

JUDICIAL LAWS AMENDMENT

H.B. 3, 2022.]

JUDICIAL LAWS AMENDMENT BILL, 2022

MEMORANDUM

The purpose of this Bill is twofold: to provide for virtual court sittings in both civil and criminal proceedings and to align various provisions of Judicial Laws to the Constitution as set out below:

Clause 1

This clause sets out the Bill's short title.

Clause 2

This clause identifies the parts under which Judicial Laws are amended namely: —

- (a) Part II amends the Constitutional Court Act [*Chapter 7:22*];
- (b) Part III amends the Supreme Court Act [*Chapter 7:13*];
- (c) Part IV amends the High Court Act [*Chapter 7:06*];
- (d) Part V amends the Administrative Court Act [*Chapter 7:01*];
- (e) Part VI amends the Labour Act [*Chapter 28:01*];
- (f) Part VII amends the Magistrates' Court Act [*Chapter 7:10*];
- (g) Part VIII amends the Criminal Procedure and Evidence Act [*Chapter 9:07*].

Clause 3

This clause amends section 10 of the Constitutional Court Act [*Chapter 7:22*] to provide for virtual court sittings in both civil and criminal proceedings subject to the consent of the parties involved.

Clause 4

This clause amends section 27 of the Supreme Court Act [*Chapter 7:13*] to provide for virtual court sittings in both civil and criminal proceedings subject to the consent of the parties involved.

Clause 5

This clause amends section 13 of the High Court Act [*Chapter 7:06*] to provide that no claim which is ordinarily within the jurisdiction of the Magistrates' Court or any other inferior court or tribunal shall be lodged with the High Court in the first instance.

Clause 6

This clause amends section 46A of the High Court Act [*Chapter 7:06*] by allowing the notice published by the Chief Justice to specify the area under the jurisdiction of the specific division of a specialist court to curb the misuse of forum shopping (for instance where a rich Plaintiff makes it more difficult for an indigent Defendant to defend a case by initiating action in a court far away from where that Defendant resides).

Clause 7

This clause amends section 47 of the High Court Act [*Chapter 7:06*] by allowing virtual court sittings in both civil and criminal proceedings subject to the consent of the parties involved.

Clause 8

This clause amends section 12 of the Administrative Court Act [*Chapter 7:22*] to provide for virtual court sittings subject to the consent of the parties involved.

Clause 9

This clause amends section 85 of the Labour Act [*Chapter 28:01*] by aligning the qualifications of a Labour Court Judge to bring them in conformity with section 179 of the Constitution.

Clause 10

This clause amends section 91 of the Labour Court Act [*Chapter 28:01*] to provide for virtual court sittings subject to the consent of the parties involved.

Clause 11

This clause inserts a new section 92BB to the Labour Act [*Chapter 28:01*] which provides for the establishment of the office of the Messenger of the Labour Court. At present, the Labour Court does not have its own mechanism for enforcing judgments and litigants are forced to register their judgments with an appropriate High Court or Magistrate Court for enforcement purposes.

Clause 12

This clause amends section 92CC of the Labour Act [*Chapter 28:01*] by the deletion of “President” wherever it appears and substitution of “judge”, in line with the terminology of the Constitution.

Clause 13

This clause amends section 92F of the Labour Act [*Chapter 28:01*] by the deletion of “President” wherever it appears and substitution of “judge”, in line with the terminology of the Constitution.

Clause 14

This clause amends section 44A of the Magistrates Court Act [*Chapter 7:10*] by the repealing subsection 3 and substituting with a provision allowing virtual court sittings in both civil and criminal proceedings.

Clause 15

This clause amends section 51 of the Magistrates Court Act [*Chapter 7:10*] by giving every magistrate special jurisdiction to impose the penalties prescribed in section 60A of the Electricity Act [*Chapter 13:19*] and 38 of the Railways Act [*Chapter 13:09*] and any other Act of Parliament wherein it is expressly provided that the Magistrate shall have jurisdiction in excess of its jurisdiction.

Clauses 16 and 17

This clause is amended in section 57 of the Magistrates Court Act [*Chapter 7:10*]. Presently prison sentences of 12 months or more imposed by Magistrates are automatically reviewable by a High Court Judge to check whether they are in accordance with real and substantial justice. Given the case load of High Court Judges is very burdensome, it was considered that the High Court should only be responsible for reviewing the award by magistrates of prison sentences exceeding two years. It is now proposed that sentences between 12 months and two years will be scrutinised by Regional Magistrate.

Clause 18

This clause inserts a new section 194A of the Criminal Procedure and Evidence Act [*Chapter 9:07*]. Presently all criminal proceedings are conducted in person with certain exceptions such as those involving vulnerable witnesses. It has been found however to be wasteful of time and resources for certain criminal proceedings of a formal rather than substantive nature to be conducted in person. Accordingly, this amendment will provide for virtual court sittings in bail and remand other than initial remand proceedings.

