

## CHAPTER 7:01

### ADMINISTRATIVE COURT ACT

*Acts 39/1979, 15/1981 (s. 66), 29/1981 (s. 59), 13/1982, 31/1983 (s. 23), 12/1986 (s. 17), 3/1994, 22/2001 (s. 4), 14/2002 (s. 6), 10/2006, 5/2011 (s. 2), 3/2016 (Part IX).*

#### ARRANGEMENT OF SECTIONS

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**AN ACT to provide for the establishment, functions and powers of the Administrative Court and to provide for matters incidental thereto or connected therewith.**

[Date of commencement: 12th July, 1979.]

#### **1 Short title**

This Act may be cited as the Administrative Court Act [*Chapter 7:01*]

#### **2 Interpretation**

In this Act—

“assessor” means an assessor appointed in terms of section *six* or in terms of any other enactment;

“Court” means the Administrative Court established in terms of section *three*;

“Minister” means the Minister of Justice, Legal and Parliamentary Affairs or any other Minister to whom the President may, from time to time, assign the administration of this Act;

“pension benefit” means a pension, commutation of pension, gratuity or other like allowance or refund of pension contributions, including any interest payable thereon, for a person in respect of his service as a Judge of the Court or in respect of any ill-health or injury arising out of and in the course of his official duties or for any spouse, child, dependant or personal representative of such a person in respect of such service, ill-health or injury;

“Judge of the Court” means the Judge President of the Court, a Judge of the Court or the acting Judge President of the Court or an acting Judge of the Court;

“Registrar” means the Registrar of the Court appointed in terms of section *seven*.

#### **3 Establishment and constitution of Administrative Court**

There is hereby established a court to be known as the Administrative Court which shall, subject to section *eleven*, consist of—

- (a) the Judge President of the Court and such number of Judges of the Court as the President may consider necessary; and
- (b) such assessors as may be provided for in terms of this Act or any other enactment.

### **3A Oath of office**

Every President of the Court shall, before entering upon his or her office, take and subscribe before the President or some person authorised by the President in that behalf the oath of loyalty and the judicial oath specified in Schedule 1 of the Constitution.

[Section inserted by Act 5 of 2011]

### **4 Jurisdiction, powers and authority of Court**

(1) The Court shall have such jurisdiction, powers and authority as may be conferred upon it by this Act or any other enactment.

(2) The Court may, in relation to any matter referred to it in terms of this Act or any other enactment—

- (a) in relation to an appeal or review, confirm, vary, reverse or set aside the decision, order or action concerned or refer the matter back to the body, person or authority concerned for further consideration; or
- (b) make such determination or order or exercise such powers as may be provided for by any other enactment.

### **5 Judges and acting Judges of Court**

(1) The Court shall be presided over by—

- (a) a Judge of the Court who shall be a person appointed, subject to subsection (3), as a Judge of the Court in terms of section 180(1) of the Constitution; or
- (b) an acting Judge of the Court appointed, subject to subsection (3), in terms of section 181 of the Constitution.

(2) A person referred to in subsection (1) shall be appointed on such terms and conditions, including terms and conditions relating to the payment of salary, allowances and pension benefits, as the President, on the recommendation of the Judicial Service Commission, may fix.

(3) A person shall not be qualified for appointment as a Judge of the Court or acting Judge of the Court unless he—

- (a) is a former judge of the Supreme Court or the High Court; or
- (b) is qualified for appointment as a judge of the Supreme Court or the High Court; or
- (c) has been a magistrate in Zimbabwe for not less than seven years.

[Section substituted by Act 3 of 2016]

### **6 Assessors**

(1) Subject to this section and except as otherwise provided in any other enactment, the Judge of the Court may appoint two persons from the appropriate list of persons referred to in subsection (2) to assist him as assessors in determining any matter which is required in terms of this Act or any other enactment to be determined.

(2) The Judge President of the Court shall, with the approval of the Chief Justice, draw up a list of the names of not less than ten persons who, by reason of their ability or experience, may appropriately be assessors and who are otherwise suitable for appointment as such in terms of subsection (1) and may draw up different lists for different classes of cases.

(3) The Judge President of the Court may, with the approval of the Chief Justice, add to or remove from any list drawn up in terms of subsection (2) the name of any person.

(4) An assessor shall, before entering upon his duties for the first time, take an oath before the Judge of the Court that he will faithfully perform his duties as a member of the Court.

(5) An assessor who is not a person in the full-time employment of the State shall be paid such remuneration and allowances as the Minister, with the consent of the Minister responsible for finance, may fix.

