DEVELOPMENTAL CHANGES IN THE HIGH COURT SYSTEM IN
ZAMBIA: CASES STUDY – COMMERCIAL REGISTRY

BY

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DEVELOPMENTAL CHANGES IN THE HIGH COURT SYSTEM IN ZAMBIA: CASES STUDY – COMMERCIAL REGISTRY

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An obligation Essay submitted to the University of Zambia, Law faculty, in partial fulfilment of the requirements the Degree of Bachelor of Laws

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December 2005

Mr.  
Supervisor

December 2005
THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

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Lwimba Chifumbe Ng’onga

ENTITLED

DEVELOPMENTAL CHANGES IN THE HIGH COURT SYSTEM IN ZAMBIA: CASES STUDY – COMMERCIAL REGISTRY

Be accepted for examination. I have checked it carefully and I am satisfied that it fulfils the requirements relating to the format as laid down in the regulations governing obligatory essays.

Dated 26/12/2005

Supervisor
DECLARATION

I, Lwimba Chifumbe Ng'onga do solemnly declare that the work herein represents my own understanding and analysis of issues and does not in any way represent any product and/or work submitted by any person to the University of Zambia or any other institution.

NAME: Lwimba Chifumbe Ng'onga
SIGNATURE: [Signature]
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Moredays, thank you for being a brother indeed and May God bless you.

To all my Colleagues that are so numerous to mention I say God be with you all.
<table>
<thead>
<tr>
<th>abbr</th>
<th>description</th>
</tr>
</thead>
<tbody>
<tr>
<td>ADR</td>
<td>Alternative Dispute Resolution</td>
</tr>
<tr>
<td>COMESA</td>
<td>Common Market For Southern Africa</td>
</tr>
<tr>
<td>DANIDA</td>
<td>Danish Development Agency</td>
</tr>
<tr>
<td>ECJ</td>
<td>European Court of Justice</td>
</tr>
<tr>
<td>U.K.</td>
<td>United Kingdom</td>
</tr>
<tr>
<td>PSCAP</td>
<td>Project for Capacity building</td>
</tr>
</tbody>
</table>
CHAPTER 1

INTRODUCTION

This study intends to acquaint us with the operations of the commercial registry. We shall attempt to assess its effectiveness and see whether it is any relevant and an answer towards the quick dispensation of justice.

Since our law owes its existence to common law especially where there is a lacuna we shall look at the commercial list as has been provided for in the latest edition of the Halsbury's Laws of England. These will not only give us an understanding of what the commercial list is about but also act, as a guide to the same.

We shall also look at other factors that have contributed towards making our courts less effective and attempt to assess what efforts are being put into place and whether they are worthwhile given the fact that the country does not have the needed resources to bring about any changes as may be desired. Having said so let us look at the reasons why the commercial registry was seen as a necessary evil as far as the high court system is concerned.

According to the Clerk in charge of the registry the court was established due to 1) the need to decongest the general cause list and therefore making it more effective 2) the need to create a commercial court to specialise in commercial matters and 3) the need to dispense
with certain procedural rules which not only make the process complicated but also long and frustrating.

It must also be pointed out here that the way a commercial matter is commenced is the same with other civil matters. However the substantive laws and rules of the high court apply save for procedure, which has now been provided for by way of Order 53 commercial action practice directions as we shall see when we get to the finer details of our study.

The high court system of Zambia

A. A General Overview

As has been pointed out already the Zambian legal system is based on common law traditions though most laws have been codified and are published under the "Laws of Zambia". Where the Zambian law is silent, the current law of England and Wales is applicable. Similarly, decisions of common law courts are influential in Zambian courts.¹

From the constitutional point of view, part VI of the 1996 constitution establishes the judiciary; for instance, Article 92 talks about the Supreme Court while the Supreme Court Act, chapter 52 of the laws of Zambia sets out its jurisdiction; that it is a final court of appeal for civic and criminal matters and that it is a superior court of record. It is composed of the Chief Justice, the Deputy Chief Justice and seven or

Looking at the cases that have been handled so far it seems the size of the commercial registry is okay especially that apart from the lack of funds, new procedural rules that dispense with unnecessary hiccups have been introduced.

A check at the commercial registry reveals that 1871 cases have been filed so far as is shown below.