Clause 19

This clause repeals and replaces section 193 of the Criminal Procedure and Evidence Act [*Chapter 9:07*], substituting section places an obligation upon the State of ensuring the availability of sign language interpreter in the case involving the accused person with hearing or speech impairment or both. Further the clause also gives power to the court to release the accused person on bail or remove such person from remand where the State has failed to secure the services of a sign language interpreter.

Clause 20

This clause repeals and replaces section 246 of the Criminal Procedure and Evidence Act [*Chapter 9:07*]. The substituting section has removed derogatory words like idiocy, mental disorder, malady and adopted the wording of the Convention of the rights of persons with disabilities.

BILL

To amend the Constitutional Court Act [*Chapter 7:22*], Supreme Court Act [*Chapter 7:13*]; High Court Act [*Chapter 7:06*], Administrative Court Act [*Chapter 7:01*]; Labour Act [*Chapter 28:01*], the Magistrates Court Act [*Chapter 7:10*], Criminal Procedure and Evidence Act [*Chapter 9:07*],
5 and to provide for matters connected with or incidental to the foregoing.

ENACTED by the Parliament and the President of Zimbabwe.

PART I

PRELIMINARY

10 **1 Short title**

This Act may be cited as the Judicial Laws Amendment Act, 2022.

2 Interpretation

In this Act, “principal Act”, in—

- (i) Part II is reference to the Constitutional Court Act [*Chapter 7:22*];
- 15 (ii) Part III is reference to the Supreme Court Act [*Chapter 7:13*];
- (iii) Part IV is a reference to the High Court Act [*Chapter 7:06*];
- (iv) Part V is a reference to the Administrative Court Act [*Chapter 7:01*];
- (v) Part VI is a reference to the Labour Act [*Chapter 28:01*];
- (vi) Part VII is a reference to the Magistrates’ Court Act [*Chapter 7:10*].
- 20 (vii) Part VIII is a reference to the Criminal Procedure and Evidence Act [*Chapter 9:07*].

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PART II

AMENDMENTS TO CONSTITUTIONAL COURT ACT [CHAPTER 7:22]

3 Amendment of section 10 of Cap. 7:22

Section 10 ('Sittings and vacation') of the principal Act is amended by the insertion of the following subsection, and the existing section becoming subsection (1)— 5

“(2) Subject to subsection (3) rules of court may provide for the sittings of the Constitutional Court and of judges of the Constitutional Court, whether sitting in court or in chambers, to be conducted by use of any electronic or other means of communication by which all parties to the proceedings at the sitting can hear and be heard at the same time without being physically present together (hereinafter referred to as ‘virtual sittings’): 10

Provided that the parties concerned must consent to their proceedings being conducted by way of a virtual sitting.

(3) Rules of court for virtual sittings shall apply to both criminal and civil proceedings. 15

(4) A party who participated in a virtual sitting for which provision is made under the rules is taken for all purposes to have been present at the sitting.”.

PART III

AMENDMENT TO SUPREME COURT ACT [CHAPTER 7:13]

4 Amendment of section 27 of Cap. 7:13 20

Section 27 (Sittings of Supreme Court) of the principal Act is amended by the insertion of the following subsections, and the existing section becoming subsection (1)—

“(2) Subject to subsection (3) rules of court may provide for the sittings of the Supreme Court and of judges of the Supreme Court, whether sitting in court or in chambers, to be conducted by use of any electronic or other means of communication by which all parties to the proceedings at the sitting can hear and be heard at the same time without being physically present together (hereinafter referred to as “virtual sittings”): 25

Provided that the parties concerned must consent to their proceedings being conducted by way of a virtual sitting. 30

(3) Rules of court for virtual sittings shall apply to both criminal and civil proceedings.

(4) A party who participated in a virtual sitting for which provision is made under the rules is taken for all purposes to have been present at the sitting.”. 35

PART IV

AMENDMENTS TO HIGH COURT ACT [CHAPTER 7:06]

5 Amendment of section 13 of Cap. 7:06

Section 13 of the principal Act is amended by the insertion of the following proviso— 40

“Provided that no claim which in terms of any law is within the jurisdiction of the Administrative Court, Labour Court, Magistrates’ Court, or any other inferior court or tribunal shall be lodged with the High Court in the first instance.”.

6 Amendment of section 46A of Cap. 7:06

5 Section 46A (“Specialised divisions of the High Court”) of the principal Act is amended by the insertion of subparagraph (d) after subparagraph (c)—

“(d) if necessary or expedient, specify the area under the jurisdiction of that division.”.