### **7 Appointment of Registrar and other officers of Court**

(1) There shall be a Registrar of the Court who shall be appointed by the Judicial Service Commission.

[Subsection amended by Act 10 of 2006]

(2) The Registrar shall perform such functions as may be assigned to him by or under this Act or any other enactment.

### **8 Record of proceedings of Court**

(1) Subject to rules of court made in terms of section *thirteen*, a record of the proceedings of the Court shall be kept and filed in the office of the Registrar.

(2) Subject to subsection (12) of section 18 of the Constitution, the record kept in terms of subsection (1) shall be accessible to the public and copies thereof may be obtained upon like conditions and upon payment of the same fees as if they were civil records of a court of a magistrate.

### **9 Proceedings to be in public**

The proceedings of the Court shall be conducted in public.

[Section substituted by Act 3 of 2016]

### **10 Decision of Court**

(1) Subject to subsection (2), all questions or matters which are required to be decided by the Court consisting of the Judge of the Court and assessors shall be decided by a majority of the members thereof:

Provided that, where the opinions of the Judge of the Court and the assessors are equally divided on any question or matter, the decision of the Judge of the Court shall be the decision of the Court.

(2) Any matter of law arising for decision at any sitting of the Court and any question arising at any such sitting as to whether a matter for decision is a matter of fact or a matter of law and any question arising at such sitting as to the admissibility of evidence shall be decided by the Judge of the Court and no assessor of the Court shall have a voice in the decision of any such matter.

### **11 Powers of Judge of Court sitting alone**

Subject to this Act and except as otherwise provided by or under the Constitution or in any other enactment, a Judge of the Court sitting without assessors may, whether in chambers or otherwise—

- (a) vary, reverse or set aside the decision, order or action that is the subject of the appeal or review or refer the matter back to the body, person or authority responsible for the decision, order or action, if he is satisfied that such a course is not opposed by any of the parties to the appeal or review, including that body, person or authority;
- (b) postpone or further postpone the hearing of any matter;
- (c) appoint commissioners for the taking of evidence;
- (d) authorize the proof of all or any of the facts in a case by affidavit;
- (e) on such terms and conditions as to costs or otherwise, as he or she thinks fit, permit an applicant or appellant to withdraw his or her application or appeal;
- (f) deal with such other matters as may be prescribed in rules of court made in terms of section 13.

[Section substituted by Act 3 of 2016]

### **12 Sittings of Court**

The Court shall sit at such places and at such times as may be prescribed or as the Judge President of the Court may direct.

### **13 Procedure of Court**

(1) Subject to this section, the Judges of the Court may make rules for the Court providing for—

- (a) the practice, procedure and rules of evidence to be followed, including the determination of any preliminary point in any proceedings;
- (b) the service of notices and other documents required for the purpose of any proceedings;
- (c) the forms to be used for the purpose of any proceedings;
- (d) the fees to be paid in respect of the service or examination of documents and the doing of any other thing by the Registrar or any officer of the Court in connection with any proceedings;
- (e) a tariff of fees which may be charged by legal practitioners in respect of any matter relating to the Court;
- (f) allowances and other payments to witnesses summoned to give evidence or to produce any book or document in any proceedings;
- (g) any other matter which the Judges consider should be provided for in rules in order to ensure or facilitate the proper dispatch and conduct of the business of the Court.

(2) Rules in terms of subsection (1) may provide for the condonation on good cause shown of any non-compliance therewith.

(3) In any proceedings not covered by rules in terms of subsection (1) or any other enactment—

- (a) the rules relating to practice and procedure in the High Court shall, where appropriate, apply; and
- (b) in any case not contemplated by rules made in terms of subsection (1) or referred to in paragraph (a), the Court shall act in such manner and on such principles as it deems best fitted to do substantial justice and to effect and carry out the objects and provisions of this Act, and may for that purpose give instructions on the course to be pursued which shall be binding on the parties to the proceedings.

(4) Rules in terms of subsection (1) shall not have effect until they have been approved by the Chief Justice and the Minister and published in a statutory instrument.

### **14 Representation of parties and consideration of written submissions**

(1) Except as otherwise provided in any other enactment, at any hearing before the Court any party may—

- (a) appear in person; or
- (b) be represented by—
  - (i) a legal practitioner; or
  - (ii) any person appointed in writing by such party; or
- (c) make written representations to the Court.

(2) For the purposes of determining any matter in terms of the Regional, Town and Country Planning Act [Chapter 29:12] the Court or the Judge of the Court, as the case may be, shall, whether or not any party appears or is represented, consider any objections or representations made in writing which are relevant thereto.