C. TABLE OF CASES FILED SO FAR

<table>
<thead>
<tr>
<th>YEAR</th>
<th>NO. OF CASES FILED</th>
<th>CASES PENDING</th>
<th>CASES THAT HAVE BEEN DISPOSED OF</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000</td>
<td>305</td>
<td>4</td>
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<td>316</td>
<td>21</td>
<td>295</td>
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<td>2002</td>
<td>500</td>
<td>63</td>
<td>437</td>
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<tr>
<td>2003</td>
<td>259</td>
<td>178</td>
<td>81</td>
</tr>
<tr>
<td>2004</td>
<td>496</td>
<td>*</td>
<td>*</td>
</tr>
</tbody>
</table>

NB. * The Commercial Registry opened its doors to the public on the 1st of April 2000.

If we analysed the table above we shall discover that 1) The number of cases dropped in 2003 and 2) the number of pending cases seen to be on the increase. While the possibility of withdraws due to one frustration or another may not be ruled out, the reasons are many and may be summed up as follows;
1) The registry is now restricted to purely commercial matters. Previously it was also acting as a mediation court until September 2003. The mediation registry has now been set up at the Supreme Court building.

2) Certain other cases involving amounts of less than K 16 million and below are now being referred to the subordinate court unlike earlier on. The minimum claim so far accepted is K30 million and above (though there is still insistency on the part of some litigants that their cases remain here) which in fact has happened and

3) Some cases are pending trial (among which are those that have been referred to other judges as for instance where an applicant demands that their case be handled by another judge or where the judge in question recurses himself from a matter in the interest of justice).

If we look at the explanation above, we shall see that the resulting inconvenience can be said to be more or less a necessary evil in that the aim has been mainly to ensure that the court operates more effectively.

According to the clerk of court in-charge of the registry at-least 500 cases were to be filed by December 2004, which if we look at the table given indicates a slight increase in number.

In terms of its operations, a clerk of court supervises the registry and is answerable to the Judge in-charge of the commercial list. Under him are four clerks whose duties include; the scrutinizing of documents, recording, writing of applications and claims and also processing
documents as each case comes. These clerks have to also consult him where they have difficulties just as he has to consult the Deputy Registrar for any queries on how to handle any particular issue concerning any matter.

Having said so, let us now consider the UK situation in terms of how the commercial registry or court works and the reforms that have so far characterised that system so that we understand what the Commercial List is about. This will also make us see if the standards we have attained so far are worthwhile.
CHAPTER 2

(i) The Commercial Court in UK

The Commercial Court was established in 1895 and was made a part of the Queen’s Bench Division to provide a court in which there was a greater familiarity...

*With the subject matter of commercial and mercantile disputes and to provide procedures which would enable those disputes to be determined justly, expeditiously and efficiently and without unnecessary formality.*

The Commercial Registry was only to take ‘commercial claims’ as defined by rules of court thus including any case arising out of trade and commerce in general – the whole list encompassing any case relating to:

1. a business document or contract;
2. the export or import of goods;
3. the carriage of goods by land, sea, air or pipeline;
4. insurance and re-insurance;
5. banking and financial services;
6. the operation of markets and exchanges;

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6. Halsbury’s Laws of England 4th ed. Lord Mackay of Clashfern 1987-97 Volume 37 Practice and Procedure, Reed Elsevier (UK) Limited, 2001 on Parag. 1370, P. 407. The originator of this successful expedient was Matthew J. He envisaged the establishment of a court to curter for the greater expense of the commercial community, and thus avoiding necessary delay and inconvenience and the greater expense of the ordinary procedure. See also paragraph 59, on Page 52 for other details.
(6) business agency and

(7) arbitration

The judges of the commercial court are such of the puisne judges of the High Court as the Lord Chancellor may from time to time nominate to be Commercial Court judges. One of these judges is in charge of the Commercial List, in which commercial claims in the Queen’s Bench Division may be entered.

All proceedings in the commercial court, including all pre-trial applications and any appeals from any judgement, order or decision of a master or district judge prior to the transfer of any case to the commercial list must be heard or otherwise dealt with by a judge in a commercial court. Secondly, proceedings for the enforcement of any judgement or order for payment or money given or made in the commercial court are referred to the master of the Queen’s Bench Division, unless a judge orders otherwise.7

Special provision for commercial proceedings is made in the civil procedure rules and the practice direction relating to the commercial court, which is supplementary thereto, but these are also subject to the provisions of the commercial court guide, which is a guide to procedure in the commercial court. It is however not a substitute for

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the Civil procedure rules and neither does it attempt to cover all
procedural points but to for instance areas relating to management,
application and expert evidence and to statements of case and bundle
preparation.

