

High Court (Commercial Division) Rules, 2020

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IT is hereby notified that the Minister of Justice, Legal and Parliamentary Affairs has, in terms of section 56 of the High Court Act [*Chapter 7:06*], hereinafter called “the Act” approved the following rules of court made by the Chief Justice, to regulate the proceedings of the Commercial Division of the High Court:—

PART I

PRELIMINARY

Title

1. These rules may be cited as the High Court (Commercial Division) Rules, 2020.

Date of commencement and purpose

2. These rules shall come into operation on the 1st of June, 2020, and shall have effect in relation to all proceedings of the Commercial Division of the High Court, including so far as is practicable proceedings pending on that date.

Interpretation

3. (1) In these rules—

“another legal practitioner” means a legal practitioner who is instructed by a legal practitioner not of the same association or firm of legal practitioners;

“business” includes any entity, trade, profession, vocation or venture and or an isolated transaction of a business character, but does not include employment related matters;

“case management” means judicial case management as described in sub rule (10).

“commercial dispute” means a dispute of a civil nature considered by the court to be of commercial significance, including any claim or application arising out of a transaction of trade or commerce but not limited to—

- (a) the formation of a business or commercial organisation;
- (b) the formation, management, transfer or dissolution of any business entity;
- (c) the contractual relationship of a business entity with another such entity or with another person or persons undertaken in the course of business, other than with a person or persons who are employees;

- (d) the contractual liability of a business or of a person engaged in a business that arises in the course of business activity other than arising from a contract of employment;
- (e) disputes primarily involving banking and financial services;
- (f) disputes relating to the restructuring or payment of business debts, including business rescue and insolvency;
- (g) the enforcement of an arbitral award of a business of a commercial nature;
- (h) a business dispute that is between an individual, a company, co-operative, partnership, syndicate, trust or other entity which does not arise from a contract of employment;
- (i) disputes arising from the exploitation of oil and gas reserves or other natural resources of a commercial nature;
- (j) any dispute of a commercial nature arising out of insolvency, insurance claims, competition and anti-trust law or legislation, the Companies and Other Business Entities Act [*Chapter 24:31*], pension funds and disputes relating to pensions or the operation of a pension fund;
- (k) any dispute relating to the management of a business or commercial organisation, including a dispute relating to the management of a business executive directors of a company and its shareholders or executive directors and the company;
- (l) any dispute relating to the contractual relationship or liability of a business, commercial organisation or person with other bodies or persons outside the business or commercial organisation arising out of business or commercial activities;
- (m) banking and financial services;
- (n) the restructuring or payment of commercial debts

by or to a business or commercial organisation or person; and

- (o) any other dispute that the Judge President may designate as a “commercial dispute” upon request by any of the parties to the dispute;

“Commercial Court or the court” means the Commercial Division of the High Court of Zimbabwe;

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

“date of service” means the date on which any pleading or other process is delivered either physically or via electronic form to the recipient named in the document;

“deliver or serve” means to either, physically or electronically file a pleading of record with the registrar and immediately thereafter serve a copy on the other party electronically or by physical means. For the avoidance of doubt, if a document is sent by telefax or electronic communication to a registry, the document is, if accepted by a registry, taken to have been filed—

- (a) if the whole document is received by 4.30 p.m. on a business day by the registrar, on that day; or
- (b) in any other case, on the next business day for the registry.

“form” means any of the prescribed Forms set out in the High Court Rules or the First Schedule hereto;

“judge” means a judge of the court, sitting otherwise than in open court;

“judge in charge or presiding judge” means the judge in charge of the court or any other judge acting in that capacity;

“legal practitioner” means a legal practitioner registered in terms of the Legal Practitioners Act [*Chapter 27:07*];

“notice” means a notice given in writing and delivered either by physical or electronic means;

“party” means any person who is a party to any proceedings before the court;

“process of court” means any process of the court lawfully issued by the registrar in terms of these rules;

“registrar” means the registrar of the High Court, and includes any acting or deputy or assistant registrar or in their absence any person designated as such by the Chief Justice.

“Rules” means these Rules as may be amended from time to time.

(2) The monetary jurisdiction of the court shall be an amount, or the value thereof, that exceeds the monetary jurisdiction of the magistrates’ commercial courts by the equivalent of one United States dollar (US\$1) in the functional currency of Zimbabwe at any point in time.

(3) Where anything is required by these rules to be done within a particular number of days or hours, a Saturday, Sunday or public holiday in Zimbabwe shall not be reckoned as part of such period.

(4) A document that is sent by electronic communication to a registry for filing shall be—

- (a) sent by using the official website 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.

(5) An affidavit shall be sent as an image.

(6) A document in an existing proceeding shall be sent to the registrar by using the court’s website.

(7) 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.

(8) Where a document sent to the registrar by electronic means in accordance with these Rules is accepted at the registry, and is a document that must be signed or stamped, the registrar shall—

- (a) for a document that these rules require to be endorsed with a date for hearing, insert a notice of filing and hearing as the first page of the document; and
- (b) for any other document, insert a notice of filing as the first page of the document.

(9) If a notice has been inserted as the first page of the document in accordance with sub rule (8) above, the notice is taken to be part of the document for the purposes of these rules.

(10) Judicial case management shall include the processes set out in rule 17.

Application

4. (1) These rules shall, unless expressly provided otherwise, apply to all commercial disputes brought before the Commercial Division of the High Court (hereinafter referred to as “the court”).

(2) To the extent that any procedural matter arises during any proceedings before the court, which matter is not specifically regulated or provided for under these rules, then in such event the High Court Rules (1971) (hereinafter referred to as “the High Court Rules”) shall apply *mutatis mutandis*.

(3) The court shall in administering these rules, have due regard to the set of values set out in the Second Schedule to these rules and the need to achieve substantial justice inter parties in any particular case without derogating from the principles of natural justice or established law and resolving the dispute timeously.

Jurisdiction

5. (1) The court shall be vested with both original and appellate jurisdictions over all commercial disputes.

(2) A court registry shall be kept at Harare, Bulawayo, Masvingo, and Mutare and at any such other place or places as the Chief Justice may determine from time to time.

COMMENCEMENT AND DETERMINATION OF NATURE OF PROCEEDINGS

Commencement of proceedings

6. (1) Proceedings in the court shall, except in the case of proceedings which by these rules or under any other law are required to be instituted by any other specified mode of commencement, be instituted by way of application.

(2) Proceedings shall be instituted in the relevant form as may be prescribed.

Determination of nature of proceedings

7. (1) Proceedings—

- (a) in which the sole or principal question at issue is or is likely to be one of the interpretation of any law or of any instrument made under any law, or of any deed, contract or other document, or some other questions of law, shall be instituted by way of application;
- (b) in which there is likely to be a substantial dispute of fact or for any other reason a person considers that the proceedings may not appropriately be instituted by way of an application, shall be instituted by way of a summons commencing action.

PART II

ACTION PROCEDURE

Nature of summons and declaration

8. The provisions of Order 3 Rules 9 to Rule 16 of the High Court Rules shall apply *mutatis mutandis* to a summons commencing action issued in the court:

Provided that every summons shall be filed together with the plaintiff's declaration and the summary of evidence in Form No. CC 2.

Additional particulars to be contained in the summons and declaration

9. (1) Notwithstanding the provisions of Order 3 Rule 11 of the High Court Rules, the plaintiff shall file, along with the summons and

declaration, his or her e-mail address, fax, telephone or cellular phone number and that of the defendant or the defendant's legal practitioners to the extent known to the plaintiff.

(2) Without prejudice to the modes of service or delivery of summons provided by these Rules or any other law, the e-mail address and fax provided, shall be used by the court and the parties for effecting service and other necessary communication throughout the course of the suit subject at all times to the strict compliance with the rules as regards such service and delivery of communication by electronic means.

Appearance to defend

10. (1) The time within which a defendant shall be required to enter appearance to defend shall be ten (10) days from the date of service, exclusive of the day of service.

(2) The provisions of Order 7 of the High Court Rules relating to appearance to defend shall apply *mutatis mutandis* save that the appearance book shall be maintained at Harare, Bulawayo, Masvingo, Mutare or any other place designated by the Chief Justice as a registry of the court and that the address for service may be one within not more than a radius of ten (10) kilometres of the Registry.

(3) Every appearance to defend shall be in Form No. CC 9 and shall contain at least one email address that is to be used by the defendant and his or her or its legal practitioner for the duration of the proceedings where documents can be delivered or served electronically.

