

High Court (Commercial Division) (Amendment) Rules, 2022 (No. 2)

IT is hereby notified that the Minister of Justice, Legal and Parliamentary Affairs, in terms of section 56 of the High Court Act [*Chapter 7:06*], has approved the following rules of court made by the Chief Justice and the Judge President:—

1. These rules may be cited as the Rules of the High Court (Commercial Division) (Amendment) Rules, 2022 (No. 2).

2. The High Court (Commercial Division) Rules, 2020, published in Statutory Instrument 123 of 2020 (hereinafter called “the principal rules”), are amended by the repeal of rule 2 and the substitution of—

“Date of commencement and purpose

2. These rules shall come into operation on the 1st of May, 2022, and shall have effect in relation to all proceedings of the Commercial Division of the High Court.”.

3. Rule 3 of the principal rules is amended in subrule (1) by the insertion of the following definitions—

““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.

4. Rule 4 (“Application”)(2) of the principal rules is amended in subrule (3) by the deletion of “the High Court Rules (1971)” and the substitution of “the High Court Rules, 2021”.

5. The principal rules are amended by the insertion after rule 12 of the following rule—

“Plaintiff’s replication

12A. The plaintiff, after receiving a plea may file a reply called the “plaintiff’s replication” within seven days which shall be served on the defendant physically or electronically in accordance with the rules for service of process.”.

6. Rule 30 (“Filing and service”) of the principal rules is amended by the insertion of the following subrule after subrule (4)—

“(5) A litigant who—

- (a) files documents electronically may do so outside of office hours but subject to the time limits for such filing prescribed by these rules; or
- (b) files documents physically must do so within office hours and the time limits for such filing prescribed by these rules.”.

7. Rule 36 (“Heads of Argument”) of the principal rules is amended by the repeal of subrule (1) and the substitution of—

“(1) If at the hearing of an application, exception or application to strike out, the applicant or excipient, as the case may be, is to be represented by a legal practitioner—

- (a) the Registrar shall, as soon as he or she receives the answering affidavit, send written notification to the applicant’s or excipient’s legal practitioners calling upon him or her to file heads of argument within fourteen (14) days after the date of such notification; and
- (b) the legal practitioner shall, within fourteen (14) days after the filing and delivery of the answering affidavit and before the matter is set down for hearing, file with

the Registrar heads of argument clearly outlining the submissions he or she intends to rely on and setting out the authorities, if any, which he or she intends to cite; and

- (c) immediately afterwards the legal practitioner shall deliver a copy of the heads of argument to every other party and, within twenty-four hours of such delivery, file with the Registrar proof of service or delivery in Form CC 13; and
- (d) if the Registrar does not receive heads of argument from the applicant's or excipient's legal practitioner within the period specified in paragraph (b), the application, exception or application to strike out shall be regarded as abandoned and shall be deemed to have been dismissed, and the Registrar shall, without delay, notify the legal practitioner in writing accordingly.”.

8. The principal rules are amended by the insertion after rule 37 of the following rule—

“Virtual Court Platform

37A. (1) 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.

(2) 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; and
- (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.

(3) 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 ten days before the proposed virtual hearing.

(4) 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.

(5) 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.

(6) 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.”.

9. The principal rules are amended by the deletion of the Part heading “SERVICE OF PROCESS” occurring after the provisions grouped under “GENERAL PROVISIONS” and the substitution of —

“PART VI

SERVICE, E-FILING AND RELATED MATTERS.”.

10. The principal rules are amended by the insertion after rule 46 of the following rules —

“General provisions for e-filing of process

46A. (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 alternate email address for the purpose of service 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) Any user of the e-filing system shall be the custodian of his or her credentials.

Pagination and indexing of electronic documents

46B. (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 appear at the top of the 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.

E-filing of Documents

46C. (1) A document that is sent by electronic communication to the Registry for filing shall be—

- (a) sent by 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 by 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.”.

11. Rule 48 (“Format of pleadings and other legal documents”) is amended by the insertion of the following after subrule (3)—

“(4) 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.”.

12. Rule 57 (“‘E_Court status’ of the Court”) of the High Court (Commercial Division) Rules is amended by the repeal of subrule (1) and the substitution of—

“(1) 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 the most senior Judge of the Court.”.

