

Statutory Instrument 150 of 2017.

[CAP. 28:01

Labour Court Rules, 2017

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SCHEDULE: FORMS.

IT is hereby notified that the Judges of the Labour Court have, in terms of section 90(3) of the Labour Act [*Chapter 28:01*] and with the approval of the Chief Justice and the Minister of Justice, Legal and Parliamentary Affairs, made the following rules: —

PART I

PRELIMINARY

Title

1. These rules may be cited as the Labour Court Rules, 2017.

Application

2. These rules shall apply to all proceedings in the Labour Court.

Interpretation

3. In these rules—

“Act” means the Labour Act [*Chapter 28:01*];

“Court” means the Labour Court;

“Form” means the appropriate form prescribed in the Schedule;

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

“Judge” means a judge of the Court referred to in section 172(1) (b) of the Constitution and includes the Senior Judge;

“Minister” means, subject to section 83 of the Act, the Minister of Public Service, Labour and Social Welfare or any other Minister to whom the President may, from time to time, assign the administration of the Act;

“party” means a person who is a party to a matter before the Court;

“representative” means—

“Registrar” means the registrar of the Court appointed in terms of section 87(1) of the Act and includes a deputy Registrar or assistant Registrar acting in that capacity;

“responsible individual” in relation to the service of any document or summons under these rules, means an individual who appears reasonably likely, if he or she is given a document or summons that is required to be served in terms of these rules, either to deliver it to the person upon whom it is to be served, or otherwise to bring it to that person’s attention;

“Sheriff” means the Sheriff for Zimbabwe appointed in terms of section 55 of the High Court Act [*Chapter 7:06*];

“Senior Judge” means the Senior Judge referred to in section 172(1)(a) of the Constitution;

- (a) a legal practitioner registered in terms of the Legal Practitioners Act [*Chapter 27:07*];
- (b) an official or employee of a registered trade union or employers organisation of which the party is a member; or
- (c) a company representative.

Computation of time and certain presumptions as to time

4. (1) Unless a contrary intention appears, where anything is required by these rules or in any order of the Court to be done within a particular number of days or hours, a Saturday, Sunday or public holiday shall not be reckoned as part of such period.

(2) A person shall be deemed to have received—

- (a) service of documents on the day indicated by the appropriate proof of service mentioned in any of the paragraphs (a) to (e) of rule 11(1);
- (b) a certificate of no settlement, by the fourteenth day after the date indicated on that certificate as the date of issue thereof to the parties;
- (c) for the purpose of rule 19(1)—
 - (i) a determination or direction of the Minister in terms of section 25, 40, 51, 79 or 82 of the Act, or in terms of any regulations made pursuant to section 17 of the Act, by the fourteenth day after the date indicated on that determination or direction as the date of issue thereof;
 - (ii) a determination made under an employment code in terms of section 101 of the Act, by the fourteenth day after the date indicated on that determination as the date of issue thereof;

- (d) for the purpose of rule 20(1), notice of termination of—
 - (i) the investigation of a dispute or unfair labour practice by the fourteenth day after the date indicated on a “certificate of no settlement” as the date of issue thereof;
 - (ii) the conduct of any proceedings in terms of an employment code by the fourteenth day after the date indicated on a determination issued after those proceedings as the date of issue thereof;

and any person alleging otherwise shall bear the onus of proof to the contrary.

(3) The period of twenty-one days shall, in the case of—

- (a) an application in terms of rule 19(1) and 20(1), be calculated from the last deemed date of receipt of the certificate, determination, direction or notice referred to in subrule (2)(b), (c) or (c)(i), as the case may be;
- (b) an application where no certificate, determination or direction was issued in relation to the proceedings sought to be reviewed, be calculated from the thirtieth day after—
 - (i) the labour officer began to attempt to settle the dispute or unfair labour practice concerned in terms of section 93 of the Act; or
 - (ii) the applicant received notification that proceedings under an employment code were to be commenced against him or her in terms of section 101(3)(e) of the Act;

as the case maybe.

Sittings and vacations of Labour Court

5. (1) In each year the Registrar shall, in consultation with the Senior Judge, publish a calendar of the sittings and vacations of the Court for the ensuing year.

(2) The Registrar shall, by notice in the *Gazette* and in any other media he or she deems fit, publish the calendar referred to in subrule (1).

PART II

SERVICE OF DOCUMENTS

Interpretation in Part II

6. In this Part—

“address for service” means the address nominated by a person where documents may be served on him or her in terms of rule 7(1);

“commercial courier service” and “postal licensee” shall have the meanings given to those terms by the Postal and Telecommunications Act [*Chapter 12:05*].

Address for service and change of address for service

7. (1) Every party shall, at the time when he or she notes an appeal or makes any application, give an address at which he or she will accept service in terms of these rules. The address for service shall be within a radius of twenty-five kilometres from the registry where this appellant or applicant files the appeal or application:

Provided that the Registrar may refuse to accept any document which does not comply with this rule.

(2) Where a party is represented by a legal practitioner or representative, the party’s address for service shall be that of his or her legal practitioner or representative.

(3) Where a party changes his or her address for service, he or she shall notify, in writing, the Registrar and the other parties to the proceedings of his or her new address for service, and if he or she fails to make such notification, his or her address for service shall be deemed to be the address given under subrule (1).

(4) Where a party fails to specify his or her address for service, his or her last known residential address or the address of his or her last known place of business or employment shall be deemed to be his or her address for service and service at any such address shall be valid:

Provided that where the person to be served is detained in custody, service shall be by delivery or registered post to the person in charge of the place where that person is detained.

Persons who may effect service of documents and manner and time of service

8. (1) All notices of set down shall be served by the Sheriff or his or her deputy.