(4) An appearance to defend that does not contain at least two alternate email addresses as required in Rule (3) shall be invalid.

(5) The email addresses provided by the parties in their initial documents shall not be changed for the entire duration of the suit except upon prior due notice having been given to all parties 24 hours before the date of change.

Summary judgment

11. (1) Where the defendant has entered appearance to defend, the plaintiff may, within seven (7) days from the date of service of the appearance to defend, make a court application in terms of this

Rule for the court to enter summary judgment for what is claimed in the summons and costs, provided that no application for summary judgment may be filed after seven (7) days from the date of service of appearance to defend.

(2) A court application in terms of subrule (1) shall be supported by an affidavit made by the plaintiff or by any other person who can swear positively to the facts set out therein, verifying the cause of action and the amount claimed, if any, and stating that in his or her belief there is no *bona fide* defence to the action.

(3) A deponent may attach to his or her affidavit filed in terms of subrule (2) documents which verify the plaintiff's cause of action or his or her belief that there is no *bona fide* defence to the action.

(4) Order 32 of the High Court Rules shall apply to the form and service of an application in terms of this rule and to any opposition thereto.

(5) No order of summary judgment entered in terms of this rule shall be appealable without the leave of the court or judge.

Plea

12. (1) The defendant shall file a plea, exception, special plea or other answer within seven days of service of the plaintiff's summons and declaration issued and served under these rules.

(2) The plea, exception, special plea or other answer shall be supported by a paginated and indexed bundle of all relevant and material documentary evidence and a summary of the evidence that the defendant relies on which shall be in Form No. CC 2.

(3) There shall be no request or application for further particulars to any pleading filed of record.

Signing of summons and declaration

13. (1) A summons shall be signed manually or electronically by the registrar or such other duly authorised officer and shall be stamped with the official date stamp of the court.

(2) Except in exceptional circumstances, and subject to these rules and any direction as may be given by a judge, including on the

question of costs, a summons that is issued out of court shall lapse after six (6) months from the date of issue or of filing a return of service unless the plaintiff prosecutes his or her or its matter in terms of these rules.

Failure to file plea or answer to summons and declaration

14. (1) Where any party required to file a plea fails to do so within the specified period the court shall, upon proof of service and on application by the plaintiff, enter a default judgment in favour of the plaintiff in Form No. CC 7.

(2) Any default judgment entered in terms of subrule (1) shall be communicated to the parties within forty-eight (48) hours thereof either by physical or electronic means.

Setting aside of default judgment

15. (1) Where a judgment has been entered in default pursuant to Rule 14 above, the court may, upon application made by the aggrieved party, and within ten (10) days from the date of service of the judgment, rescind such a judgment upon such terms as may be considered by the court to be just.

(2) In considering whether to rescind the judgment under this rule, the court shall have regard to whether the aggrieved party has—

- (a) applied to the court within the period specified under subrule (1);
- (b) given good and sufficient reasons for failing to file a plea;
- (c) demonstrated reasonable and good prospects of success on the merits;
- (d) filed a draft plea, summary of evidence and, where applicable, the documentary evidence relied upon in support of his or her or its defence; and
- (e) provided security for costs in favour of the judgment creditor as may be prescribed by the registrar.

(3) Where a default judgment is set aside, the draft plea and summary of evidence filed together with the application for rescission

of judgment shall immediately become the Plea and Summary of Evidence of Record upon such filing.

(4) Where the defendant fails to file a plea within the period specified in sub rule (3), the default judgment shall automatically revive and be enforceable.

(5) Any judgment revived pursuant to subrule (4) shall not be set aside nor shall its execution be stayed.

PRE-TRIAL, CASE MANAGEMENT AND SCHEDULING OF HEARINGS

Allocation of cases

16. The registrar shall, unless the circumstances do not permit, within a maximum of 3 (three) days after the closure of pleadings, cause a case to be manually or electronically allocated to a specific judge for the purpose of case management and case mapping.

Management of cases generally to be determined by the presiding judge

17. (1) Judicial case management shall comprise the following processes—

- (a) after the closure of pleadings, the record of the commercial dispute shall immediately be allocated to a presiding judge and in accordance with a roll kept in the registrar's office.
- (b) upon receipt of the record aforesaid, the presiding judge shall allocate a date for an initial case management conference to deal with *inter alia*—
 - (i) the scheduling of the matter;
 - (ii) the setting of deadlines for the filing of any further documents and or pleadings;
 - (iii) agreeing on the set down dates for the hearing of the main dispute or any interlocutory matters;
 - (iv) the giving of general directions in relation to the dispute;
- (c) at least one more pre-trial case management conference may be scheduled before a judge the purpose for which

shall be to try and resolve one or some or all of the issues in dispute before going to trial or a full hearing on applications;

- (d) if no settlement is reached at the second pre-trial case management conference the dispute shall proceed to trial or hearing of the application, on issues identified by the parties and agreed to by the presiding judge;
- (e) at any of the case management conferences the presiding judge shall deal with all aspects of the matter, including all interlocutory applications;
- (f) the presiding judge shall after each case management meeting issue a case management order in Form No. CC 5 in the First Schedule hereto.

(2) A dispute shall proceed and be determined within a period of ten months, and in any event not more than twelve (12) months, from the date of commencement.

(3) Without derogation from any provisions of these rules in relation to case management, a judge to whom a matter has been allocated may at any time give directions as to how he or she wants the matter to proceed and may call the parties to his or her chambers to give directions.

Power to make and give directions for disposal of suits

18. (1) A judge shall, within ten (10) working days after receipt of the record, on his or her own motion direct the registrar to cause the parties to the proceedings to appear before him or her, for the purposes of case management, in order that he or she may make such order or give such directions in relation to any case management as well as any interim application which the parties may have filed or intend to file as the judge deems fit, in order to achieve the just, expeditious and economical disposal of the dispute.

(2) Where any party fails to comply with any order made or direction given by the judge under sub rule (1), the judge may dismiss the suit, strike out the defence or counterclaim or make such other order on the papers filed of record as he or she considers just.

(3) The judge may, in exercising his or her powers under sub rule (2), make such order as to costs on the papers filed of record as he or she considers just.

(4) Any order or direction given or made against any party who does not appear before the judge when directed to do so under sub rule (1), shall be deemed a default judgment and may only be set aside or varied by the judge on good and sufficient cause shown upon application made within ten (10) days of the order being made or direction being given and on such terms as the judge considers just.

(5) Rule 15 shall *mutatis mutandis* apply in respect of the setting aside of a default judgment.

Pre-trial case management hearings to be held when directed by a judge

19. (1) Notwithstanding Rules 16, 17 or 18 above, at any time before any case is tried, the judge may direct parties to attend a pre-trial case management hearing to deal with any matters or issues arising in the suit or proceedings.

(2) At such a pre-trial case management hearing, the judge may consider any matter arising from the pleadings filed of record, including the possibility of a settlement of all or any of the issues in the suit or proceedings and may require the parties to furnish the judge with any such further information as he or she considers necessary and expedient, and may give all such other directions as he or she considers necessary or desirable for securing the just, expeditious and economical disposal or curtailment of the suit or proceedings.

(3) The judge may, having given directions under this Rule or Rule 20, on his or her own motion or upon the application by any party, if any party defaults in complying with any such directions, dismiss such suit or proceedings or strike out the defence or counterclaim or enter judgment or make such other order on the papers filed of record as he or she considers fit.

(4) Any judgment or order made under sub rule (3) shall be deemed a default judgment and may be set aside on good and sufficient cause shown and on such terms as the judge considers just, on the

application by the party against whom such judgment or order is made, and the provisions of Rule 15 shall apply to the extent possible.

(5) The judge may at any time during a pre-trial case management conference where the parties are agreeable to a settlement of some or all of the matters in dispute in the suit or proceedings, record such agreement as an order of court or where the matter is settled in full, enter judgment in the suit or proceedings or make such other order to give effect to the settlement as may be required.

(6) An order by consent issued under sub rule (5) shall not be set aside save in exceptional circumstances and on good and sufficient cause shown and the provisions of Rule 15 shall apply to the extent possible.

Notification of case management pre-trial conference set down

20. A party to the proceedings shall be informed by notice in Form No. CC 12 of the date and time appointed for the holding of a pre-trial case management conference which shall be held in their physical presence or via electronic video link.