The commercial court also encourages the use of alternative
dispute resolution (ADR) in appropriate cases, including mediation,
conciliation and (non-binding and without prejudice) early neutral
evaluation by a commercial court judge. 8

(ii) Commercial Proceedings in the Commercial Court

Proceedings in the commercial court are commenced by claim forms
under the relevant parts of the civil procedure rules, except for certain
applications relating to arbitration. The appropriate claim form must be
marked in the top right hand corner with the appropriate words (for
instance’ Queen’s Bench Division, commercial court’) whether the claim
in issue coming in or out of the commercial list.

The statement of value of the case (otherwise required by the civil
procedure rules) is not necessary where a claim form has been marked
for the commercial court in this way.9

8. Halsbury’s Laws of England 4th ed., P. 408. It must be observed here that all
Judge’s of the High Court have all in respect equal power authority and
jurisdiction except where the Supreme Court Act 1981 expressly provides
otherwise.

adapted version of the part 7 claims just as a similar one has been approved for
part 8 claims. There are also provisions available for transfer into and out of the
Commercial list; the judge may by own initiative do so and equally by consent of
the parties involved.
(iii) Pleadings in Commercial Proceedings

These must be drafted in accordance with the commercial court guide one of the requirements being that they have to be brief and as concise as possible to avoid contentious paraphrasing. The court may however order that more particulars be provided as an exception to the rule.\textsuperscript{10}

(iii) Case Management in Commercial Proceedings

Cases here proceed as if allocated to a multi-track and the usual allocation rules do not apply. \textsuperscript{11}

The commercial court case management procedure is also set out in the commercial court guide; so are the complementary practice directions, which deal with case management in the multi-track. However provisions dealing with failure to comply with case management directions do also apply similarly as in civil matters.

The commercial court guide identifies ten 'Key features' of case management as follows:

(1) Statements of the case will be exchange within a fixed or monitored time periods;

\textsuperscript{10} Halsbury's Laws of England 4\textsuperscript{th} ed. P 410, pages so being relied upon may be attached or served as per order.

\textsuperscript{11} Halsbury's Laws of England 4\textsuperscript{th} ed. P 410 the term multi-track refers to the normal track for any civil trial. It is something to do with the procedure to follow in a given type of cases. There is also the fast track where court expects trials take not more than one day and oral expert evidence is limited. For instance one expert per party may be used in relation to any expert field. The other one is the small claims track for personal injuries.
A case memorandum, a list of issues and a case management bundle will be produced at any early point in the case;

(1) The case memorandum, list of issues and a case management bundle will be amended and updated or revised (which ever is recommended by the court at every stage of the case);

(2) A mandatory case management conference will be held shortly after statements of the case have been served, if not before (and preceded by the parties lodging case management information sheets identifying their views on the requirements of the case);

(3) At the case management conference the court will (as is necessary) discuss the issues in the case, and the requirements of the case with the advocates retained in the case, the court will set a pre-trial timetable (to include a progress monitoring date and, normally, a fixed trial date); consideration being given to the possibility of the trial of preliminary issues, and (further where appropriate) alternative dispute resolution ('ADR') directions may be made;

(4) Before the progress monitoring date the parties will report to the court (based on the progress monitoring information sheet) or compliance with the pre-trial timetable;

(5) On or shortly after the progress monitoring date a judge of the court will (without a hearing) consider progress and then confirm the fixed trial date or, reconvene the case management conference in order to give further directions where necessary;
(6) If at the progress monitoring date all parties have indicated that they will be ready for trial, all parties will complete a pre-trial checklist.

(7) In many cases there will be a pre-trial review; and parties will be required to prepare (for consideration by the court) a trial time table and;

(8) Throughout the case, there are regular reviews of the estimated length of trial.

The above procedure presumes that service of particulars of claim has been done. However in some cases the court may commence case management before particulars of claims are served or may decide to try a case without particulars of claims or a defence. The overriding objective is what the court tries to serve as it undertakes case management.