(2) All documents not required in terms of these rules to be served by the Sheriff may be served upon a person by—

- (a) the party who issued the documents; or
- (b) a party's legal practitioner, representative, agent, messenger or courier; or
- (c) the deputy sheriff;
- (d) the messenger of court;

in any of the following ways by—

- (i) registered post; or
- (ii) delivery through a commercial courier service; or
- (iii) personal delivery to that person or to his or her duly appointed agent; or
- (iv) delivery to a responsible individual at that person's place of work or residential address; or
- (v) telegraph; or
- (vi) telefacsimile.

(3) Service of documents in terms of these rules shall not be valid if served between 10 p.m. and 6 a.m.

Provided that the service of documents by post, telegraph, facsimile or courier shall be valid whenever served.

Service where person to be served prevents service or cannot be found

9. Where documents are to be served, and—

- (a) the person upon whom they are to be served avoids or prevents service; or
- (b) the person seeking to effect service of the documents is unable, after a diligent search at the residence, place of business or employment or address for service of the person to be served, to find that person or a responsible individual;

it shall be sufficient service to leave a copy of the documents in a letter box, at or affixed to or near the counter or principal door or gate, or in some conspicuous place at the residence, place of business or employment or address for service, as the case may be.

Substituted service

10. Where service cannot be effected in the manner prescribed in rules 8 and 9, the Court may, upon evidence of that fact, make an order allowing service to be effected in any manner as may be stated in such order.

Proof of service

11. (1) Where service of documents has been effected by—
- (a) registered post, the advice slip, or some other acceptable proof of delivery provided by the postal licensee;
 - (b) the Sheriff, the Sheriff's out-going mail register or extract there from certified by the Sheriff;
 - (c) hand-delivery or courier delivery, a certificate of service or affidavit by the person effecting service, or delivery slip, or a copy of the document served duly signed by the recipient;
 - (d) telefacsimile, the electronic record of such service;
 - (e) telegraph, a return from the postal licensee;

shall constitute proof of service.

(2) Where any document has been served on a responsible individual, the name, title and relationship of that individual shall be stated in the proof of service.

PART III

DETERMINATION OF MATTERS BY LABOUR COURT

Informality of proceedings

12. (1) Subject to these rules, the Court shall conduct any hearing in such manner as it considers most suitable to the clarification of the issues, the fair resolution of the matters, and generally the just handling of the proceedings before it.

(2) The Court may, so far as appear to it appropriate, avoid formality in its proceedings and may, where circumstances warrant it, depart from any enactment or rule of law relating to the admissibility of evidence in proceedings before courts of law generally.

Labour Court Record Book

13. The Registrar shall, in respect of every matter for hearing or determination by the Court, keep an index book to be called the Labour Court Record Book in which the following shall be recorded—

- (a) the number of the case;
- (b) the names of the parties;
- (c) the nature of the case;
- (d) the date and place of the hearing or determination of the case;
- (e) the judgment of the Court; and
- (f) any subsequent proceedings and remarks.

Court applications

14. (1) A court application shall be in Form LC1 and shall be supported by one or more affidavits setting out the facts upon which the applicant relies together with the draft order.

(2) The applicant shall deposit with the Sheriff an amount to be determined by the Sheriff as security for costs of the service of the notices of set down.

(3) The Registrar, upon receipt of the application and proof of such payment shall allocate a case number to the application and thereafter a date of hearing.

(4) The applicant shall serve copies of the application together with annexures thereof to the respondent within five days of their issuing out and within ten days thereafter, file with the Registrar proof of service in accordance with rule 11.

(5) Except as otherwise provided in this rule, no affidavit which has not been served with a court application shall be used in support of the application unless it is otherwise ordered by the Court or a Judge.

*Application for an order by a Labour Officer or Designated Agent
in terms of section 93(5)(a), (5)(b) and (c) of the Act*

15. (1) In this rule—

“applicant” means a labour officer or a designated agent.

(2) The applicant shall deposit with the Sheriff an amount to be determined by the Sheriff as security for costs of the service of the notices of set down.

(3) The Registrar, upon receipt of the application and proof of such payment shall allocate a case number to the application and thereafter a date of hearing.

(4) An applicant who wishes to apply for granting of a ruling and order which he or she has made shall within thirty days of the date of ruling lodge with the Registrar an application in three copies by way of Form LC 11 supported by an affidavit and any evidence which he or she considered in making the ruling and order including—

- (a) the record of any charge against or allegation of misconduct that was made against the employee;
- (b) the minutes or record of proceedings or hearing undertaken to inquire into the charge or allegation of misconduct;
- (c) the decision or determination made at the end of the hearing or inquiry; and
- (d) any other relevant evidence in the matter in question.

(5) The applicant shall serve copies of the application together with annexures thereof on the parties within five days of their issuing out and thereafter file with the Registrar proof of service.

(6) Within ten days of receipt of the application for confirmation, the respondent shall file a notice of response in Form LC 2 together with any heads of argument in support of his or her case.

(7) The Registrar shall set down the matter for hearing and cause the notice of set down to be served on the parties.

Application by the Minister in terms of section 120 of the Act

16. (1) Where a recommendation by an investigator investigating a trade union, employers' organisation or federation to appoint an administrator to administer the trade union, employers' organisation or federation has been accepted, the Minister shall lodge with the Registrar an application accompanied by an affidavit and supporting documents, by way of Form LC 13, in three copies.

(2) The Minister shall deposit with the Sheriff an amount to be determined by the Sheriff as security for costs of service of the notice of set down.

(3) The Registrar, upon receipt of the application and the proof of payment, shall allocate a case number to the application.

(4) The Minister shall serve copies of the application together with the annexures thereof on the respondents within five days of their issuing out and thereafter file with the Registrar proof of service.

(5) The respondent shall file his or her opposition if any, to the application within ten days of receipt of the application.

(6) If the application is opposed, the Registrar shall set down the application for hearing.