Failure to appear of one or more parties

21. (1) Where at the time appointed for the pre-trial case management conference, one or more of the parties or witnesses, fails to attend, the judge may—

- (a) dismiss the suit or proceedings;
- (b) strike out the defence or counterclaim;
- (c) enter judgment;
- (d) make such other order as he or she considers fit on the papers filed of record.

(2) An order made by the judge in in terms of this rule may be set aside on the application of the party affected thereby on good and sufficient cause shown within ten (10) days from date of the order, and on such terms as the judge considers fit and just and the provisions of Rule 15 shall apply to the extent possible.

(3) Subsequent to the first adjournment, if all parties fail to attend the pre-trial conference, the court or judge shall remove the

suit from the roll, with such order as to costs as it or he or she deems fit and just.

Power of court to control evidence

22. (1) After a pre-trial case management conference, the judge shall determine the manner in which the evidence is to be led at any trial or hearing by giving appropriate directions *inter alia* as to—

- (a) the issues on which evidence is required;
- (b) the anticipated duration of a trial;
- (c) the trial date;
- (d) the way in which any matter is to be proved;
- (e) additional discovery;
- (f) the compulsory attendance of any witness; and
- (g) any other matter arising at the pre-trial case management conference.

(2) Any directions given in terms of subrule (1) above shall be issued as an order of the court and served on the affected party by the sheriff.

Set down and conduct of trials

23. (1) The registrar shall set down any action proceeding for trial in accordance with the case management order issued by the presiding judge, who shall also be the trial judge.

(2) All trial actions other than as may be directed by the presiding judge, shall be conducted in terms of the High Court Rules.

Closing submissions at the end of a trial

24. (1) All submissions in a trial shall proceed orally, preceded by, at a litigant's option, the filing and service of written submissions submitted to the trial judge at least three (3) working days before the allocated date for oral submissions:

Provided that failure to prepare written submissions shall not be a ground for adjournment or seeking an extension of time to file written submissions and the hearing shall proceed notwithstanding the failure to present such written submissions.

(2) Notwithstanding the generality of sub rule (1) above, the parties or their legal practitioner may with the direction of the court file written submissions in exceptional circumstances only.

(3) Where the Court grants leave to file written submissions, the same shall be filed within seven (7) days by the plaintiff after the conclusion of the trial:

Provided that the time for the filing and exchange of plaintiff's submissions, the defendant's reply and any rejoinder (including any hearing), shall not in total exceed twenty-one (21) days.

PART III

APPLICATION PROCEDURE

Nature of applications

25. (1) Subject to these rules, all applications made for whatever purpose in terms of these rules or any other law, other than applications made orally during the course of a hearing, shall be made—

- (a) as a court application, that is to say, in writing to the court on notice to all interested parties; or
- (b) as a chamber application, that is to say, in writing to a judge.

(2) An application shall not be made as a chamber application unless it satisfies any or all of the following—

- (a) the matter is urgent and cannot wait to be resolved through a court application;
- (b) these rules or any other enactment so provides;
- (c) the relief sought is procedural or for a provisional order where only an interim relief is sought;
- (d) the relief sought is for a default judgment or a final order where—
 - (i) the defendant or respondent, as the case may be, has previously had due notice that the order will be sought, and is in default; or
 - (ii) there is no other interested party to the application; or

- (iii) every interested party is a party to the application;
or
- (iv) it is for directions relating to case management;
or
- (e) there are special circumstances which are set out in the application justifying the application.

GENERAL PROVISIONS APPLICABLE TO ALL APPLICATIONS

Written applications, notices and affidavits

26. (1) Every written application, notice of opposition and supporting and answering affidavit shall—

- (a) be legibly written on A4 size paper and in Times New Roman font size 12, on one side with 1.5 spacing; and
- (b) be divided into paragraphs numbered consecutively, each paragraph containing, wherever possible, a separate allegation; and
- (c) have each page, including every annexure and affidavit, numbered consecutively, the page numbers, in the case of documents filed after the first set, following consecutively from the last page number of the previous set, allowance being made for the page numbers for the proof of service filed for the previous set.

(2) Every written application and notice of opposition shall—

- (a) state the title of the matter and a description of the document concerned; and
- (b) be signed by the applicant or respondent, as the case may be, or by his or her or its legal practitioner; and
- (c) give an address for service which shall be within a radius of five (5) kilometres from the registry in which the document is filed and two alternative email addresses, to which documents can be delivered electronically during the life of the matter; and
- (d) contain an index clearly describing each document included and showing the page number or numbers at which each such document is to be found.

(3) Every written application shall contain a draft of the order sought.

(4) Every application shall provide an alternate email address for the purposes of service or delivery of pleadings. Any application that does not provide such email address shall be invalid.

(5) An affidavit filed with a written application—

- (a) shall be made by the applicant or respondent, as the case may be, or by a person who can personally swear positively to the facts or averments set out therein; and
- (b) shall be accompanied by all material and relevant documents verifying the facts or averments set out in the affidavit, and any reference in this Rule to an affidavit shall be construed as including such documents.

(6) Where by any law a certificate or other document is required to be attached to or filed with any application, it shall be sufficient to attach or file a photocopy or other facsimile of the certificate or document:

Provided that, if required to do so by the court or judge, the party concerned shall produce the original certificate or document.

Counter-applications

27. (1) Where a respondent files a notice of opposition and opposing affidavit, he or she may raise as part of the opposing affidavit but set out in a separate and distinct section of the opposing affidavit, a counter-application against the applicant and set out the alternative relief (if any) sought in a draft order attached to such affidavit without the need to institute a separate court or chamber application.

(2) Rule 26 above shall apply, *mutatis mutandis*, to such a counter-application under subrule (1) as though it was a court application or a chamber application, as the case may be, and subject to sub-rules (3) and (4), it shall be dealt with at the same time as the principal application unless the court or judge otherwise directs.

(3) If in any application in which the respondent files a counter-application under subrule (1), the application is stayed, discontinued or dismissed, the counter-application may nevertheless be proceeded with to finality in accordance with these rules.

Adoption of incorrect form of application

28. (1) Notwithstanding anything said in these rules, the fact that an applicant has instituted—

- (a) a court application when he or she should have proceeded by way of a chamber application; or
- (b) a chamber application when he or she should have proceeded by way of a court application;

shall not in itself be a ground for dismissing the application unless the court or judge, as the case may be, considers that—

- (i) some interested party has or may have been prejudiced by the applicant's failure to institute the application in proper form; and
- (ii) such prejudice cannot be remedied by directions for the service of the application on that party with or without an appropriate order of costs.

COURT APPLICATIONS

Form of court application

29. A court application shall be in Form No. CC 10 and shall be supported by one or more affidavits setting out the facts upon which the applicant relies and copies of all the material and relevant documents that establish the claim or allegations made:

Provided that where a court application is not to be served on any person, it shall be in Form No. CC 10A.

Filing and service

30. (1) A copy of a court application and of every affidavit by which it is supported shall be served or delivered physically or electronically upon every respondent named therein.

(2) Except as otherwise provided in this rule, no affidavit which has not been served or delivered electronically with a court application shall be used in support of the application.

(3) A certificate of service of the court application and supporting documents shall be filed with the registrar in Form No. CC 13 immediately after the application has been served on every

respondent and in any event within twenty-four (24) hours of service or delivery thereof.

(4) The provisions of these rules relating to electronic service of documents shall apply *mutatis mutandis*.

Time for opposition

31. The time within which a respondent in a court application may be required to file a notice of opposition and opposing affidavits shall be 10 (ten) days, exclusive of the day of service:

Provided that in urgent cases a chamber application shall specify that the time within which to file opposing affidavits may be no more than three (3) days from the date of service or any other time as may be granted by the judge prior to the hearing of the matter.

Notice of opposition and opposing affidavits

32. (1) The respondent shall be entitled, within the time given in the court application in accordance with these rules to file a notice of opposition in Form No. CC 14 together with one or more opposing affidavits.

(2) Immediately after filing a notice of opposition and opposing affidavit in terms of subrule (1), the respondent shall serve or deliver copies of them upon the applicant and within twenty-four (24) hours thereafter, shall file with the registrar proof of such service in Form No. CC 13.

(3) A respondent who has failed to file a notice of opposition and opposing affidavit in terms of subrule (1) shall be barred and the application shall be treated as unopposed and the applicant may apply for a default judgment through the chamber book without further notice to the respondent.