(iv) Disclosures in Commercial Proceedings

The court tries by all means to restrict disclosure to the merits of the particular case so that the disclosure so ordered is within the confines of that case. It is thus the parties’ duty to carefully limit disclosure even by sampling methods where it is appropriate.

Disclosure statements are supposed to meet three additional requirements relating to searches for documents while complying with the relevant rules.¹²

¹² Halsbury’s laws of England 4th ed., P. 411. These include (i) identifying the limits of the search, (ii) explaining fully the basis under which certain omitted areas may be considered reasonably unnecessary and (iii) specify by whom the search was conducted.
Applications in Commercial Proceedings

There are four types of applications in the commercial court, each treated differently in the commercial court guide. They include:

1. applications without notice;
2. expedited applications;
3. ordinary applications
4. heavy applications

There are special provisions made in the commercial court guide in relation to each of the above types of applications. A good example here is an adapted version or application notice made for time estimates and time limits for applications.

Ordinary applications in the commercial court are applications on notice expected to involve an oral hearing lasting half a day or less. These are normally heard on Fridays, and are short. They may even be heard without evidence and at short notice.

In the case of other applications evidence in support is normally served with the application, with evidence in answer coming within 14 days and any in reply within 7 days thereafter.

In ordinary applications, an ordinary application bundle must be lodged with the listing office at the stipulated time one clear day before the date fixed for the hearing [the application must be stood out of the list without further warning] and provided by the applicant to other parties. The listing office will then pass the case management bundle to
the judge and Skeleton arguments must be served on the advocates for all other parties to the application, and lodged with the listing office similarly the day before the hearing.

In heavy applications, oral hearing is normally and does last more than half a day and normally involves more evidence and complex or extensive issues. Even here evidence in support is served with the application with evidence in answer coming within 28 days and any in reply as soon as possible or at least within 14 days thereafter.\textsuperscript{13}

It is also expected that evidence bundles are lodged with the listing office and 2 clear days before the hearing and the documents bundle but the day before the day fixed for the hearing, or preferably area; the same is applicable to skeleton arguments that must be lodged with the listing office and served on the advocates for all other parties to the application two clear days before the hearing date. The respondent must also serve his skeleton arguments one clear day before the hearing date.

The commercial court guide makes further detailed provisions for the lodging of reading lists, bundles, skeletons, evidence and time estimates in various different circumstances. Provision is also made where consent applications are allowed. Further, applications that are urgent as for instance freezing injunctions and search orders are provided for through other available provisions.

\textsuperscript{13} Halsbury's Laws of England 4\textsuperscript{th} ed. P 412
(vi) Trial in the Commercial Court

It is here where the spirit and purpose of the various provisions of commercial court practice are displayed and in particular these are detailed. Sets out in the commercial court guide are issues that relate to the following;

1. witnesses of fact and witness statements;
2. expert witnesses;
3. evidence by video link;
4. taking evidence from abroad;
5. facility for expedited trial;
6. information technology at trial;
7. trial sitting days (not normally including Fridays)
8. oral opening statement at trial;
9. written closing submissions;
10. judgements;
11. costs;
12. multi-party disputes which may be allocated to a two judge team;
13. litigants in person.

The Civil Procedure Rules have brought procedure in other civil courts more into line with the objective and purpose of practice in the commercial court.
(iv) **Powers of Commercial Court or Judges in arbitration proceedings.**

Two distinct functions may be associated with the commercial court in arbitration proceedings namely;

1. the role of its judges as arbitrators (they are the ones that are usually appointed for this purpose) and
2. the supervisory role in commercial cases.

Where one is so appointed they have to weigh all circumstances surrounding and where permissible the said judge of the commercial court or any other official Referee may accept appointment as sole arbitrator or an empire, by or by virtue of an arbitration agreement where the dispute appears to him to be of a commercial nature or character. Where there is an appeal from the decision of a judge appointed as an arbitrator, any appeal must be made to the court of appeal, unlike the commercial court where non-judge arbitrators must appeal.\(^{14}\)

(vii) **Mercantile courts and business lists.**

There are also provisions relating to the mercantile court claims by way of normal process and or by transfer from another court. The term “mercantile claims” refers to claims relating to commercial or business transactions and includes (but is not limited to) any claim relating to;

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(1) a business document or contract;

(2) the export or import of goods or the sale of goods;

(3) the carriage of goods by land, sea, air or pipeline;

(4) the exploitation of oil and gas reserves;

(5) insurance and re-insurance;

(6) banking and financial services;

(7) the operation of markets and exchanges;

(8) business agency;

(9) the custom and practices of particular trades, business or commercial organisations;

(10) commercial fraud;

(11) professional negligence in a commercial context; and

(12) arbitrations applications.

