice, Legal and Parliamentary Affairs has, in terms of section 26(2) of the Constitutional Court Act [*Chapter 7:22*], approved the following rules made by the Chief Justice:—

1. These rules may be cited as the Constitutional Court (Amendment) Rules, 2022 (No. 1).

2. The Constitutional Court Rules, 2016, published in Statutory Instrument 61 of 2016 (hereinafter called the principal rules), are amended as follows—

(a) rule 2 of the principal rules is amended in subrule (2) by the insertion of the following definitions and interpretations—

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

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

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

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

“filing” means electronic filing or physical filing;

“hearing” means physical or virtual hearing;

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

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

- (b) rule 7 (“Address of service”) of the principal rules is amended in subrule (1) by the insertion of the words “*email address or physical*” to read—

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

- (c) rule 9 (“Service”) of the principal rules is amended—
- (i) by the deletion of the heading “Service” and the substitution of “*Service, e-filing and related matters*”;
- (ii) by the insertion after rule 9 of the following—

“*General provisions for e-filing of process*

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

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

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

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

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

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

Electronic service

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

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

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

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

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

Pagination and Indexing of electronic documents

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

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

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

(4) The applicant or appellant shall create an index of all documents filed electronically,

which index shall be identical to the index of the hard copies.”;

- (d) rule 11 (“Office hours of the Registrar”) of the principal rules is amended by the insertion of the following subrules after subrule (2)—

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

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

- (e) rule 16 (“Court Applications”) of the principal rules is amended in subrule (3)(b) by the insertion of the words “*email address*” to read—

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

- (f) rule 17 (“Notice of opposition”) of the principal rules is amended in subrule (3) by the insertion of the words “*a physical or email address*” to read—

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

- (g) rule 20 (“Chamber applications”) of the principal rules is amended—

- (i) in subrule (1)(a) by the insertion of the words “*an electronic or*” to read—

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

- (ii) in subrule (1)(c) by the insertion of the words “*or email address*” to read—

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

- (h) rule 41 (“Hearing of matters”) of the principal rules is amended by the insertion of the following subrule after subrule 3—

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

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

- (a) the platform will facilitate the expeditious, effective, seamless and real time conduct of court proceedings;
- (b) the court as the host of the platform is responsible for furnishing the technology, software and equipment needed to make the platform operational, but each party hosted on it is responsible for, and bears the cost and burden of, providing the technology software and equipment needed by the party to make its participation on the platform effective;
- (c) subject to this rule, self-actors, legal practitioners and their clients and witnesses, may access the Virtual Court Platform from different locations or together, and from locations within or outside Zimbabwe;
- (d) the participation of the parties on the platform can be so arranged that any of the following forms of participation is possible—
 - (i) one party and his or her witnesses may be physically present at the location where the court is sitting, while the other party accesses the platform from a different location;

or

- (ii) both parties may be present at the same remote location if—
 - A. the location is another court at which the police officer is present; or
 - B. in the case where the location is not a court, the court hosting the platform is able, by prearrangement of the parties with the Registrar, to assign a police officer to be present at the location at all times during the hearing;
- (e) the platform is availed for parties to use on a voluntary and consensual basis, subject however to the court's power to direct that, in the interests of justice, a particular case must be heard virtually;
- (f) the platform will ensure the security, authenticity, and where necessary, the confidentiality of virtual proceedings, with provision being made, however, for the live streaming of those cases that the judge deems to be of particular public interest;
- (g) the filing of process and electronic payment of court fees shall be effected using the IECMS platform whether or not the hearing is conducted virtually;
- (h) the platform will ensure that virtual hearings will be conducted as seamlessly as possible without interruption and will resolve any

technical challenges in that respect which are the responsibility of the platform as speedily as possible;

- (i) the platform will enable witnesses to participate virtually in the hearings at any court nearest to their place of residence or at any other location by pre-arrangement with the Registrar;

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

- (i) if there are two or more terminals at the location, the party and his or her witnesses must communicate from different terminals;
- (ii) if there is only one terminal at the location, the party must not be seen in close proximity with his or her witness while the witness's testimony is being given or tested;
- (iii) to ensure that witnesses will not be influenced or influence other witnesses, the witnesses who are yet to give testimony and who have given testimony must be absent from the location until their testimony is required;
- (iv) in any of the foregoing circumstances (paragraphs

- (i) to (iii)) the police officer present at the location must ensure that no communication (except with the express leave of the court) takes place between the party and his or her witnesses or between the witnesses themselves;
- (j) the platform affords to the parties before and during the hearing the assistance of technically qualified officers of the court to ensure that the parties hosted thereon are able to participate seamlessly and effectively;
- (k) the Registrar is ultimately responsible, subject to the directions of the court, for the smooth operation of the Virtual Court Platform, and any or all of the parties to the virtual hearing shall have access to him or her during normal office hours for the purpose of ensuring beforehand that the hearing will be conducted seamlessly, efficiently, cost effectively and expeditiously;
- (l) if a party fails to attend a virtual hearing, having agreed or been directed to participate in the hearing, and there being no technical default attributable to the platform itself, such party shall be subject to default judgement proceedings, and it shall not be competent for it to plead lack of the requisite technical resources

if it had not raised that issue with the Registrar before the start for the virtual hearing.

- (m) to ensure the continuity and seamlessness of virtual court proceedings, the platform incorporates backup facilities in case of power outages and interruptions of connectivity, but is not responsible for any defaults in that respect in the technology, software or equipment furnished by the parties to enable them to access the platform (accordingly it is incumbent on each party to make the necessary backup provision against power outages and interruption of internet connectivity at their location);
- (n) the platform affords a quality of connectivity, resolution and definition sufficient to permit legal practitioners, their clients, the judge and the witnesses to observe each other's expression, reactions and demeanour as much as possible as if the participants are present together in an actual court setting.

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

(7) If, despite the lack of agreement of the parties, the Registrar forms the opinion, on his or her own or at the instance of the parties concerned, that it is in the interests of justice for a particular case to be

held virtually, then the Registrar shall refer the matter to a judge in chambers for an appropriate determination.

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

(9) Before making a direction the judge shall—

- (a) invite the parties to make representations to him or her in chambers;
 - (b) require any party alleging any incapacity to participate in a virtual hearing an affidavit setting forth the particulars of such incapacity.”.
- (i) rule 43(“Documents to be filed with the Registrar”) of the principal rules is amended—
- (a) after subrule (3)(a) by the insertion of the following paragraph—

“(a1) Notwithstanding the provisions of any other rule, the format of the documents presented for filing to the court shall be in paragraphs, and the “Times New Roman” font type, size twelve (12), and a line spacing of 1.5 shall be used for all pleadings and documents;”;
 - (b) after subrule (9) by the insertion of the following subrules—

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

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

(12) Any party aggrieved by any decision of the Registrar in terms of these rules

may apply to a Judge in chambers for a review of such decision within five days of the party having been notified of the decision.”;

- (j) the principal rules are amended after rule 43 by the insertion of the following rule—

“E-filing of Documents

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

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

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

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

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

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

- (k) the principal rules are amended by the insertion of the following rule after rule 64—

“E-court status of the court

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