Answering affidavit

33. (1) Subject to these rules, where the respondent has within the prescribed time, filed a notice of opposition and an opposing affidavit, the applicant may file an answering affidavit with the registrar within five (5) days of the service of the opposing affidavit, which may be accompanied by supporting affidavits:

Provided that no answering affidavit may be filed after the expiry of the fifth day without the leave of a judge and on good cause shown.

(2) Immediately after filing an answering affidavit in terms of subrule (1), the applicant shall serve copy of it upon the respondent and, as soon as possible thereafter, shall file with the registrar proof of such service within twenty-four (24) hours of filing in accordance with Rule 32(2).

Further affidavits

34. (1) After an answering affidavit has been filed or where the applicant has failed to file an answering affidavit timeously, no further affidavits may be filed by any party without the leave of the judge.

(2) Where the leave of the judge to file a further affidavit is required by any party to the hearing, he or she or it shall give due notice in Form No. CC 15 of the intention to file the further affidavit which shall be attached to that notice and may seek the leave of the court at the hearing:

Provided that no such notice may be filed five (5) days before the hearing.

(3) Any party to the hearing that wishes to oppose the filing of a further affidavit in terms of this Rule, shall file a notice in Form No. CC 15A, containing the grounds of opposition:

Provided that no such notice may be filed three (3) days before the hearing.

Set down of applications

35. (1) Where the respondent is barred for failure to file a notice of opposition in terms of Rule 32, the applicant may, without notice to him or her or it, set the matter down for a default judgment.

(2) Where the respondent has filed a notice of opposition and an opposing affidavit and the applicant has filed any answering affidavit that he or she or it may wish to file, the applicant may set the matter down for hearing in terms of rule 223 of the High Court Rules.

(3) Where the respondent has filed and served a notice of opposition and an opposing affidavit together with the certificates of service timeously, and, within five (5) days thereafter the applicant has neither filed an answering affidavit nor set the matter down for hearing, may the respondent, on notice to the applicant, either—

- (a) set the matter down for hearing in terms of Rule 223 of the High Court Rules; or
- (b) make a chamber application to dismiss the matter for want of prosecution, and the judge may order the matter to be dismissed with costs or make such other order on such terms as he or she thinks fit.

(4) Where the applicant has filed an answering affidavit in response to the respondent's opposing affidavit but has not, within seven (7) days thereafter applied to set the matter down for hearing, the respondent, on notice to the applicant, may either—

- (a) set the matter down for hearing in terms of Rule 223 of the High Court Rules; or
- (b) make a chamber application to dismiss the matter for want of prosecution, and the judge may order the matter to be dismissed with costs or make such other order on such terms as he or she thinks fit.

(5) Except in exceptional circumstances, and subject to these rules or any direction as may be given by a judge, including on the question of costs, an application or counter-application that is issued out of court shall lapse after a period of six (6) months from the date of issue unless it is set down for hearing in accordance with these rules.

Heads of Argument

36.(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) within fourteen (14) days after the filing and delivery of the answering affidavit and before the matter is set down for hearing, the legal practitioner shall 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

- (b) immediately afterwards, the legal practitioner shall file and deliver a copy of the heads of argument to every other party and file with the registrar proof of service or delivery in Form No. CC 13, within twenty four (24) hours thereof.

(2) Where an application, exception or application to strike out has been set down for hearing in terms of Rule 223 subrule (2) and any respondent is to be represented at the hearing by a legal practitioner—

- (a) he or she shall file with the registrar, within ten (10) of the delivery of the applicant's heads of argument, his or her own heads of argument clearly outlining the submissions relied upon by him or her and setting out the authorities, if any, which he or she intends to cite; and
- (b) immediately thereafter deliver a copy of the heads of argument to every other party; and
- (c) thereafter file a certificate of service in Form No. CC 13, within twenty-four (24) hours thereof.

(3) Where a respondent fails to file heads of argument as required in terms of this rule, he or she shall be barred and the court or judge may deal with the matter on the merits or direct that it be set down for hearing on the unopposed roll.

(4) A legal practitioner shall not be precluded from making a submission or citing an authority that was not outlined or set out, as the case may be, in his or her heads of argument unless the court or judge hearing the matter considers that—

- (a) the submission or authority was omitted from the heads of argument with the intention of misleading the other party; or
- (b) to permit the legal practitioner to make the submission or cite the authority would prejudice the other party in

a manner which cannot be remedied adequately by a postponement or an appropriate order of costs.

(5) In relation to any application, exception or application to strike out which has been set down for hearing by a respondent, any reference—

- (a) in sub rule (1) to the applicant or excipient, shall be construed as a reference to the respondent;
- (b) in subrules (2), (3) and (4) to a respondent, shall be construed as a reference to the applicant or excipient.

(6) Where an applicant, excipient or respondent is not to be represented at the hearing by a legal practitioner, they may, if they so wish, file heads of argument, in which event they shall comply with subrule (1) or (2) as the case may be.

(7) Heads of argument filed before the court shall comply with all of the following requirements—

- (a) be no more than ten pages long, and;
- (b) not contain any factual averments or repetition of the averments made in the affidavits filed of record, and;
- (c) be restricted to the presentation of a short summary of the party's case on the facts and at law accompanied by the correct citation of the relevant pages of the record, case law or other legal writings relied on including the specific page and section references relied upon.

Hearing of court applications

37. (1) The registrar shall set down any action proceeding for trial in accordance with the case management order issued by the presiding judge.

(2) Subject to these rules or any direction as may be given by the presiding judge, all applications shall be conducted in terms of the High Court Rules.

CHAMBER APPLICATIONS

Form of chamber applications

38. (1) A chamber application shall be made by means of an entry in the chamber book and shall be accompanied by Form No. CC 11B and, except as is provided for in subrule (2), shall be supported by one or more affidavits setting out the facts upon which the applicant relies:

Provided that where a chamber application is to be served on an interested party, it shall be in Form No. CC 11A.

(2) Where a chamber application is for a default judgment in terms of Rule 25(2) or for other relief where the facts are evident from the record, it shall not be necessary to annex a supporting affidavit.

Service of chamber applications

39. (1) A chamber application shall be served on all interested parties unless the defendant or respondent, as the case may be, has previously had due notice of the order sought and is in default or unless the applicant reasonably believes one or more of the following—

- (a) that the matter is uncontentious in that no person other than the applicant can reasonably be expected to be affected by the order sought or object to it;
- (b) that the order sought is—
 - (i) a request for directions; or
 - (ii) to enforce any other provision of these rules in circumstances where no other person is likely to object; or
- (c) that there is a risk of perverse conduct in that any person who would otherwise be entitled to notice of the application is likely to act so as to defeat, wholly or partly, the purpose of the application prior to an order being granted or served;
- (d) that the matter is so urgent and the risk of irreparable damage to the applicant is so great that there is insufficient time to give due notice to those otherwise entitled to it;

- (e) that there is any other reason, acceptable to the judge, why such notice should not be given.

(2) Where a party has not served a chamber application on another party because he or she or it reasonably believes one or more of the matters referred to in paragraphs (a) to (e) of subrule (1) applies he or she or it shall set out the grounds for his or her or its belief fully in his or her or its affidavit.

CHAMBER APPLICATIONS

Urgent chamber applications

40. (1) An urgent chamber application shall be in Form No. CC 11 and shall be clearly labelled as an urgent chamber application stating clearly and concisely on the face of it the nature and grounds of the relief sought and the grounds upon which the matter is urgent, and shall be accompanied by an affidavit by any person who can swear positively to the facts, together with any documents which may be used in support thereof.

(2) An urgent chamber application shall be served on all interested parties unless—

- (a) the matter is uncontentious in that no person other than the applicant can reasonably be expected to be affected by the order sought; or
- (b) there is a risk of perverse conduct by any person who may be otherwise be entitled to notice of the application in that he or she may act in such a way as to defeat the purpose of the application prior to an order being granted or served; or
- (c) the matter is so urgent and the risk of irreparable damage to the applicant is so great that there is insufficient time to give due notice to those otherwise entitled to it; or
- (d) there is any other reason, acceptable to the judge, why the application should not be served.

(3) The registrar shall immediately submit an urgent chamber application to a judge, who shall consider the papers forthwith and decide whether or not the matter is indeed urgent.

(4) Where the judge considers that the matter is not urgent, the registrar shall immediately notify the parties in writing and the provisions of Rule 54, relating to dormant applications shall *ipso facto*, come into effect and apply:

Provided that the judge may upon written request direct that any interested person be invited to make representations in such manner and within such time as he or she may direct, as to whether the application should be treated as urgent or not.