Chamber applications

17. (1) A chamber application shall be in Form LC 12 duly completed and 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. LC1 with appropriate modifications.

(2) A chamber application shall be served on all interested parties unless the respondent has previously had due notice of the order sought and is in default or unless the applicant reasonably believes that there is any reason, acceptable to the Judge, why such notice should not be given.

(3) Where an applicant has not served a chamber application on another party because he or she reasonably believes that there is any reason, acceptable to the Judge, why such notice should not be given him or her shall set out the grounds for his or her belief fully in his or her affidavit; and unless the applicant is not legally represented,

the application shall be accompanied by a certificate from a legal practitioner setting out, with reasons, his or her belief that the matter should be heard without notice to the other party.

Urgent chamber applications

18. (1) Where a person wishes to file an application in terms of these rules and he or she considers that the matter is one of urgency, he or she may file the application accompanied by an affidavit requesting that the application be treated as an urgent application.

(2) An affidavit submitted in terms of subrule (1) shall set out the facts of the matter, the name of any other person who might be affected by the order sought by the applicant and the circumstances that justify treating the matter as an urgent application, and where a party is legally represented, shall be accompanied by a certificate by a legal practitioner that the matter is urgent.

(3) Upon receipt of the urgent application, the Registrar shall immediately refer the file to a Judge.

(4) A Judge may direct that the application be served on any person who might be affected by the order sought and the applicant shall comply with such direction in which event—

- (i) the applicant shall deposit with the Sheriff an amount to be determined by the Sheriff as security for costs of the service of the notices of set down; and
- (ii) the Registrar, upon receipt of the application and proof of such payment shall allocate a case number to the application and thereafter a date of hearing.

(5) If the Judge considers that the application should be treated as an urgent application, he or she may issue a directive dispensing with the forms and service provided for in these rules and may give directions for the matter to be dealt with at such time and in such manner and in accordance with such procedure, which shall, as far as is practicable, be in accordance with these rules, as he or she considers appropriate.

Appeals and cross appeals

19. (1) A person wishing to appeal against any decision, determination or direction referred to in the Act, shall, within twenty-one days from the date when the appellant receives the decision, determination or direction or award, do the following—

- (a) complete in three copies a notice of appeal in Form LC 4; and
- (b) make three copies of any of the documents referred to in subparagraphs (i) to (iv) as are relevant to the appeal, if they are in the possession of the appellant—
 - (i) the record of any charge or allegation of misconduct that was served on the appellant, if any;
 - (ii) the minutes or record of any proceedings or hearing undertaken to inquire into any charge against or allegation of misconduct on the part of the appellant;
 - (iii) a minute or record of any decision, determination, direction or award made at the conclusion of any proceedings or hearing referred to in subparagraph (ii);
 - (iv) the letter of suspension or dismissal from employment, if any;
- (c) deposit with the Sheriff an amount to be determined by the Sheriff as security for costs of service of the notice of set down.
- (d) file with the Registrar one of the other copies of the notice of appeal, together with—
 - (i) a copy of the documents, if any, referred to in paragraph (b);
 - (ii) proof of payment of the Sheriff's costs for service of the notice of set down; and
 - (iii) proof (as required by rule 11) that the notice of appeal was served on the respondent;

- (e) serve one copy of the notice of appeal, together with a copy of the documents, if any, referred to in paragraph (b), on the respondent within ten days of ; and
- (f) retain a copy of the notice of appeal, and of the documents, if any, referred to in paragraph (b), for himself or herself.

(2) The respondent shall, within ten days of receiving a notice of appeal—

- (a) complete in three copies a notice of response in Form LC2;
- (b) file the notice of response with the Registrar;
- (c) serve a copy of the notice of response on the appellant;
- (d) file with the Registrar proof of service of the notice of response as required by rule 11;
- (e) retain a copy of the notice of response for himself or herself;
- (f) make copies of any documents which are in his or her possession and have not been availed by the appellant and at the time of filing the response file them with the Registrar and thereafter serve the appellant.

(3) A person making an appeal under this rule who also wishes to seek a review of the proceedings in respect of which he or she makes the appeal shall, at the same time, complete in three copies of a notice of review in Form LC 4 and serve such notice together with the notice of appeal under this rule.

(4) A person who wishes to make a cross appeal shall do so at the same time as he or she files a notice of response in which event the provisions of these rules with regard to appeals shall apply, with necessary modifications, to the cross-appeal.

Reviews

20. (1) A person wishing to seek review of proceedings referred to in terms of the Act shall, within twenty-one days from the date when the proceedings are concluded, do the following—

- (a) complete in three copies a notice of review in Form LC 5; and

- (b) make three copies of any of the documents referred to in subparagraphs (i) to (iv) as are relevant to the review, if they are in the possession of the applicant—
 - (i) the record of any charge against or allegation of misconduct on the part of the applicant that was served on the applicant, if any;
 - (ii) the minutes or record of any proceedings or hearing undertaken to inquire into any charge against or allegation of misconduct on the part of the applicant;
 - (iii) a minute or record of any decision taken at the conclusion of any proceedings or hearing referred to in subparagraph (ii);
 - (iv) the letter of suspension or dismissal from employment, if any;
 - (c) deposit with the Sheriff an amount to be determined by the Sheriff as security for costs of service of the notice of set down.
 - (d) file with the Registrar one of the other copies of the notice of review, together with—
 - (i) a copy of the documents, if any, referred to in paragraph (b);
 - (ii) proof of payment of the Sheriff's costs for service of the notice of set down; and
 - (iii) proof (as required by rule 11) that the notice of review was served on the respondent; and
 - (e) serve one copy of the notice of review, together with a copy of the documents, if any, referred to in paragraph (b), on the respondent; and
 - (f) retain a copy of the notice of review, and of the documents, if any, referred to in paragraph (b), for himself or herself.
- (2) The respondent shall, within ten days of receiving a notice of review—
- (a) complete in three copies a notice of response in Form LC2;

- (b) file the notice of response with the Registrar;
- (c) serve a copy of the notice of response on the applicant;
- (d) file with the Registrar proof of service of the notice of response as required by rule 11;
- (e) retain a copy of the notice of response for himself or herself;
- (f) make copies of any documents which are in his or her possession and have not been availed by the applicant and at the time of filing the response file them with the Registrar and thereafter serve the applicant.