7 Amendment of section 47 of Cap. 7:06

10 Section 47 (“Sittings of the High Court”) of the principal Act is amended by the repeal of subsection (3) and the substitution of—

“(3) Rules of court for virtual sittings shall apply to both civil and criminal proceedings.”.

PART V

15 AMENDMENT TO ADMINISTRATIVE COURT ACT [*CHAPTER 7:01*]

8 Amendment of section 12 of Cap. 7:01

Section 12 (Sittings of Court) of the principal Act is amended by the insertion of the following subsections, and the existing section becoming subsection (1)—

20 “(2) Subject to subsection (3) rules of court may provide for the sittings of the Administrative Court and of judges of the Administrative Court, whether sitting in court or in chambers, to be conducted by use of any electronic or other means of communication by which all parties to the proceedings at the sitting can hear and be heard at the same time without being physically present together (hereinafter referred to as “virtual sittings”):

25 Provided that the parties concerned must consent to their proceedings being conducted by way of a virtual sitting.

(3) Rules of court for virtual sittings shall apply.

(4) A party who participated in a virtual sitting for which provision is made under the rules is taken for all purposes to have been present at the sitting.”.

30 PART VI

AMENDMENTS TO LABOUR ACT [*CHAPTER 28:01*]

9 Amendment of section 85 of Cap. 28:01

Section 85 (“Qualification for appointment as President of Labour Court”) of the principal Act is repealed and the substitution of—

35 “85 Qualifications of judges of Labour Court

The qualification of every judge of the Labour Court shall be as specified in section 179 of the Constitution.”.

10 Amendment of section 91 of Cap. 28:01

40 Section 91 (Sittings of Labour Court) of the principal Act is amended by the insertion of the following subsections, and the existing section becoming subsection (1)—

“(2) Subject to subsection (3) rules of court may provide for the sittings of the Labour Court and of judges of the Labour Court, whether sitting in court or in chambers, to be conducted by use of any electronic or other means of communication by which all parties to the proceedings at the sitting can hear and be heard at the same time without being physically present together (hereinafter referred to as ‘virtual sittings’): 5

Provided that the parties concerned must consent to their proceedings being conducted by way of a virtual sitting.

(3) Rules of court for virtual sittings shall apply.

(4) A party who participated in a virtual sitting for which provision is made under the rules is taken for all purposes to have been present at the sitting.”. 10

11 Insertion of new section to Cap.28:01

(1) With effect from such date as the Minister shall fix by notice in the *Gazette* the principle Act is amended by the insertion of the following section after section 92B 15

“92 BB Messengers of Labour court

(1) In this section Messenger means a Messenger of the Labour Court appointed in terms of this section and includes a Deputy Messenger.

(2) Subject to such conditions as he or she may determine, the Minister may appoint Messengers of the Labour Court. 20

(3) A Messenger may, with the approval of the senior Judge of the Labour Court, appoint one or more Deputy Messengers for whom the Messenger of the Labour Court shall be responsible.

(4) The senior Judge may appoint a person to act as an Acting Messenger when, by reason of the illness, absence or interest of the Messenger of the Court, or on the application of any person interested, he or she may consider it necessary or expedient so to do. 25

(5) Where no Messenger or Deputy Messenger has been appointed for a Labour Court or for an area to which the Labour Court regularly goes on circuit, every Messenger and Deputy Messenger appointed for the court of a magistrate whose jurisdiction covers the area in question shall be qualified to act as Messenger or Deputy Messenger, as the case may be, of the Labour Court in those circumstances. 30

(6) When process of the Labour Court is to be served and no Messenger or Deputy Messenger has been appointed at the place where the court is held, a police officer shall, subject to the rules, be as qualified to serve such process in such a case as if he or she had been duly appointed Deputy Messenger. 35

(7) A Messenger who—

(a) is negligent or dilatory in the service or execution of process; or 40

(b) willfully demands payment of more than his or her proper fees or expenses or makes a false return; or

(c) becomes incompetent to perform his or her work; or

(d) conducts himself or herself in any manner or is addicted to any habits inconsistent with the discharge of his or her duties as a Messenger; or 45

(e) for any other reason is, in the opinion of the senior Judge of the Labour Court, unsuitable or to perform his or her duties;

5 may be suspended by the senior judge, who may appoint a person to act in his or her place during the period of suspension.

(8) The senior Judge shall forthwith report to the Minister any action he or she has taken under subsection (6) and the Minister may, after consideration of the report, set aside the suspension or confirm it and dismiss the Messenger from his or her office.

10 (9) A Messenger shall give security to the satisfaction of the senior judge of the Labour Court for the due fulfillment of his or her office and for the due and punctual payment by him or her to the parties entitled thereto of all moneys which come into his or her hands by virtue of his or her office.