(5) Where the judge decides that the matter is not urgent it shall be removed from the roll for urgent matters and the judge may give directions as to costs and subrule (4) shall *ipso facto* come into effect and apply.

(6) In determining the urgency of an application, a judge may require any person to appear before him or her in chambers or in court as may seem convenient, to provide such further information as the judge may require.

(7) Where the judge is satisfied that the papers establish a *prima facie* case for the relief sought he or she shall grant a provisional order either in terms of the draft filed or as varied.

(8) Subject to this rule, a provisional order shall be in the Form prescribed by the High Court Rules with appropriate modifications depending on the nature of the case and the exigencies thereof, and shall specify—

- (a) the person upon whom copies of the provisional order and the application, together with all the supporting documents, shall be served; and
- (b) the time within which the respondent shall file a notice of opposition if he or she or it opposes the relief sought.

(9) Before granting a provisional order the judge may require the applicant to give security for any loss or damage which may be caused by the order.

(10) The parties may consent to the judge granting a final order instead of a provisional order.

(11) The High Court Rules shall apply *mutatis mutandis* to the enrolment and hearing of a matter consequent upon the issue of a provisional order.

Judgments

41. (1) Notwithstanding the provisions of Regulation 19 of the Judicial Service (Code of Ethics) Regulations, 2012, the Court shall, at the conclusion of the hearing of a matter, deliver a fully reasoned judgment within a period of sixty (60) days in the case of a judgment, or thirty (30) days in the case of a ruling or consent order.

(2) Interlocutory orders shall be issued within seven (7) days of the conclusion of the hearing.

(3) Where a judge fails to comply with the provisions of sub rule (1), he or she shall state in the court record the reason for such failure and shall notify the parties accordingly within seven (7) days of the date on which the judgment or order was supposed to have been delivered in terms of Rule 41(1).

Execution and superannuation of judgments

42. (1) Subject to these Rules and subrule (2) and subrule (3), Order 40 of the High Court Rules shall apply *mutatis mutandis* to the execution of any judgment of the court.

(2) A judgment shall become superannuated after three (3) years from the date on which it is granted but may be revived by the court on application on notice to the judgment debtor for the purpose and in such case no new proof of the debt shall be required.

(3) Notwithstanding subrule (1) and subrule (2), where the judgment debtor performs in terms of a judgment that has become superannuated in terms of this rule, such performance shall be deemed valid but shall not by itself revive the judgment.

PART IV

APPEALS

Appeals from a subordinate court or tribunal

43. An appeal against the decision of a subordinate court or tribunal may be made to the court.

Appeals from the court

44. (1) The provisions of Part VI of the Rules of the Supreme Court, 2018 shall apply *mutatis mutandis* in relation to appeals from the court.

(2) An appeal from the decision of the court shall not suspend the operation of the decision appealed against, unless the court or judge directs otherwise on application by the aggrieved party.

(3) Subject to the provisions of the High Court Act [*Chapter 7:06*], no appeal shall from an order or directive issued at a case management meeting and interlocutory orders.

PART V

GENERAL PROVISIONS

Register and record of proceedings

45. (1) The registrar shall cause to be maintained a register of all cases filed before the court to be known as the Commercial Court Register.

(2) The Commercial Court Register shall be used for recording the cases instituted before the court together with such other particulars of such cases as may be determined by the registrar.

(3) The registrar shall in addition to a physical Commercial Court Register, maintain an encrypted digital copy of all pleadings and recordings relating to any case contained in the Commercial Court Register.

SERVICE OF PROCESS

Electronic service

46. (1) In addition to the methods of service provided for in these rules and the High Court Rules, service may also be effected electronically by way of e-mail, web portal or other electronic means designated under this rule by the registrar, using any or all of the addresses previously disclosed and used between the parties in their business transactions.

(2) A copy of such electronic service shall be simultaneously copied to the court.

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

(4) Except as otherwise provided for in these rules or any other law, proof of service of any document required be filed shall be lodged with the registrar in all cases not more than forty-eight (48) hours after such service.

(5) Service of any notice or process that, under the Rules of the High Court, can be done by hand delivery or registered post, may be effected by communication through an electronic mail address, website, portal or other interactive electronic link if the legal practitioners of all the parties who are involved in the matter concerned, and the registrar each have an electronic mail address, website, portal or other interactive electronic link that has been authorised in terms of these Rules.

(6) 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 or making any transaction for, or relating to this Court electronically.

(7) The authentication of any electronic communication shall be effected by means of electronic signatures, and certified back-up copies of the communication in paper form or by such other acceptable means, as may be directed from time to time by the Judge President, shall be kept.

(8) The registrar may raise any fee or charge, on notice to the parties, for the use of the electronic filing system or facility by the litigants;

(9) The Judge President may from time to time issue Practice Directions in respect of the general application of electronic filing and service of process or documents.

Presumption of service

47. Where service is not duly effected on a defendant but such defendant enters an appearance or notice of opposition, before the

court on the day he or she was supposed to appear according to the summons, the service shall be deemed to have been duly effected on him or her and to have been so served on the date on which he or she entered appearance.

Format of pleadings and other legal documents

48. (1) Notwithstanding the provisions of any other Rule or the High Court Rules, the format of the pleadings presented for filing to the court shall be in paragraphs, “Times New Roman” font type, size twelve (12), 1.5-line spacing and shall not be unreasonably long, voluminous or convoluted.

(2) The court or judge may order costs on higher scale or *de bonis propriis* against any party or person who has filed unnecessarily voluminous or convoluted pleadings or documents in any matter before the court or judge, or alternatively, disallow recovery of all or any portion of the costs.

(3) The registrar shall reject any pleading that does not comply with the provisions of these rules.

Amendment of pleadings

49. (1) The court or judge may, at any stage of the proceedings, allow either party to the proceedings to amend or alter his or her or its pleadings, against such order as to costs or otherwise as may be just and equitable, and in such manner as it or he or she may direct.

(2) Subject to subrule (1), any party to any proceeding may amend his or her or its pleadings at any time before service to the other party without an order of the court or judge subject to payment of the prescribed fee.

(3) The amendment under this rule shall be for the purposes of—

- (a) correcting any patent defect or error in any pleading;
- (b) determining the real question(s) in issue; or
- (c) to achieve justice between the parties.

(4) An amendment shall be made by filing a copy of the amended document, which shall indicate the amendment proposed and serving a copy of it on all other interested parties.

(5) Where—

- (a) the amendment is allowed during a trial, hearing of any action or application proceedings; or
- (b) all parties are present when the amendment is made, the court or judge may amend the document in the court record accordingly and further service on the parties shall not be necessary.

Offers and tenders in settlement

50. (1) A party to the proceedings may at any time, but at least seven (7) days prior to the first day of the trial, make a formal tender of settlement in the form and manner prescribed by the High Court Rules.

(2) Such tender shall be invalid unless, an order of wasted costs is tendered in favour of the successful party.

Appearance of parties and consequences of non-appearance

51. Appearance of parties and consequences of non-appearance shall (save as specifically provided herein) be otherwise regulated by the provisions of Rule 59A and Rule 62 of the High Court Rules.

Appearance of legal practitioners before the court

52. (1) A legal practitioner who appears in the court for the hearing of any matter shall—

- (a) have the full mandate and authority enabling him or her to act for the party concerned and may if so required file a Power of Attorney to that effect in Form No. CC 8; and
- (b) be fully acquainted with the facts of the case in relation to which he or she appears;
- (c) be able to obtain directions from the party he or she represents at any point on both substantive and procedural issues that may arise with a view to settling the matter altogether or narrow down the issues in contention; and

- (d) be prepared to discuss and argue any applications that have been submitted and remain outstanding.

(2) A legal practitioner who fails to comply with this rule shall not have the right of audience in the matter concerned.

Conduct of hearing, postponements and adjournments

53. (1) Subject to these rules, the provisions of Order 49 of the High Court Rules shall apply *mutatis mutandis* in relation to hearings conducted before the court:

Provided that where the hearing of the matter has commenced it shall be continued from day to day until all the witnesses in attendance have been examined.