Record preparation (indexing, pagination and binding)

21. (1) it shall be the duty of the parties or litigants to prepare the record of proceedings by indexing, paginating and binding.

(2) Every written application, appeal, review or notice of opposition and supporting answering affidavit shall—

- (a) be legibly written on A4 size paper on one side only; 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 of proof of service filed for the previous set.

(3) Every written application, appeal, review 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 legal practitioner or union representative; and
- (c) give an address for service which shall be within a twenty-five kilometre radius from the registry in which the document is filed; and

(d) where it comprises more than five pages, contain an index clearly describing each document included and showing the page number or numbers at which each such document is to be found.

(4) Every written application, appeal or review shall contain a draft of the order sought.

(5) An affidavit filed with a written application, appeal or review—

(a) shall be made by the applicant or respondent, as the case may be or by a person who can swear to the facts or averments set out therein; and

(b) may be accompanied by the documents verifying the facts or averments set out in the affidavit, and any reference in this Order 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 a Judge at the hearing, the party concerned shall produce the original certificate or document.

Application for condonation of late noting of an appeal or review

22. (1) A party wishing to apply for condonation of the late noting of an appeal or review shall do so in form LC 1.

(2) An application in terms of this rule shall be accompanied by a draft of the intended notice of appeal or review.

Interlocutory and other applications

23. Where a party to any matter pending before the Court wishes to make an application to the Court in respect of any matter for which an application may be made in terms of these rules, the applicant shall give not less than ten days' written notice of the application to the Registrar and the other party specifying the nature of the application and the grounds upon which it is made unless a Judge or the Court otherwise directs.

Adoption of incorrect form of application

24. 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.

Representation of parties, assumption and renunciation of agency

25. (1) Where a party—

- (a) is represented before the Labour Court by an official or employee of a registered trade union or employers' organisation of which a party is a member, such representative shall be required to produce proof of their capacity to represent the party;
- (b) is represented by a company official, they shall produce a company resolution or letter of appointment authorising them to represent the party;
- (c) is represented by a legal practitioner, the legal practitioner shall file a written notice of assumption of agency in Form LC 6 with the Registrar and serve copies of the notice to the other party or that party's legal practitioner or representative.

(2) Subject to this rule, an appellant's or applicant's or respondent's legal practitioner may for good cause renounce his or her agency at any time before the appeal or application has been set down for hearing or, after it has been set down, not later than three weeks after he or she has been notified of the date of hearing of the appeal or application:

Provided that, where he or she has agreed to less than six weeks' notice of the date of hearing, he or she may not renounce his or her agency in terms of this sub rule later than one month before the date of hearing

(3) Where a legal practitioner renounces agency he or she shall give written notice of his or her renunciation to—

- (a) his or her client; and
- (b) the other party or the other party's legal practitioner or representative; and
- (c) the Registrar; and
- (d) specify in that notice his or her client's last known address which shall be the address of service.

(4) A legal practitioner who does not comply with sub-rule (1) shall not have the right of audience in respect of that matter.

Heads of argument

26. (1) Where an applicant or appellant is to be represented by a legal practitioner or representative at the hearing of the application, appeal or review, the legal practitioner or representative shall —

- (a) within ten days of receiving a notice of response to the application, appeal or review, lodge 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 deliver a copy of the heads of argument to the respondent and lodge with the Registrar proof of such delivery as required by rule 11.

(2) No legal practitioner or representative shall be allowed to make submissions in a matter without having filed heads of argument: —

Provided that a party who has been barred may—

- (a) make a chamber application to remove the bar, and the Judge or Court may allow the application on such terms as to costs and otherwise as he or she thinks fit; or
- (b) make an oral application to remove the bar at the hearing of the application or appeal.

(3) Where a respondent is to be represented by a legal practitioner or a representative at the hearing of the application, appeal or review, the legal practitioner or representative shall—

- (a) lodge 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 within ten days of receiving a copy of the heads of argument in terms of subrule (1)(b), or at the time when the notice of response is filed with the Registrar in terms of rule 14(2)(b)(ii), 19(2)(b)(ii) or 20(2)(b)(ii), if the applicant or appellant is not represented by a legal practitioner or representative; and
- (b) immediately afterwards, deliver a copy of the heads of argument to the applicant or appellant and lodge with the Registrar proof of such delivery.

(4) Where heads of argument that are required to be lodged in terms of subrule (3) are not lodged on behalf of the respondent, within the period or at the time specified in those provisions—

- (a) the Registrar shall nevertheless set down the application, appeal or review for hearing in terms of rule 28;
- (b) subject to subrule (2), the defaulting party shall be barred and the Court may according to the nature of the case, or as the justice of the case requires—
 - (i) enter a default judgment against the defaulting party; or
 - (ii) proceed to determine the matter.

(5) Where an applicant, appellant or respondent is not to be represented at the hearing by a legal practitioner or representative, he or she may, lodge heads of argument with the Registrar, in which event he or she shall comply with subrule (1) or (4), as the case may be.

(6) After the heads of argument have been lodged with the Registrar, no further papers may be lodged without the leave of the Court.

Settlements and withdrawals

27. (1) Where the parties to a matter pending before the Court agree on an out of court settlement or a party withdraws the matter, the parties or party shall notify the Registrar in writing of such settlement or withdrawal.