A mercantile claim intended to be entered in the commercial list of the commercial court Queen’s Bench Division must be began by a claim form issued out of the Admiralty and commercial Registry at the Royal Courts of justice.\(^\text{15}\)

We having considered practice and procedure in general but there are other provisions as orders 73 – 74, which deal with special

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15. Halsbury’s Laws of England 4\(^{th}\) ed. P 41 Reference to mercantile court, Admiralty court and commercial court may seem a unsconception but not N1.2 of the ADMIRALTY AND COMMERCIAL COURTS GUIDE. Proves otherwise as we saw that a mercantile claim may actually involve a commercial interest. According to note N1.2 the guide for both courts in fact prepared in consultation with the admiralty judge.
proceedings as per Rules of the Supreme Court 1965. For instance Order 72 gives certain definitions, which are important to our discussion.

Under the order it is stated that it applies to actions in the Queen’s Bench Division. “Commercial Actions” has been interpreted to include

any cases arising out of the ordinary transactions
or merchants and traders and, without prejudice
to the generality of the foregoing words, or any
relating to the construction of clause a
mercantile document, the export or import or
merchandise, affreightment, insurance, banking,
mercantile agency and the usage thereof.

2. The commercial list

According to the order shall be the

“Commercial List” in which commercial
actions in the Queen’s Bench Division may be entered in accordance with the provisions
of this order for trial in the commercial court...\textsuperscript{16}

Having so discussed the system in the UK let us now consider the Barry V. Peruvian Corporation Limited case since it was the first case to be handled as a commercial matter. The facts here are that the plaintiff issued a writ of summons against the defendant in the

\textsuperscript{16} Halsbury’s Laws of England 4\textsuperscript{th} ed. P 41 the order also explains the power of the Liverpool and Manchester district judges. Order 73 talks about applications relating to arbitration
civil registry but later made an application to the court before the latter could even make any appearance. Upon discovering what had happened the defendant then sought an order to have a declaration that the move as allowed was in fact made without jurisdiction and thus wrong on that ground.

In delivery judgement Lord Ester had to observe that the plaintiff issued a writ in what was a commercial cause pure and simple, and therefore an application to put it into the commercial list was within his rights.\textsuperscript{17} According to him, \textit{cases in the commercial list are the same as any other case except that they relate to commercial business – the notice relating to such not being a rule made by authority but a practice agreed on by the judges of the Queen's Bench Division, who have the right to deal by convention among themselves with the mode to dispose of the business in their courts}. They can deal with the question of what judge a cause shall come before, and for the benefit of suitors it has been arranged that on the application of either party a commercial cause may be put on a separate list, so as to be in train to be tried before one of the several

\textsuperscript{17}. Barry V. Peruvian Corporation Limited (1896) 1 Q. B. 208 at 209. In specific reference to the issue in contention he further observed that it was not necessary that the defendant be before the judge but that once the order is made, when he appears, the defendant would or may then now object that the cause is not in fact a commercial cause. According to Lord Ester such was the only ground on which he could object and if he is right in this, no injury would be done by the making of the order. Further the judge observed that such a course makes the practice simple and clear, and that where a cause is really a commercial one, a Summons only is required. On this bases the court of Appeal found against the defendant and ruled that the order needed to address issues as to whether the cause was a commercial cause or not.
judges. When it is done the judge in chamber will deal with the case under the rules and directions as to the mode of trial and other preliminary steps.

Today, the court in the UK has expanded to the level where cases involving big international organisations are being heard by the court. Since the coming in of the European Union, cases are being handled to a level where even other nations of the European community are seeking assistance from the UK court. For instance the first UK compensation damages case to be handled was heard under Article 81 and 82 of the European Commission Treaty and in particular the Arkin V. Borchard Lines Limited case where it was made possible for parties to get damages under national laws the closest fact being that national courts could award damages for breach of EC (or European community competition Law in the European court of Justice (ECJ) court of Appeal in the case Courage V. Creha. 18 This development now has not only over-tuned previous EC (or European Community) jurisprudence but also further necessitated the modernisation of reforms by way of derogating enforcement away from the European court of Justice. 19

18. Arkin V. Borchard Lines Limited (2003) EWHC 687 (comm. Court) The issues involved include; predatory pricing and the spreading of rumours that the BCL was insolvent and would have to exit the market. Judge Colman held that the liner conferences were collectively dominant to the extent that they had the potential to exercise market power should they have wished so. With regard to the price set by the defendant, no proof was found.