(2) The court or judge may on good and sufficient reasons grant a request by any party to the proceedings for a postponement or adjournment of the hearing in terms of Order 49 Rule 445 on condition that—

- (a) the party applying for a postponement or adjournment pays the prescribed fee for postponements or adjournments, unless the court or judge orders a waiver of such fees;
- (b) where the fee for postponements or adjournments has not been waived the same shall be paid before the date of the next hearing unless the court or judge directs otherwise;
- (c) no postponement or adjournment shall be granted at the request of a party, or parties except where the circumstances are shown to be beyond their control;
- (d) the fact that the legal practitioner of a party is engaged in another court, shall not be a ground for a postponement or adjournment unless that legal practitioner is appearing before the Constitutional Court or the Supreme Court or in another division of the High Court where another matter in that division is shown to have been set down prior to the set down of the matter before the court;
- (e) where the illness of a legal practitioner or his or her inability to conduct the case for any reason other than his

or her being engaged in another court, is put forward as a ground for postponement or adjournment, the court or judge shall not grant the postponement or adjournment unless it or he or she is satisfied that the party applying for adjournment could not have engaged another legal practitioner to handle the matter in time;

- (f) in the event of a postponement or adjournment at the instance of the court, the reasons for the postponement or adjournment shall be recorded and the next hearing date shall be fourteen (14) days after the postponement or adjournment unless circumstances dictate otherwise, in which case the next hearing date shall be within the shortest period possible;
- (g) a party seeking a postponement shall be liable for the wasted costs of the innocent party or parties unless he or she or it is excused on good and sufficient cause shown.

Procedure where no application for set down after postponement or adjournment sine die is made

54. Where the hearing of a matter has been adjourned or postponed *sine die* the registrar shall immediately notify the parties in writing that if no application for a new set down date is made by any of them within one (1) month of the adjournment or postponement, the matter shall be removed from the roll.

Subpoena and examination of witnesses

55. (1) Subject to these rules, the provisions of Orders 46 and 47 of the High Court Rules shall apply *mutatis mutandis* to the procedure in the court relating to the subpoena and examination of witnesses:

Provided that the court or judge may, on application by a party, allow a witness to give evidence without being present in the courtroom, through a video-link and at the cost of the applicant.

(2) The court or judge may order virtual sitting of the court to accommodate the giving of evidence via a video link.

Directions

56. (1) The Judge President may from time to time as may be expedient, and in consultation with the Chief Justice, give Practice Directions on any aspect relating to the procedure or conduct of proceedings in the court.

(2) In the event of any inconsistency between any Practice Direction given by the Judge President in terms of subrule (1) and these rules, the Practice Directions shall prevail:

Provided that the Judge President shall within six (6) months from the date such Practice Direction was issued, or such other extended period not exceeding three (3) months as may be expedient, cause an amendment of the Rules to bring them in line with any such Practice Direction.

(3) In the event that the rules are not amended in line with any Practice Direction as provided for in subrule (1) then such Practice Direction shall lapse automatically.

“E-court status” of the court

57. (1) On the second anniversary of the date of the promulgation of these rules, the court shall become a fully paperless court and, except in exceptional circumstances authorised by the Judge President, shall operate only as an electronic court.

(2) The registrar shall provide appropriate and secure electronic filing services and portals in the registry and on the World Wide Web.

Fees and costs

58. The registrar, in consultation with the Chief Justice and the Judge President, shall from time to time publish a tariff of fees and costs to be paid by the litigants or other users of the court.

Record of proceedings

59. (1) The provisions of Order 48 of the High Court Rules shall apply *mutatis mutandis* to the records kept in the court.

(2) Every official record of hearing shall be kept for a period of five (5) years from the date of final determination of the case by the court or of the appeal if one is noted.

High Court (Commercial Division) Rules, 2020

FIRST SCHEDULE

FORMS

(R 5)

Form No. CC 1

Summons commencing action

Rule 8

Case No. CC

IN THE HIGH COURT OF ZIMBABWE
COMMERCIAL DIVISION

In the matter between:

.....

Plaintiff

and

.....

Defendant

Defendant's particulars of service are:

Physical residential address:

Physical business address:

Telephone numbers: *Fax No.*

Mobile or cellular phone numbers:

E-mail address:

Web portal:

SUMMONS COMMENCING ACTION

To the defendant named above:

The plaintiff's claim, as more fully set out in the declaration and summary of evidence attached hereto, is for:

[Give a concise statement of the nature, extent and grounds of the plaintiff's cause of action and of the relief or remedies he seeks. If he sues in a representative capacity, or if the defendant is sued in a representative capacity, the capacity should be stated]

If you wish to oppose any of the plaintiff's claims, you must –

- (a) enter an appearance to defend by making an appropriate entry in the appearance book kept in the office of the Registrar of the High Court of Zimbabwe at (specify Harare, Bulawayo, Mutare or Masvingo) within seven (7) days after service of this summons (Saturdays, Sundays and public holidays are not counted as part of this seven-day period, nor is the day on which this summons is served); and
- (b) within twenty-four hours serve your appearance to defend on the plaintiff or his or her or its legal practitioner, at the address given below, specifying your address for service which is within a radius of five (5) kilometres of the court registry stated above, together with your mobile, cellular and all other telephone numbers, as well as all your e-mail addresses and web portal details.

If you do not enter appearance to defend and notify the plaintiff as aforesaid, the plaintiff's claim will be heard and dealt with by the Court without further notice to you.

The sheriff or his or her duly authorised representative, is hereby required to serve a copy of this summons on the defendant named above and, immediately after doing so, to return a further copy of the summons, with a return of service in the prescribed form, to the Registrar who issued it.

Dated at..... this..... day of.....

.....
[Plaintiff's signature]

The plaintiff's particulars of service are:

Physical residential address:

Physical business address:

Telephone numbers: *Fax No.*

Mobile or cellular phone numbers:

High Court (Commercial Division) Rules, 2020

E-mail address:

Web portal:

.....
Registrar, High Court of Zimbabwe
Commercial Division

Form No. CC 2

Summary of evidence

Rule 8

Case No. CC

IN THE HIGH COURT OF ZIMBABWE
COMMERCIAL DIVISION

In the matter between:

.....

Plaintiff

and

.....

Defendant

SUMMARY OF EVIDENCE

TAKE NOTICE that at the Trial in this matter the plaintiff/defendant will lead the following evidence:

SECTION A

[List of witnesses to be called and summary of their evidence]

(a) Witness 1 [*name*] [*status/designation*]

Summary of his/her evidence

(b) Witness 1 [*name*] [*status/designation*]

Summary of his/her evidence

Etc., etc.

SECTION B

[Documents relied upon]

- (a) The Plaintiff/Defendant shall rely on the **following original documents:**

[List all original documents to be produced and relied on at the hearing]

- (b) Plaintiff/Defendant shall rely on the **following copy documents:**

[List the copy documents that the party relies on]

NB: the Summary of Evidence shall be paginated and combined with a separate bundle of documents that will also be indexed and paginated, dated at Harare Plaintiff/Defendant's Legal Practitioner to the Registrar Commercial Court Division of the High Court to the Plaintiff/Defendant's Lawyers.

Dated at..... this..... day of.....

.....
Plaintiff's/Defendant's Legal
Practitioners
Address & reference
E-mail address

TO: The Registrar
Commercial Division

AND TO: Plaintiff's/Defendant's Legal Practitioners
Address and reference
E-mail address

High Court (Commercial Division) Rules, 2020

Schedule of documents

Rule 8

Case No. CC

IN THE HIGH COURT OF ZIMBABWE
COMMERCIAL DIVISION

In the matter between:

.....

Plaintiff

and

.....

Defendant

SCHEDULE OF DOCUMENTS

| ITEM | Document | Page |
|------|----------|------|
| 1. | | |
| 2. | | |
| 3. | | |
| 4. | | |
| 5. | | |
| 6. | | |
| 7. | | |
| 8. | | |
| 9. | | |
| 10. | | |

Dated at..... this..... day of.....

.....
Plaintiff's/Defendant's Legal
Practitioners
Address and reference
E-mail address

TO: The Registrar
Commercial Division

AND TO: Plaintiff's/Defendant's Legal Practitioners
Address and reference
E-mail address

Form No. CC 4

**Case management meeting minute
Rules 17, 18 and 19**

Case No. CC

IN THE HIGH COURT OF ZIMBABWE
COMMERCIAL DIVISION

In the matter between:

.....

Plaintiff

and

.....