(2) Where the Registrar has received notification of a settlement or withdrawal in terms of subrule (1), the Registrar shall refer the matter to a Judge who shall issue an appropriate order or direction with regard to the settlement or withdrawal, as the case may be.

(3) If during the hearing of a matter, a party withdraws or the parties settle the matter, the court shall proceed to issue an appropriate order.

Set-down of matters

28. (1) The Registrar shall as far as reasonably possible set down matters on a first come first served basis:

Provided that in urgent cases or for other good cause shown the Judge President may, at the request of one or more of the parties, allocate a date for the hearing of a case, whether in or out of term.

(2) The applicant or the appellant must deposit with the Sheriff an amount as determined by the Sheriff as security for costs of service of all notices of set down.

(3) Upon receipt of such proof of payment, the Registrar shall allocate a date for the matter to be heard and submit the notice of set down to the Sheriff for service to be effected.

(4) The Sheriff shall submit the return of service to the Registrar within five days after service has been effected and at least five days before the date of hearing.

(5) If a matter is postponed to a date to be determined in the future, any party to the matter may, upon furnishing the Registrar with proof of payment of the Sheriff's costs for service of the notice of set down, apply to the Registrar for it to be re-enrolled, but no preference may be given to that matter on the roll, unless the Court decides otherwise.

(6) Once a date becomes available for the hearing of a case, the Registrar shall allocate the date for the case to be heard and shall give the parties notice of the date in Form LC 7:

Provided that all the parties shall receive not less than five days' notice of the date, time and place of the hearing.

(7) The Registrar may for good cause, or after consultation with the parties, alter the date of set-down allocated under subrule (2) and shall give the parties notice in Form LC 7 of any such alteration.

(8) The Registrar shall thereafter allocate a time, date and place of hearing and cause a notice of set down to be served on the parties.

(9) Where a matter is postponed in court to a specific date, the Registrar shall not be required to send a notice of set down to the parties.

Where party fails to file notice of response

29. Where the respondent fails to file a notice of response within the period specified in rules 14, 19 or 20 and that party fails to comply, the matter shall nevertheless be set down in terms of rule 28 and if, on the day of hearing, the defaulting party—

- (a) appears and shows good cause why he or she did not file a notice of response, the Court may according to the nature of the case, or as the justice of the case requires—
 - (i) postpone the matter to enable the defaulting party to comply; or
 - (ii) proceed to determine the matter;or
- (b) does not appear or fails to show good cause why he or she did not file a response, shall be barred, and the Court may, according to the nature of the case, or as the justice of the case requires—
 - (i) enter a default judgment against the defaulting party; or
 - (ii) proceed to determine the matter.

Witnesses

30. (1) Whenever it is required to obtain the attendance of any witnesses, the Registrar shall issue a summons in Form LC 8.

(2) Part II of these rules applies to the service of a summons issued in terms of subrule (1).

(3) The service of any summons in terms of this rule may be effected by any person authorised to do so by the Registrar.

Pre-hearing stage

31. (1) A Judge may, before the hearing commences, call the parties and their legal practitioners or representatives, if any, into his or her chambers with a view to securing—

- (a) agreement on any matters likely to curtail the duration of the hearing; or
- (b) subject to subrules (2) and (3), a settlement of the matter through conciliation and or mediation.

(2) A Judge may attempt to settle the matter by conciliation or mediation under subrule (1)(b) unless, before such conciliation or mediation begins, the parties do not agree to such conciliation or mediation.

Provided that if the parties agree to such conciliation or mediation but conciliation or mediation fails to settle the matter, the Judge shall proceed to hear the matter unless either or both of the parties object to the Judge hearing the matter.

(3) If a Judge succeeds in settling a matter at the prehearing stage through conciliation or mediation, rule 27 shall apply to such settlement.

Departure from rules

32. At any time before or during the hearing of a matter a Judge or the Court may—

- (a) direct, authorise or condone a departure from any of these rules, including an extension of any period specified therein, where the Judge or Court is satisfied that the departure is required in the interests of justice, fairness and equity;
- (b) give such directions as to procedure in respect of any matter not expressly provided for in these rules as appear to the Judge of the Court to be just, expedient and equitable.

Joinder of parties and actions

33. (1) A Judge, prior to a hearing or in the course of a hearing may, at his or her own instance or upon application by a party, order that two or more applications, appeals or reviews be consolidated or heard together and may give directions on all other matters related thereto so as to give effect to the order.

(2) A person who has an interest in the determination of a matter by the Court may apply to be joined as a party to the proceedings.

(3) Where in any matter before the Court a party wishes to join a third party who is not a party to the proceedings, he or she may apply to the Court to join that third party to the action.

Hearings of applications

34. (1) The Registrar shall refer every unopposed application, to a Judge sitting in chambers, who may—

- (a) deal with the application on the papers; or
- (b) direct that the application be heard in open court; or
- (c) direct that the application be heard in chambers.

(2) At any time after the matter has been set down under rule 28 or during a hearing a Judge may, with the approval of the Senior Judge, order that such matter be referred for hearing or decision by two or more Judges, in which event any reference to a Judge in this rule shall be construed as a reference to the Judge presiding over the Court.

(3) If, after a hearing has begun, the Court as reconstituted under subrule (2) deems it fit, it shall be competent for the Court to direct that any witness be recalled and to order further argument.

(4) The Judge during any hearing may apprise the parties of their rights and the correct procedures where he or she considers it necessary or desirable to do so, and, in so doing the Judge shall have due regard to the interests of any party who is not being advised or represented by a legal practitioner or representative.