Considering the above it can be observed that the court in the UK still utilizes alternative dispute resolution (ADR), Mediation and conciliation in addition to the given methods available for handling matters.

Looking at the influence that the Court in the U.K. has over European affairs is enough testimony to prove that the Court has scored successes. Having said so let us now look at the Zambia situation and see how the court is fairing.
CHAPTER 3

PRACTICE AND PROCEDURE IN ZAMBIA

Having considered the standard as has been mentioned about the UK it can only be stated from the onset that the Zambian Commercial Court has saved itself from the trouble of detailed rules and provisions so that to that extent, it makes practice and procedure different from that provided for in the U.K. This is because of the introduction of Order 53 Commercial Action Practice Directions. The advantage of this is that it makes things manageable and easier to run which is important especially that we also have no financial capacity or even the human resource to effectively handle such a complicated system. Nevertheless this is not to say that we have done away with everything else, as we shall see.

Let us now look at Order 53 Commercial Action Practice Directions and see how it determines practice procedure as far as the Zambian situation is concerned. An analysis of some cases will also help us determine the extent to which the court in Zambia is copying.

ORDER 53 COMMERCIAL ACTION

The attention of practitioners is drawn to the following practice and procedure to be adopted in the commercial proceedings:

1. *each statement of claim must state in clear terms the material facts upon which the plaintiff relies and above all must show a clear*
cause of action failing which the statement of claim may be struck out, set aside or the action shall be dismissed summarily;

2. the defence shall specifically traverse every allegation of fact made in the statement of claim or counterclaim as the case may be. A general or bare denial of such allegations or a general statement or non-admission of them shall not be a traverse thereof. A defence that fails to meet the requirements of this direction shall be deemed to have admitted the allegations not specifically traversed and in an appropriate case the plaintiff may be entitled to enter Judgement on admission;

3. not less than 21 days before the date for trial the parties shall exchange between them and file in Court Statement of witnesses they intend to call. The parties shall at the same time file skeleton arguments of their case;

4. during the scheduling conference the parties shall be required to give the Judge an estimate of the time hearing will take and the Judge shall allocate such time to the matter;

5. where a party requests an adjournment and the Judge whilst granting an adjournment is of the view that the reasons for the
adjournment are not very firm, the Judge may, apart from
awarding costs to the opponent, condemn the party requesting the
adjournment to a hearing fee to be paid to the court. Such fee shall
be paid before the matter proceeds. Provided that where the party
condemned to such hearing fee is not the applicant and that party
fails or neglects to pay the fee such hearing fee by the next hearing
day, the applicant shall be granted his application. Where the
condemned party is the applicant and he fails or neglects to pay
the hearing fee by the next hearing day, the applicant shall be
dismissed.

6. Where an application is struck out for non-attendance by the
applicant, the application to restore it shall, upon filing, be charged
fees higher than those charged normally. Such fees shall be
prescribed in the schedule of fees;

7. a party whose application has been struck out for non-attendance
shall apply to restore it within 30 days failing which the
application shall stand dismissed;

8. if a matter that had been struck out for non-attendance is restored
and the applicant again fails to attend the hearing the Judge shall
dismiss the application forthwith;
9. it shall be the obligation of the party making the application to serve process thereof. Proof shall be by filing an affidavit of service exhibiting an acknowledgement of service;

10. where at the hearing it is established that the applicant neglected to serve process and such neglect results in an adjournment, the applicant shall be condemned to pay hearing fee. This practice shall apply also to the respondent that causes an adjournment as a result of failure to serve necessary documents. The hearing fee shall be paid before the matter proceeds;

11. in an interlocutory application the applicant shall file, together with the application, skeleton arguments of his case stating the facts relied upon, the law and citing any authorities relied upon with copies of such authorities wherever possible.

