

GOVERNMENT OF ZAMBIA

STATUTORY INSTRUMENT NO. 72 OF 2018

**The High Court Act**  
(Laws, Volume 3, Cap. 27)

**The High Court (Amendment) Rules, 2018**

IN EXERCISE of the powers contained in sections 44 and 45 of the High Court Act, the following Rules are made:

1. These Rules may be cited as the High Court (Amendment) Rules, 2018, and shall be read as one with the High Court Rules, in these Rules referred to as the principal Rules. Title  
Cap. 27
2. Order XXXI of the principal Rules is amended— Amendment  
of Order  
XXX I
  - (a) by the deletion of rule 4 and the substitution therefor of the following:
    4. (1) A trial judge shall, at the scheduling conference and before setting an action down for trial, refer the action for mediation, except for a case involving a constitutional issue, the liberty of an individual, an injunction or where the trial Judge considers the case to be unsuitable for referral. Referral to  
mediation
    - (2) The referral order under sub-rule (1) shall be in form 28A set out in the First Schedule.
    - (3) The judge shall, where mediation fails, inform the parties of a trial date for hearing of the matter by way of notice of hearing.
    - (4) The following interlocutory matters shall be referred to mediation in matrimonial causes:
      - (a) maintenance of spouse, children or both, and property settlement; and
      - (b) application for the custody of children by a party.

(b) by the deletion of rule 5 and the substitution therefor of the following:

List of mediators

5. (1) The mediation officer shall keep a list of trained and certified mediators.

(2) A mediator shall only act in the capacity of the field of specialisation or experience in respect of which that mediator is listed.

(3) A mediator shall only be listed if that mediator has five years or more of work experience in that mediator's field.

(4) The parties to proceedings that have been referred to mediation shall be accorded an opportunity to select a mediator from the list of mediators within five days of the date of the referral.

(c) by the deletion of rules 6 and 7, and the substitution therefor of the following:

Collection of copies of record by mediator

6. The mediation officer or court registry, shall provide a mediator with copies of the record of proceedings and pleadings, except that the original record and pleadings shall remain in the court registry.

Time limit for conduct of mediation

7. (1) The mediator shall, within forty-five days from the date of receiving copies of the record of proceedings and pleadings mediate and conclude the matter between the parties.

(2) The mediator shall at least five days before the intended date of mediation, inform the parties of a date, time and venue for mediation by way of a notice of mediation.

(3) The mediator shall, where the parties fail to settle the matter through mediation, refer the matter back to the referral court for adjudication through the mediation officer, with a brief report stating that the mediation was unsuccessful.

(d) by the insertion, immediately after rule 7 of the following new rule:

Extension of time for mediation

7A. Where the court considers that a mediator should be given an extension of time within which to mediate, or where the parties themselves request for an extension of time to mediate, the court shall impose a reasonable time within which that mediation shall be concluded.

(e) by the deletion of rule 8 and the substitution therefor of the following:

8. (1) The parties shall attend mediation either in person or with a legal representative. Appearance before mediator

(2) Where a party is a body corporate, partnership, state institution or entity other than an individual, a director or senior officer of that body corporate, partnership, state institution or entity shall attend the mediation.

(3) The court shall, where a party that has received notice of mediation in accordance with rule 7 fails to attend without reasonable cause, make an order as to costs from the date of the referral of the proceedings to mediation in favour of the party in attendance, despite the defaulting party being successful in the action.

(f) by the deletion of rules 10 and 11 and the substitution therefor of the following:

10. (1) A mediator, whether court appointed or appointed by the parties to the mediation, shall return the copies of the record of proceedings and the report within five days of the conclusion of the mediation to the mediation officer and shall inform the parties of such return. Return of copies of record to mediation officer

(2) A mediator shall not communicate with any trial judge about the mediation.

(3) Statements made during mediation are confidential and privileged, and shall not be used as evidence in any matter.

(4) The record of mediation, statements made at any mediation session, and any information obtained during the mediation shall not be admissible as evidence in any subsequent court proceedings.

11. (1) The mediator shall not more than five days after the close of the mediation proceedings, if the mediation fails, forward copies of the record to the mediation officer with a report in form 28C set out in the First Schedule. Filing of mediation report with mediation officer and referral of matter back to court

(2) The mediation officer or proper officer shall, not more than three days after receipt of the report referred to in sub-rule (1), submit the report to the trial Judge who shall, not more than ten days after receipt of the report from the mediation officer or proper officer, summon the parties in terms of Rule 5.; and

(g) by the insertion of the following new Rule immediately after Rule 15:

Mediation  
guidelines

16. (1) The purpose of referring proceedings to mediation is to assist the parties reach an agreement in good faith on a fair and efficient resolution or partial resolution of their dispute.

(2) In order to give effect to sub-rule (1), the parties to proceedings that have been referred to mediation shall participate in the mediation in good faith, and shall—

(a) provide all reasonable assistance to enable the mediation to proceed and to be concluded within the time allocated;

(b) make all reasonable efforts to attend every mediation session in person or through a legal representative; and

(c) strive to minimise the costs involved in the mediation by complying timeously with orders by the mediation officer.

(3) A party to mediation may, at any stage, make one or more proposals with a view to reaching a settlement or limiting the issues in dispute.

(4) A proposal made under sub-rule (3) shall be—

(a) in writing;

(b) communicated to the mediator and to all other parties; and

(c) in sufficient detail to enable the other parties and the mediator to understand the nature of the proposal.

(5) Where it appears to the mediator that there is a possibility of a settlement acceptable to the parties, the mediator may, with the prior consent of the parties, formulate the terms of settlement in writing, as a proposal for consideration by the parties.

(6) In the absence of a written agreement of all parties to the contrary, the mediation shall take place in private and shall be confidential.

(7) All documents or other information disclosed and all communications made by any party specifically for the purposes of the mediation, are deemed to have been disclosed or made on a privileged and without prejudice basis, and no privilege or confidentiality is deemed to have been waived by that communication or disclosure.

(8) Subject to these Rules, unless a party makes a written statement to the contrary, nothing said or done in the course of mediation is taken as the expression of an intention to affect the legal rights of the party or in any way prejudice that parties position in the mediation or any arbitration, adjudication or litigation.

(9) All notes and records taken by or before the mediator and all statements made by the mediator in connection with the mediation shall, be confidential and be destroyed at the conclusion of the mediation.

(10) Subject to sub-rule (11), the parties and any third party who attended one or more mediation sessions shall not disclose to any person any information discussed or disclosed, communication made or agreement reached in the course of mediation.

(11) A disclosure prohibited under sub-rule (10) may be permitted where it becomes necessary for the implementation or enforcement of a successfully mediated agreement—

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(a) with the prior written consent of all parties;  
or

(b) within the terms of an order made by the mediator.

(12) A mediator shall not disclose any information received in confidence in the course of a separate or private meeting to any other party or the party's legal representative in the course of the mediation or to any other person at any other time, unless authorised by that other party.

(13) Sub-rule (10) shall not affect the right of a party to make use of that party's own documents and information, except that reference shall not be made to the mediation in connection with or related to such documents and information.

LUSAKA  
10th September, 2018

I. C. MAMBILIMA,  
*Chief Justice*