(5) At the hearing of any matter—

- (a) unless the Judge otherwise orders, the applicant or appellant shall be heard in argument in support of

the application, appeal or review, and thereafter the respondent's argument against the application, appeal or review shall be heard and the applicant or appellants shall be heard in reply;

- (b) the Judge may allow oral evidence:

Provided that if one of the parties has been barred the Judge shall deal with the application, appeal or review as though it were abandoned or unopposed;

- (c) the Judge may require any witness to give evidence on oath or affirmation;
- (d) any party at a hearing may cross-examine witnesses called by the other party:

Provided that the Judge may curtail the cross-examination if he or she considers the cross-examination to be repetitive, irrelevant or time-wasting;

- (e) the party calling a witness may re-examine the witness after cross-examination.

Adjournments and postponements

35. (1) If for any reason it appears expedient to the Court that the hearing of any matter should be adjourned or postponed, the Court may make such orders as to adjournment as it considers necessary.

(2) Where a Court either postpones a matter *sine die* or removes it from the roll, the Court shall direct what a party must do and the time frames by which the directive must be complied with.

(3) Where a directive has not been given in terms of rule (2), and a matter postponed *sine die* or removed from the roll is not set down within three (3) months from the date on which it was postponed *sine die*, such matter shall be regarded as abandoned and the Registrar shall advise the parties accordingly.

Reinstatement of matters

36. Where a matter has been deemed to have been abandoned in terms of these rules, a Judge may, on good cause shown upon application by a party made within thirty days of the party becoming aware of the abandonment, order that the matter be reinstated.

Default judgment entered where party or witness fails to appear

37. Where a party fails to appear at a hearing, the Court may, according to the nature of the case, or as the justice of the case requires—

- (a) enter default judgment;
- (b) proceed with the hearing on the merits; or
- (c) postpone the matter.

Consent to judgment

38. (1) A respondent may consent to judgment by delivery of a written memorandum to the Court to that effect stating—

- (a) that he or she so consents; and
 - (b) whether his or her consent is for the full claim or less.
- (2) If the consent is for less than the full claim—
- (a) he or she may continue his or her defence as to the balance of the claim; and
 - (b) notwithstanding a judgment upon such consent the action may proceed as to such balance and it shall in that event be in all subsequent respects an action for such balance.

Costs

39. (1) The Court or Judge, in giving judgment or making any order, may make such order as to costs as it thinks just and equitable.

(2) The costs of any appeal, application or review by the parties may be—

- (a) awarded by the Court or Judge irrespective of the judgment in the cause; or
- (b) made costs in the cause; or
- (c) reserved to be dealt with at the conclusion of the action.

(3) If the court or a judge considers that the conduct of a party to an appeal or application under these rules has been such as to warrant such a course, the court may make any one or more of the following orders—

- (a) depriving a successful party of all or part of his or her costs in the appeal or application and additionally, or alternatively, in the tribunal below;
- (b) ordering a successful party to pay all or part of the costs of the other party in the appeal or application and additionally, or alternatively, in the tribunal below;
- (c) ordering a party to pay costs on a legal practitioner and client scale or on any other appropriate scale.

(4) If the court or a judge considers that the conduct of a legal practitioner representing a party to an appeal or application under these rules has been such as to warrant such a course, the court or judge may make any one or more of the following orders—

- (a) ordering him or her personally to pay all or part of the costs of the appeal or application and additionally, or alternatively, in the tribunal below;
- (b) ordering him or her to refund to his or her client all or any of the fees his or her client may have paid him or her in respect of the appeal and additionally, or alternatively, in the tribunal below;
- (c) ordering him or her not to charge his or her client any fee in respect of all or part of the work done by him or her in respect of the appeal or application and additionally, or alternatively, the proceedings in the tribunal below;
- (d) ordering him or her to pay the costs referred to in paragraph (a) on a legal practitioner and client scale or on any other appropriate scale.

(5) Before making an order in terms of subrule (3) or (4), the court or judge shall give the party or legal practitioner concerned an opportunity to make representations as to whether or not the order should be made.

(6) This rule shall not derogate from the power of the court or a judge to make any other order or give any direction, whether as to costs or otherwise, arising out of the conduct of parties or legal practitioners.

(7) Where a judgment or order for costs is made against two or more persons, it shall, unless the contrary is stated, have effect against such persons jointly and severally.

(8) Where there is a dispute as to the bill of costs, either party may apply to the Registrar for taxation and thereupon the Registrar shall on notice to both parties set down the matter for taxation.

(9) On taxation the Registrar—

- (a) shall allow all such costs, charges and expenses as appear to him or her to have been necessary or proper for the attainment of justice or for defending the rights of any party, but save as against the party who incurred the same, no costs shall be allowed which appear to the Registrar to have been incurred or increased through over caution, negligence or mistake;
- (b) may depart for good and sufficient reason from any of the prescribed tariffs where strict adherence to such provisions would be inequitable;
- (c) shall award a party who is not represented by a legal practitioner his or her disbursements in addition to necessary expenses.

(10) The Registrar's assessment shall be reviewable by a Judge at the instance of the aggrieved party.

Applications for rescissions or alterations of judgments

40. An application for the rescission or alteration of a determination, order or judgment of the Court or Judge on any of the grounds specified in the Act shall be made within twenty-one days from the date after the party has had knowledge of the determination, order or judgment:

Provided that unless the contrary is proven, the party shall be presumed to have had knowledge of the judgment within two days after the date thereof.

Stay of execution

41. (1) Pending the determination of an appeal the Court or a Judge sitting in chambers may, upon application, order a stay of the execution of a decision order or determination appealed against.

(2) In granting a stay of execution, the Court or Judge may fix any such terms as to security for the due performance of an arbitral award, decision, order or determination or any variation thereof as the Court or the Judge deems fit.

PART IV

GENERAL

Precedents and binding nature of decisions

42. (1) Where a case similar or identical to the one being heard by the Court has been previously decided by it, any principle established by that case shall have persuasive authority.

(2) Decisions of the Court shall be binding on all labour officers, arbitrators, disciplinary authorities and other determining authorities acting in terms of the Act.