### **15 Summoning of witnesses and privileges of witnesses**

(1) The Court shall have power to summon witnesses, to call for the production of, and grant inspection of, books and documents and to examine witnesses on oath.

(2) A subpoena for the attendance of witnesses or the production of books or documents shall be signed by the Registrar and served in the manner provided for in rules made in terms of section *twelve*.

(3) Any person subpoenaed to give evidence or to produce any book or document or giving evidence before the Court shall be entitled to the same privileges and immunities as if he were subpoenaed to attend or were giving evidence at a civil trial in the High Court.

### **16 Witnesses failing to attend or refusing to be sworn or to give evidence**

(1) If any person who has been subpoenaed to give evidence or to produce any book or document before the Court fails to attend or to remain in attendance until duly excused by the Court from further attendance, the Judge of the Court may—

- (a) if he is satisfied upon oath or by the return of the person charged with the service of the subpoena that the subpoena was duly served upon such person; and
- (b) if no sufficient cause for such failure seems to him to exist;

issue a warrant, signed by him, for the arrest of such person, and such person shall thereupon be apprehended by any police officer to whom such warrant is delivered and shall be brought before the Court to give his evidence or to produce the book or document.

(2) If any person who has been subpoenaed to give evidence or to produce any book or document before the Court refuses without sufficient cause, the onus of proof whereof shall rest upon him, to be sworn as a witness or, having been sworn, to answer fully and satisfactorily a question lawfully put to him, or to produce any such book or document, the Judge of the Court may order that person to be removed and detained in custody as if he were a prisoner awaiting trial until the determination of the matter before the Court or until he sooner consents to do what is required of him.

(3) Nothing in this section shall prevent the Court from giving judgment in any case or otherwise disposing of the same in the meantime according to any other sufficient evidence taken but, if such judgment be given or the case be otherwise disposed of, any person committed to prison in terms of subsection (2) shall thereupon be released.

(4) No person shall be bound to produce any document or thing not specified or otherwise sufficiently described in the subpoena unless he actually has it in the Court.

(5) Every person who refuses or fails to comply with subsection (1) or (2) shall be liable, in addition to being committed to prison in terms of subsection (2), to be sentenced summarily by the Judge of the Court to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

### **17 Witness giving false evidence**

Any witness who, after being duly sworn, makes a false statement of fact material to any question under investigation before the Court knowing such statement to be false or not knowing or believing it to be true shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

### **18 Contempt of Court**

If any person wilfully insults the Court or any member thereof during any sitting of the Court or wilfully interrupts the proceedings of the Court or otherwise wilfully disturbs the peace or order of such proceedings, the Judge of the Court may order that person to be removed and detained in custody as if he were a prisoner awaiting trial until the rising of the Court and such person shall be liable, in addition to such removal and detention, to be sentenced summarily by the Judge of the Court to a fine not exceeding level three or to imprisonment for a period not exceeding one month or to both such fine and such imprisonment.

[Section amended by Act 22 of 2001]

### **19 Costs**

(1) Except as otherwise provided in any other enactment, the Judge of the Court may make such order as to costs as he may deem fit.

(2) The costs in connection with any proceedings before the Court shall be payable in accordance with the scale of costs for the time being in use in the court of a magistrate in civil cases unless the Judge of the Court directs that the scale of costs for the time being in use in the High Court shall apply.

(3) Any costs awarded in terms of subsection (1) shall be taxed by the Registrar in terms of subsection (2) and the taxation of such costs shall be subject to review by the Judge of the Court at the instance of the interested party.

### **20 Appeal from decision of Court**

(1) Subject to subsection (2) and except as otherwise provided in any other enactment, any person who is dissatisfied with any decision of the Court may lodge an appeal with the Supreme Court within the period of twenty-one days immediately following the announcement by the Court of such decision.

(2) Except as otherwise provided in any other enactment, no appeal shall lie from—

- (a) any order of the Court or the Judge of the Court made with the consent of the parties;

- (b) an order as to costs only or an interlocutory order or an interlocutory judgment without the leave of the Court or the Judge of the Court or, if such leave has been refused, without the leave of a judge of the Supreme Court.
- (3) Except as otherwise provided in any other enactment in any appeal in terms of subsection (1), the Supreme Court may—
  - (a) exercise its powers in terms of the Supreme Court of Zimbabwe Act [*Chapter 7:13*] or take any other course which may lead to the just, speedy and, as far as possible, inexpensive settlement of the matter;
  - (b) make such order as to costs as it may deem just.