The respondent shall in the same manner, upon filing the affidavit in opposition do the same. This practice shall also apply to application for assessment of damages;

12. if, after an action has been filed, 60 days shall elapse without any progress the matter shall be taken before the Judge for dismissal;
in the unlikely event that a party may want to vary a date of hearing he shall make an application by notice at least ten days before. 20

From the Order above we shall see that issues of definitions in terms of what constitutes a commercial claim and such others have not been included here. Nevertheless we can only suppose the list encompasses any case arising out of trade and commerce in general as per UK system from which we draw where our law is silent. 21

Secondly, our court here as has been said about the UK has also handled matters to do with mediation and arbitration which now is no longer a common feature as the mediation registry has been set up within the Supreme Court building. As regards the latter there is a Centre for Dispute Resolution, which has been set up to carter for the same.

Thirdly, as is the case in the U.K. each case filed before the Commercial Court (just like the general list of the High Court) must have a cause number (number indicating position in the court register and the year it was filed) which is the same even here where for instance the first case to be registered may have the cause number 2005/HCP/001 in regard to the Commercial Registry while if the same were to be before High Court the cause number would be 2005/HP/001

(the initial H representing 'high court' and C representing 'commercial' and P 'principal registry').

Similarly, when filing any case in the commercial court Writ of Summons is used generally except under certain circumstances. In regard to the Zambian situation however The High Court Act and Rules of the Supreme Court of England apply. In terms of differences between the Commercial Court and High Court where Writ of Summons is concerned for instance the difference is in terms of procedure as we have already indicated.

In Luywa v Council of the University of Zambia for instance a case filed in the general list the brief facts are that the applicant was an employee of the defendant establishment before having his contract terminated and had not been confirmed at the time of such firing. When the matter came up in the high court the court could not rule in his favour mainly because particulars in the statement of claim had not been complete.

When he appealed to Supreme Court the lawyer representing him tried to justify the defect by stating that the University had been written to in regard to the claim for reinstatement and the court in his support observed;

...before the opening of the case it was drawn to our attention that before the opening of the
case the very first statement by Counsel for
the appellant was that he intended to show
the court that his dismissal was null and void
... and he said, 'He will therefore seek the
remedy of reinstatement.'

Eventually the Supreme Court held that what was important is
whether the defendant had notice of the claim and that if he intended to
object that the claim was not properly pleaded he must object
immediately the plaintiff gave indication that he intended to claim
something not pleaded. The Supreme Court ruled in accordance with
rules as are applied in the court below which would not be the case if
such a matter were come before the Commercial Court were rule 1 would
apply. This shows that as regards the general list;

1) Amendments can be entertained at any stage of the case and
depending on the Order involved and that The other party must
respond immediately or else he could be held to have consented to
the same.

This goes to show that the general list is opposed to rushing cases
but is more interested in Justice. This is also why such applications as
the judgements in default for instance are reluctantly given effect.

If on the other hand we looked at Rule 1and 2 of Order 53

22. Luywa v Council of the University of Zambia (SCZ Judgement no. 6 of
Commercial Court Practice Directions we shall see that such delaying factors in terms of procedure have been dispensed with. It is either one states his claim in clear terms ...or the cause of action is struck out, set aside or even being summarily dismissed. That is the effect of the practice directions under Order 53 if we were to pick on one particular example. Having pointed out certain factors peculiar to the Zambian Commercial Court, let us now contrast the two lists.

**The similarities and differences in the general and commercial list of the high court**

(a) **Similarities**

1. both processes are driven by puisne Judges.  
2. Commencement of case process is the same in both cases i.e.; the filing of the writ together with the Statement of Claim; while Memorandum of Appearance is entered together with the Defence.
3. Pleadings in both cases are the same i.e., they have to be in written or printed with each stating material facts and not law.
4. To both the High court Act and the rules of the Supreme Court of England applies.

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23. Sheila Bone(ed), 9th ed. Osborn’s Concise Law Dictionary, (London: Sweet & M Maxwell, 2001), p. 312. [Means later born, or younger.] A puisne judge is a High Court judge other than the Lord Chancellor, the Lord Chief Justice or the President of the Family division (Supreme Court Act 1981, s.4 (2)).
(b) Differences

1. Witness statements are mandatory in the Commercial List but are not required in the General List. The consequence of this is that there is no examination in Chief, cross-examination and re-examination in the former. As has also been shown in the case of Luywa above viva vocal testimony is permissible in the latter.24

2. In the Commercial List Skeleton Arguments is a neccessary requirement while they are not in the other List.

3. In the Commercial List Lists of Authorities parties intends to rely on are mandatory while such is not the requirement in regard to the General List.