Leave to appeal against decisions of the Court

43. (1) An application in terms of section 92F(2) of the Act seeking leave to appeal from any decision of the Court shall be made to the Judge of the Court who made the decision or in his or her absence, from any other Judge, within twenty-one days from the date of that decision.

(2) An application in terms of this rule shall be accompanied by a draft of the intended Notice of Appeal to the Supreme Court.

Referral in terms of section 175(4) of the Constitution

44. (1) Where a Judge wishes to refer a matter to the Constitutional Court *mero metu* in terms of section 175(4) of the Constitution, the Judge shall—

- (a) request the parties to make submissions on the constitutional issues or question to be referred for determination; and
- (b) state the specific constitutional issue or question the Judge considers should be determined by the Constitutional Court.

(2) Where a Judge is requested by a party to the proceedings to refer the matter to the Constitutional Court and the Judge considers that the request is not frivolous or vexatious, the Judge shall refer the matter to the Constitutional Court.

(3) A referral under subrule (1) or (2) shall be in Form LC 10 and shall be accompanied by a copy of the record of proceedings and statements from the parties, if any, setting out the arguments they seek to make before the Constitutional Court.

(4) Where there are factual issues involved, the Judge shall resolve or cause them to be resolved:

Provided that where there are no disputes of fact, the parties shall prepare a statement of agreed facts.

(5) The record of proceedings referred to in subrule (3) shall contain the record of appeal, the specific findings of fact by the Court and the issue or question for determination by the Constitutional Court:

Provided that where there is a statement of agreed facts in terms of the proviso to subrule (4), it shall suffice for the statement to be incorporated in the record in place of the specific findings of fact.

(6) Registrar shall prepare and transmit the record to the Constitutional Court within fourteen days of the date of such direction:

Provided that, before transmission, the Registrar shall ensure and certify that the record is correct and accurate and, in the case of a referral in terms of subrule (2), that it contains an appropriate draft order.

Conduct and dress of persons appearing and attending court

45. The Senior Judge may, through a practice direction, regulate the conduct and dress of persons appearing before or attending the Court.

Abandonment of matters

46. Where for any reason—

- (a) proof of service is not filed by the applicant or appellant with the Registrar in the manner and time prescribed;
- (b) the Registrar does not receive heads of argument from an applicant or appellant who is represented by a legal practitioner or representative within the prescribed period;

the matter shall be regarded as abandoned and the Registrar shall inform the parties accordingly:

Provided that the matter may be reinstated by a Judge in chambers on good cause shown upon application made within twenty-one days of the abandonment.

Forms

47. (1) The Forms prescribed in the Schedule shall be used in all proceedings to which they are applicable with such modifications as the circumstances may require.

(2) Subject to this rule, a person required to complete any form prescribed in the Schedule may modify it by making such alterations to it as circumstances require.

(3) The Registrar may refuse to accept any modified form and require the party modifying it to submit another form substantially compliant with that prescribed in the Schedule if the Registrar is of the opinion that the modified form is not so compliant.

(4) Where a dispute arises as to the discretion exercised by the Registrar under subrule (3), the Registrar shall refer the matter to a Judge in chambers who may thereupon—

- (a) direct the Registrar to accept the modified form; or
- (b) direct the party who modified the form to submit another form substantially compliant with that prescribed in the Schedule; or
- (c) give such other directions as to the manner in which the parties may proceed as the Senior Judge thinks fit in the circumstances.

SCHEDULE (RULE 47)

Forms

ARRANGEMENT OF FORMS

- LC 1. Notice of Application.
- LC 2. Notice of response.
- LC 3. Notice of Opposition.
- LC 4. Notice of appeal to Labour Court.
- LC 5. Notice of application for review by Labour Court.
- LC 6. Notice of assumption of agency.
- LC 7. Notification to party to attend proceedings.
- LC 8. Summons to Witness.
- LC 9. Document summons.
- LC 10. Referral of matter to Constitutional Court.
- LC 11. Application for an order by a Labour Officer or Designated Agent in terms of section 93(5)(a), (b) and (c) of the Act.
- LC 12. Notice of chamber application.
- LC 13. Notice of application for appointment/confirmation in terms of section 120 of Act.

Case No.

In the Labour Court of Zimbabwe

In the matter between:

..... Applicant

and

..... Respondent

NOTICE OF APPLICATION

TAKE notice that Applicant intends to apply for an order in terms of the draft annexed hereto. The accompanying affidavit shall be used in support of the application.

Further take notice that if you wish to oppose the application, you are required to file a Notice of Opposition together with an affidavit setting out the basis of the opposition within ten (10) working days.

Dated at this day of 20.....

Applicant
(Address)

TO: Respondent
(Address)

TO: Registrar,
Labour Court

FORM LC 2

Case No.

In the Labour Court of Zimbabwe

In the matter between:

..... Applicant/
and

..... Respondent

NOTICE OF RESPONSE

TAKE notice that the Respondent intends to respond to the appeal.

Further take notice that the attached affidavit shall be used in support of the Respondent's case.

Dated at this day of 20.....

Respondent
(Address)

TO: Appellant/Applicant
(Address)

TO: Registrar,
Labour Court

FORM LC 3

Case No.

In the Labour Court of Zimbabwe

In the matter between:

..... Applicant

and

..... Respondent

NOTICE OF OPPOSITION

TAKE notice that the respondent intends to oppose the application/review.

Further take notice that the attached affidavit shall be used in support of the respondent's case.

Dated at this day of 20.....

Respondent
(Address)

TO: Appellant/Applicant
(Address)

TO: Registrar,
Labour Court

FORM LC 4

Case No.

In the Labour Court of Zimbabwe

In the matter between:

..... Applicant

and

..... Respondent

NOTICE OF APPEAL

TAKE notice that the Appellant hereby appeals against the attached arbitration award/determination/dismissal dated the day of 20....