15 (10) The tariff of sheriffs and messengers fees applicable in the Magistrates' Court and High Court shall apply to the tariffs of charges of the Messenger of the Labour Court depending on whether the High Court or Magistrate Court would have had jurisdiction in the matter.

20 (11) A Messenger or Deputy Messenger appointed under this section shall have such powers, and shall conduct his or her duties in such manner, as may be prescribed by order of the Labour Court or in rules of court.

(2) Subsections 3, 4 and 5 of section 92B ("Effective date and enforcement of decisions of Labour Court") shall be deemed to be repealed on the date on which subsection (1) comes into force.

12 Amendment of section 92CC of Cap 28:01

Section 92CC ("Part-heard matters") of the principal Act is amended by the deletion of "President" wherever it appears and substitution of "judge".

13 Amendment of section 92F of Cap 28:01

30 Section 92F ("Appeals against decisions of Labour Court") of the principal Act is amended by the deletion of "President" wherever it appears and substitution of "judge".

PART VII

AMENDMENTS TO MAGISTRATES' COURT ACT [CHAPTER 7:10]

14 Amendment of section 44A of Cap. 7:10

35 Section 44A ("Electronic Sittings of the Court") of the principal Act is amended by the repeal of subsection (3) and the substitution of—

"(3) Rules of court for virtual sittings shall apply to both civil and criminal proceedings."

15 Amendment of section 51 of Cap. 7:10

40 Section 51 ("Special jurisdiction as to punishment") of the Magistrate Court Act [Chapter 7:10] is amended by the insertion of—

"(6) Notwithstanding section fifty, every magistrate shall have special jurisdiction to impose the penalties prescribed in section 60A of the Electricity Act [Chapter 13:19] , 38 of the Railways Act [Chapter 13:09]" and any other Act of

Parliament wherein it is expressly provided that the Magistrate shall have jurisdiction in excess of its ordinary jurisdiction.

16 Amendment of section 57 of Cap. 7:10

Section 57 (“Review”) of the principal Act is amended in subsection (1) by the deletion of —

- (a) in paragraph (a), “twelve months” and the substitution of “two years”;
- (b) in paragraph (b), “six” and the substitution of “ten”.

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17 Amendment of section 58 of Cap. 7:10

Section 58 (“Scrutiny of certain cases not falling within section 57(1)”) of the principal Act is amended in subsection (1) by the deletion of—

- (a) in paragraph (a), “twelve months” and the substitution of “two years”;
- (b) in paragraph (b), “six” and the substitution of “ten”.

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PART VIII

AMENDMENTS TO CRIMINAL PROCEDURE AND EVIDENCE ACT [*CHAPTER 9:07*]

18 Insertion of new section Cap 9:07

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The principal Act is amended by the insertion of the following section after section 194—

“194 A Virtual Court Sitings

(1) Notwithstanding section 194 or any other provision to the contrary in any law—

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- (a) proceedings in any court for the remanding of an accused person (other than proceedings on initial remand) or the admission of an accused person to bail shall be done at a virtual sitting of the court by means of closed circuit television or similar electronic media, but only if facilities therefore are readily available or obtainable;
- (b) the court may, in order to ensure the fair and just conduct of proceedings in a virtual sitting as contemplated in paragraph (a), make the giving of evidence at such a sitting subject to such conditions as it may deem necessary:

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Provided that the prosecutor and the accused have the right, by means of that procedure, to question a witness and to observe the reaction of that witness.”.

19 Amendment of section 193 of Cap. 9:07

Section 193 (“Detention of persons who are deaf or mute or both”) of the Criminal Procedure and Evidence Act [*Chapter 9:07*] (hereinafter called the principal Act) is repealed and substituted by the following—

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“193 Detention of persons with hearing impairment or speech impairment or both

(1) In any criminal proceedings involving the accused with hearing impairment or speech impairment or both, the State shall ensure the availability of a sign language interpreter where the accused concerned requires the services of such interpreter.

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(2) In any criminal proceedings, if the court is satisfied that the accused is unable to properly conduct his or her defence by reason of hearing impairment or speech impairment or both, the court shall—

(a) order the release of the accused person on bail; or

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(b) order the removal of the accused person from remand;

where the State has failed to ensure the availability of the sign language interpreter.

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(3) where the court has ordered the removal of the accused from remand in terms of subsection (2)(b), the State may recall the accused by way of summons to appear before the Court once the services of the sign language interpreter have been secured.”.

20 Amendment of section 246 of Cap. 9:07

Section 246 (“Incompetency from mental disorder or defect and intoxication”) of the principal Act is repealed and substituted by the following—

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“246 Incompetency from mental or intellectual impairment or intoxication

No person—

(a) appearing or proved to be mentally or intellectually impaired; or

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(b) labouring under intoxication or otherwise;

whereby he or she is deprived of the proper use of reason, shall be competent to give evidence while under such intoxication or impairment.”.