Defendant

CASE MANAGEMENT MEETING MINUTES

Harare []

Date: []

In Chambers, before the Honourable Justice []

In Attendance

Mr. [Name 1] representing the Plaintiff with the following persons.....
[designation]

Mr. [Name 2] representing the Defendant with the following
persons..... [designation]

Issues

1. JOINT AGREED ISSUES

- (i)
- (ii)
- (iii)
- (iv)
- (v)
- (vi)
- (vii)
- (viii)

2. DISCOVERY

[To be effected by both parties in terms of the rules, or record already in place, or record directions given by the court].

3. WITNESSES

Plaintiff's list.
[insert]
Defendant's List.
[insert]

4. ADDITIONAL SUMMARIES OF EVIDENCE

[If any] OR [as directed by court]

5. DURATION OF TRIAL

X (x) days will suffice.

6. INTERPRETER

[Insert details]

7. DIRECTIONS GIVEN BY THE COURT

[insert details]

Dated at..... this..... day of.....

.....
Plaintiff's/Defendant's Legal
Practitioners
Address and reference
E-mail address

TO: The Registrar
Commercial Division

AND TO: Plaintiff's/Defendant's Legal Practitioners
Address and reference
E-mail address

Form No. CC 5

**Case management order
Rules 17, 18 and 19**

Case No. CC

IN THE HIGH COURT OF ZIMBABWE
COMMERCIAL DIVISION

In the matter between:

.....

Plaintiff

and

.....

Defendant

CASE MANAGEMENT ORDER

Harare the day of 20 .

Before the Honourable Mr./Mrs. Justice

Mr. [Name] for the Plaintiff

High Court (Commercial Division) Rules, 2020

Defendant in default

IT IS ORDERED—

THAT:

- (a)
- (b)
- (c)
- (d)
- (e)

Dated at..... this day of20

The Registrar
Commercial Division

Form No. CC 6

**Order by consent
Rule 19**

Case No. CC

IN THE HIGH COURT OF ZIMBABWE
COMMERCIAL DIVISION

In the matter between:

.....

Plaintiff

and

.....

Defendant

ORDER BY CONSENT

HARARE

In Chambers, pre-trial conference.

Before the Honourable Justice []

Mr [Name 1] for Plaintiff

Mr [Name 2] for Defendant.

WHEREUPON after reading the papers filed of record and hearing Counsel,

IT IS ORDERED BY CONSENT THAT:

- 1.
- 2.
- 3.

BY THE JUDGE

DATED at HARARE this day of 20 .

Defendant's Legal Practitioners

Plaintiff's Legal Practitioners

TO: THE REGISTRAR
Commercial Division of The High Court of Zimbabwe

Rule 14(1)

Form No. CC 7

High Court of Zimbabwe

Case No. CC.....

Commercial Court Division

High Court (Commercial Division) Rules, 2020

Harare/Bulawayo

In the matter between:

..... Plaintiff

and

..... Defendant

DEFAULT JUDGEMENT IN THE TERMS OF RULE 14(1)

Before.....in Chambers

[Name of Judge]

[Insert names of Legal Practitioners, if any]

Defendant in Default:

IT IS ORDERED THAT:

- 1 Defendant/Defendants shall pay the Plaintiff the sum of \$....., together with the interest on that sum at the rate of..... percent per annum from, 20.....to the date of payment.
[Where there is more than one defendant, add: The defendants' liability to pay this amount is joint and several, the one paying the other(s) to be absolved.]
- 2 [Costs: insert an appropriate order as to costs.]

Date

Judge/Deputy Registrar

Rule 52

POWER OF ATTORNEY IN TERMS OF RULE CC

POWER OF ATTORNEY

I/We, the undersigned,

[NAME] (BORN,) [I.D. No.]

OR

**[INSERT ORGANISATION DETAILS, DESIGNATION AND ATTACH
RESOLUTION AUTHOURISING THE ISSUANCE OF POWER OF
ATTORNEY IN FAVOUR OF NAMED FIRM]**

do hereby constitute, nominate and appoint [Name] and/or [Name] and/or [Name] and/or [Name] and/or [Name] and/or [Name] of [Firm], to be my/our lawful Legal Practitioners and Agent to appear before the Commercial Court in Harare/ Bulawayo/Masvingo/Mutare and represent me/us/the company / organisation and to make file any and all such pleadings and attend any and all such hearings as may be required or necessary under Zimbabwean law as our / my lawful legal practitioners as may be necessary for the purpose of litigation in the Commercial Division of the High Court of Zimbabwe and generally for the effecting the purposes aforesaid, to do whatsoever shall be requisite as fully, apply and effectually and for all intents and purposes whatsoever as I/we might or could do if personally present, hereby ratifying allowing and confirming and promising and agreeing to ratify, allow and confirm all and whatsoever my/our said Legal Practitioners shall lawfully do or cause to be done by virtue of these presents.

EXECUTED at HARARE on day of 20 in the presence of the undersigned Legal Practitioner/Commissioner of Oaths/Notary Public.

.....

[name]

High Court (Commercial Division) Rules, 2020

[designation]

[national ID number]

[physical address]

.....

Legal Practitioner/Commissioner of oaths/ Notary Public

Form No. CC 9

Appearance to defend

Rule 10

Case No. CC

IN THE HIGH COURT OF ZIMBABWE
COMMERCIAL DIVISION

In the matter between:

.....

Plaintiff

and

.....

Defendant

Take notice that at a.m./p.m. on the day of
..... 20, the defendant entered appearance to defend this action.

The summons was served on the defendant on the day of
....., 20.....

The defendant's address for service is:

The defendant's postal address is:

The defendant shall during the life of this matter use the following email
address:

Email address No. 1.....

Email address No. 2.....

[Optional email address No. 3]

The defendant hereby irrevocably consents to receive electronic notices sent to the above email addresses from all/or any of parties and/or the registrar until this matter is concluded.

Signature

Legal Practitioner for Defendant/

Defendant

To:

of

(Plaintiff or plaintiff's Legal Practitioner)

Form No. CC 10

Court Application

Rule 29

Case No. CC

IN THE HIGH COURT OF ZIMBABWE
COMMERCIAL DIVISION

In the matter between:

.....

Plaintiff

and

.....

Defendant

COURT APPLICATION

TAKE notice that the applicant intends to apply to the High Court at for an Order in terms of the Draft Order annexed to this notice and that the accompanying affidavit/s and documents will be used in support of the application.

If you intend to oppose this application you will have to file a Notice of Opposition in Form No. 29A, together with one or more opposing affidavits, with the Registrar of the High Court at within ten days after the date on which this notice was served upon you. You will also have to serve a copy of the Notice of Opposition and affidavit/s on the applicant at the address for service specified below. Your affidavits may have annexed to the documents verifying the facts set out in the affidavits.

Electronic service of the Notice of Opposition filed shall be to the email addresses set out herein, and or as directed by the registrar from time to time.

If you do not file an opposing affidavit within the period specified above, this application will be set down for hearing in the High Court at without further notice to you and will be dealt with as an unopposed application

Dated at this day of , 20

Applicant/Applicant's Legal Practitioner

Applicant's address for Service

[which must be a physical address within a radius of five kilometres from the registry in which the notice is to be filed];

Email address No. 1 for the purpose of service during the life of this matter.

Email address No. 2 for the purpose of service during the life of this matter.

TO: The Registrar

High Court

Harare/Bulawayo

AND TO:

Respondent/Respondent's Legal Practitioners

Form No. CC 10 A

Court Application

Rule 29 (proviso)

Case No. CC

IN THE HIGH COURT OF ZIMBABWE
COMMERCIAL DIVISION

In the matter between:

.....

Plaintiff

and

.....

Defendant

***EX PARTE* COURT APPLICATION**

The Applicant hereby files an *Ex parte* application to the High Court for an Order in terms of the Draft Order annexed to this notice and that the accompanying affidavit/s and documents will be used in support of the application.

The reasons for filing the application *Ex parte* are:

[list]

The nature of the order sought is:

[insert nature of/and summary of relief sought]

High Court (Commercial Division) Rules, 2020

Dated at this day of , 20

Applicant/Applicant's Legal Practitioner

Applicant's address for Service

[which must be a physical address within a radius of five kilometres from the registry in which the notice is to be filed]:

Email address No. 1 for the purpose of service during the life of this matter.

Email address No. 2 for the purpose of service during the life of this matter.

Form No. CC 11

Urgent Chamber Application

Rule 40

Case No. CC

IN THE HIGH COURT OF ZIMBABWE
COMMERCIAL DIVISION

In the matter between:

.....