GROUND OF APPEAL *(must be concise and precise)*

Wherefore appellant prays for:

.....
.....

Dated at this day of 20....

Appellant
(Name, Signature and Address)

TO: Registrar, Labour Court

TO: Respondent
(Name and Address)

NB. Upon service of this notice, respondent shall file his or her response to the appeal within ten (10) working days.

Case No.

In the Labour Court of Zimbabwe

In the matter between:

..... Applicant

and

..... Respondent

APPLICATION FOR REVIEW

TAKE notice that the Applicant hereby applies for review on the following grounds;

GROUND FOR REVIEW *(must be concise and precise)*

.....
.....
.....
.....

And take notice that the accompanying affidavit shall be used in support of the application.

Further take notice that if you wish to oppose the application you are required to file a Notice of Response together with an opposing affidavit setting out the basis of your opposition within ten (10) working days.

Wherefore Applicant prays for:

.....
.....

Dated at this day of 20.....

Applicant
(Name, Signature and Address)

TO: Registrar, Labour Court
(Address)

TO: Respondent
(Name and Address)

Labour Court Rules, 2017

FORM LC 6

Case No.

In the Labour Court of Zimbabwe

In the matter between:

..... Applicant/Appellant

and

..... Respondent

ASSUMPTION OF AGENCY

TAKE notice that Messrs
(*Name of Legal Firm*)

of
(*Address*)

do hereby assume agency on behalf of Applicant/Appellant/Respondent in the above matter.

Messrs
(*Name of firm*)

Date:

TO: REGISTRAR,
Labour Court
(*Address*)

TO: Applicant/Appellant/Respondent
(*Name and Address*)

Case No.

In the Labour Court of Zimbabwe

In the matter between:

..... Applicant/Appellant

and

..... Respondent

NOTIFICATION TO PARTY TO ATTEND PROCEEDINGS

TAKE notice that the above mentioned application/appeal/matter to which you are a party shall be heard at

.....
(Specify address and location of Court)

on theday of (year) atam/pm.

NB. If, as a party, you fail to attend the hearing at the time and place notified, the hearing may proceed without you to the possible detriment of your interests.

Given under my hand at this day of20....

.....
REGISTRAR OF COURT

FORM LC 8

Case No.

In the Labour Court of Zimbabwe

In the matter between:

..... Applicant/Appellant
and

..... Respondent

SUMMONS TO WITNESS

TO:

.....
.....
.....
(Names of witness/es and address/es)

TAKE notice that you are required to appear in person before the Labour court sitting at on the day of (year) at a.m/p.m. to give evidence in respect of the above matter.

Further take notice that you are required to bring with you for production before the Court the following documents:-

- 1.....
- 2.....
- 3.....

.....
REGISTRAR OF COURT

Case No.

In the Labour Court of Zimbabwe

In the matter between:

..... Applicant/Appellant

and

..... Respondent

DOCUMENT SUMMONS

TO:

.....

.....

.....

(Names of witness/es and address/es)

TAKE notice that you are required to bring the following documents to the Registrar of the Labour Court at

Further take notice that you must comply with this summons within ten (10) days of receipt thereof.

DOCUMENTS: —

1.....

2.....

3.....

.....

REGISTRAR
Labour Court

Labour Court Rules, 2017

FORM LC 10

Case No.

In the Labour Court of Zimbabwe

In the matter between:

..... Applicant/Appellant
and

..... Respondent

REFERRAL OF MATTER TO CONSTITUTIONAL COURT

THE matter is hereby referred to the Constitutional Court in terms of section 175(4) of the Constitution.

Accompanying documents:

.....
.....
.....
.....

.....
REGISTRAR
Labour Court

FORM LC 11

Case No.....

IN THE LABOUR COURT OF ZIMBABWE

In the matter between:

..... Applicant

And

..... Respondent

**APPLICATION FOR AN ORDER BY LABOUR OFFICER/
DESIGNATED AGENT IN TERMS OF SECTION 93(5)(a) and (b) OF
THE ACT**

TAKE notice that on the day of20..... at the Labour Courtthe applicant intends to apply for confirmation of the ruling and order in this action together with costs in terms of the annexed draft order. The accompanying affidavit and documents attached shall be used in support of the application.

Further take notice that if you wish to oppose the application, you are required to file a Notice of Response in Form LC3 together with an affidavit setting out the basis of your opposition within ten (10) working days.

Dated at thisday of 20.....

.....
Applicant

TO: FIRST RESPONDENT
(Address)

TO: SECOND RESPONDENT
(Address)

AND TO: THE REGISTRAR,
LABOUR COURT

FORM LC 12

Case No.

IN THE LABOUR COURT OF ZIMBABWE

In the matter between:

..... Applicant

And

..... Respondent

CHAMBER APPLICATION

APPLICATION is hereby made for an order in terms of the order\draft 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 thisday of 20.....

.....
Applicant

TO: RESPONDENT
(*Address*)

TO: REGISTRAR,
LABOUR COURT OF ZIMBABWE

FORM LC 13

Case No.

IN THE LABOUR COURT OF ZIMBABWE

In the matter between:

..... Applicant
 And
 Respondent

**APPLICATION FOR APPOINTMENT/CONFIRMATION IN TERMS
 OF SECTION 120 OF ACT**

PLEASE take notice that an application made in terms of section 17 of Act 5 of 2015 shall be heard before the Labour Court at on day of in the year for the appointment of an administrator/confirmation of the appointment of a provisional administrator (delete the inapplicable) in terms of the draft annexed hereto.

Further take notice that the accompanying affidavit/s and document/s are tendered in support of the application.

Dated at this day of 20.....

.....
Applicant

TO: RESPONDENT
 (Address)

TO: THE REGISTRAR,
 LABOUR COURT OF ZIMBABWE.