Plaintiff

and

.....

Defendant

URGENT CHAMBER APPLICATION FOR AN ORDER

[State of order/interdict/ show cause/stay of execution, etc., etc.]

TAKE NOTICE that the applicant/s intend to apply to the Court sitting at for an Order in terms of the Draft annexed hereto to be issued on an urgent basis and that the accompanying Affidavits and documents will be used in support of the Urgent Chamber Application.

FURTHER TAKE NOTICE that the application is for an Order

[State nature of relief sought]

FURTHER TAKE NOTICE THAT THE MATTER IS URGENT FOR THE FOLLOWING REASONS:

A- *[State the factual basis of urgency/ grounds of urgency]*

B- *[State the legal basis or grounds of urgency]*

If you intend to oppose this application you will have to file a **Notice of Opposition in Form CC14** together with one or more opposing affidavits, with the Registrar of the Court at within days after the date on which this notice was served on you or before the matter is set down for hearing (whichever occurs first).

You must also have to serve a copy of the Notice of Opposition and affidavits on the applicant at the address for service specified below or electronically via the email addresses provided below.

Your affidavit may have annexed thereto the documents verifying the facts set out in the affidavit. You will be served with Notice of Set down of the Case Management hearing, whether or not you have filed any papers in opposition prior to the matter being heard or any other written direction the Presiding Judge may issue upon allocation of the matter to him.

If you do not attend the Case Management hearing, the matter may be dealt with as unopposed.

DATED at this.....day of20..... Address for service

[Note – the address for service must be a physical address within a radius of five kilometres from the registry in which the notice is to be filed]

Email address 1

Email address 2

High Court (Commercial Division) Rules, 2020

TO: The Registrar
High Court

Harare/Bulawayo

AND TO:

Respondent/Respondent's legal practitioners

Form No. CC 11A

Chamber Application on Notice

Rule 38

Case No. CC

IN THE HIGH COURT OF ZIMBABWE
COMMERCIAL DIVISION

In the matter between:

.....

Plaintiff

and

.....

Defendant

CHAMBER APPLICATION

Application is hereby made for an order in terms of the order/draft order annexed to this application on the grounds that:

(set out in summary the basis of the application)

The accompanying affidavit/s and document/s are tendered in support of the application.

Dated at this day of , 20

Applicant/Applicant's Legal Practitioner
Address for service

[Note –the address for service must be a physical address within a radius of five kilometres from the registry in which the notice is to be filed]

Email address No. 1

Email address No. 2

TO: The Registrar

High Court

Harare/Bulawayo

AND TO:

Respondent/Respondent's legal practitioners

Form No. CC 11B

Chamber Application without Notice

Rule 38

Case No. CC

IN THE HIGH COURT OF ZIMBABWE
COMMERCIAL DIVISION

In the matter between:

.....

Plaintiff

and

.....

Defendant

CHAMBER APPLICATION

Application is hereby made for an order in terms of the order/draft order annexed to this application on the grounds that:

High Court (Commercial Division) Rules, 2020

(set out in summary the basis of the application)

No notice is required because [state reasons in full]

The accompanying affidavit/s and document/s are tendered in support of the application.

Dated at this day of , 20

Applicant/Applicant's Legal Practitioner

Address for service

[Note — the address for service must be a physical address within a radius of five kilometres from the registry in which the notice is to be filed]

Email address No. 1

Email address No. 2

TO: The Registrar

High Court

Harare/Bulawayo

FORM CC 12

CASE No. CC.....

**COMMERCIAL DIVISION OF THE HIGH COURT
HELD AT HARARE**

In the matter between:

Plaintiff/Applicant

and

Defendant/Respondent

NOTICE OF SET DOWN [*Sate purpose or type of Hearing*]

TAKE NOTICE the above matter is set down in the above Honourable Court or Judges Chambers for [type of hearing] hearing on _____, the _____ day of _____ 20____ at _____ am/pm or so soon thereafter as Counsel may be heard.

FURTHER TAKE NOTICE that the above matter will be held before the Honourable Mr. Justice in his/her Chambers/ Court _____, the _____ day of _____ 20____.

DATED at HARARE on this the _____ day of 20____.

Plaintiffs' Legal Practitioners

TO: THE REGISTRAR

Commercial Division of the High Court of Zimbabwe

AND

TO: Defendants' Legal Practitioners

Form No. CC 13

Certificate of service by a legal practitioner

Rule

Case No. CC

IN THE HIGH COURT OF ZIMBABWE
COMMERCIAL DIVISION

High Court (Commercial Division) Rules, 2020

In the matter between:

.....

Plaintiff

and

.....

Defendant

Certificate of service by a legal practitioner

In the matter between

Plaintiff

and

Defendant

I the Legal Practitioner of record for the hereby certify that at (*here state the precise place where service was effected*) on the day of 20, at o'clock in the forenoon/afternoon, I served the following documents(s), namely: by (*here describe the method of service*).

Dated at this..... day of, 20.....

Signature

Form No. CC 13B

Certificate of service by a person in the employment of a legal practitioner

Rule

Case No. CC

IN THE HIGH COURT OF ZIMBABWE
COMMERCIAL DIVISION

In the matter between:

.....

Plaintiff

and

.....

Defendant

Certificate of service by a person in the employ of a legal practitioner

In the matter between:

Plaintiff

and

Defendant

I, a clerk in the employ of the Legal Practitioner of record for the plaintiff/defendant, hereby certify that at
..... (*state precisely where service was effected*) on the day of 20
....., at o'clock in the forenoon/afternoon, I served the following documents, namely: —
..... upon
..... by (*state method of service*).

DATED at this.....day of20.....

Signature

I, the Legal Practitioner of record for the plaintiff/ defendant hereby certify that I have satisfied myself by personal inquiry of
who is a responsible person in my employ, that the service has been effected.

Signature

Form No. CC 14

Notice of Opposition

Rule 32

Case No. CC

IN THE HIGH COURT OF ZIMBABWE
COMMERCIAL DIVISION

In the matter between:

.....

Plaintiff

and

.....

Defendant

NOTICE OF OPPOSITION

TAKE notice that the respondent intends to oppose the application on the grounds set out in the affidavit/s annexed to this notice, and that his or her addresses for service is specified below.

The application was served on the respondent on the day of
....., 20.....

Dated at this day of, 20

Respondent/Respondent's Legal Practitioner

Respondent's address for service

[which must be a physical address within a radius of five kilometres from the registry in which the notice is to be filed];

Email Address No. 1 for service of process during the life of this matter

Email Address No. 2 for service of process during the life of this matter

TO: The Registrar
High Court

Harare/Bulawayo

AND TO:
Applicant/Applicant's Legal Practitioners

Form No. CC 15

Notice of intention to seek leave to file a further affidavit

Rule 34

Case No. CC

IN THE HIGH COURT OF ZIMBABWE
COMMERCIAL DIVISION

In the matter between:

.....

Plaintiff

and

.....

Defendant

Notice is hereby given of the intention of Applicant/Respondent to seek leave to file an additional affidavit(s) at the hearing of this matter:

The grounds on which this application is made are:

The Affidavit was not filed previously because (set out full reasons in an attached affidavit deposed to by authorised representative or the party or their legal practitioner under oath)

Tender of costs/scale of costs

The applicant seeks an order in the following terms:

Attach draft order.

IF YOU INTEND to oppose the Application, you are required to file a written statement of opposition stating the grounds of opposition and serve it on the Applicant at least 24 hours before the hearing date.

Dated at this day of 20...

Applicant

To Registrar

To Respondent

SECOND SCHEDULE

VALUES

(R 2)

The adjudication of disputes and operation of the Commercial Division of the High Court of Zimbabwe (hereafter referred to as “the Commercial Court”) shall be guided by the set of values listed below which however, are not part of the Rules of Court.

1. The establishment of the Commercial Court in Zimbabwe is designed to improve the ease of doing business in line with the criteria set by the World Bank and contribute towards the national effort in attracting local and foreign direct investment.

2. The core function of the Commercial Court is the expeditious resolution of commercial disputes according to international best practices to enhance efficient justice delivery.

3. The core attributes of the Commercial Court are:

- (a) reduction and simplification of processes;
- (b) curtailment and minimisation of costs and time;
- (c) full integration of electronic case management systems;

- (d) complete digitalisation of records;
- (e) across the board training;
- (f) enhanced professionalism and increased efficiency;
- (g) new rules of procedure;
- (h) adaptability.