4. While the jurisdiction of the High Court is generally spelt out in the High Court Act such is not the case with the other. It came in as result of a Statutory Instrument No. 29 of 1999.

5. The Commercial List can only entertain matters of a Commercial nature commenced via the processes;

   i) Writ of Summons

   ii) Originating Summons;

   iii) Winding Up Petition; and

   iv) Award of Arbitration

24. See Supra note 22 above.
6. As a general rule Commercial Court Judges do not handle
General List matters and vise versa.

7. The procedure in the two Lists is different in that in the
Commercial Court the essence is speed while in the other
normal process is what is of concern.

Salient Features of Order 53

According to Rules 1 and 2 of the same;

1. each statement of claim must state in clear terms the material facts
upon which the plaintiff relies and above all must show a clear
cause of action failing which the statement of claim may be struck
out, set aside or the action shall be dismissed summarily;

2. the defence shall specifically traverse every allegation of fact made
in the statement of claim or counterclaim as the case may be. A
general or bare denial of such allegations or a general statement or
non-admission of them shall not be a traverse thereof. A defence
that fails to meet the requirements of this direction shall be deemed
to have admitted the allegations not specifically traversed and in an
appropriate case the plaintiff may be entitled to enter Judgement on
admission;

The Commercial Court therefore has no jurisdiction in
matrimonial, employment and constitutional matters. As of now it
can also be pointed out the Courts role in 5 (iv) above is no longer
the same as specialisation is now in other matters where Arbitration is not involved.

The other two features of importance as far as Order 53 is concerned are the aspect of the Scheduling and Status Conference.

The importance of these is that they bring the aspect of pleadings, case management, disclosures, trial, and how each application is handled within these and consequently within the confines of Order 53.

If we for instance looked at Rules 3, 4 and 11 we shall see that these seem to play a certain important role. In the case of Ngenda Sipalo vs. Stanbic Bank (z) limited filed in 2001 involving an amount of K74, 214, 080. 77 for example an attempt to have the matter struck out for non-attendance according to Order 53 rule 6 was made.

Later a defence was entered and the Judge handling the case then scheduled the matter as follows; -

- by the 28/8/2001 the reply; bundle of documents and pleadings; the witness statement and skeleton argument were to be filed.
- On the 22/10/2001 and 23/10/2001, there was going to be trial at 10:00 hours on each date and on 16/10/2001 a Status Conference.  

However the case went for taxation on the 21/08/2002 and no other

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25. Ngenda Sipalo vs. Stanbic Bank (z) limited 2001/HCP/199. It is case number four on the table of cases given.
data is on the file to show what happened after that but as we have seen that's how the Judge handling the matter may order that proceeding go and the parties must comply.

The Scheduling Conference is therefore one of the two peculiar stages to the Commercial List where orders for directions are given. In general terms therefore this is what it looks like

**Scheduling Conference**

Under this heading the Judge handling the matter issues the order for directions as follows;

a. The plaintiff’s advocates shall deliver a reply and defence to counter claim, if any on the defendants advocates on....

b. *Discovery by List and Inspection of documents is to be completed on* or before....

c. The parties shall file bundles of pleadings and documents on or before....

d. The parties shall file or exchange witness statements on....

e. Skeleton arguments shall be filed on or before....

f. The Status Conference shall be held on...

**Status Conference**

The purpose of this is to enable the court to establish that the litigants have complied with the order for directions in one above after which a trial date is set.
If we for instance compared this with the aspect of case management, which deals with cases in the multi-track, we shall see that the latter talks of ten 'key features' in a normal case or more or less what stages given cases go through which is more or less what the Scheduling Conference does. The differences are that 1) case management looks at the broader picture of how proceedings go in the commercial court generally while the other is a specific order expected of a judge in regard to a given case and 2) while the former is talked of in terms of proceedings affecting cases likely to take more than one day to be concluded the latter is inclusive of all case generally and what would happen if that stage of the case is reached.

From this perspective we shall see therefore that Order 53 is more concerned with what will happen to each case at every stage which is in fact more important. This is why without referring to anything to do with procedure the judge in KBS Insurance Brokers Limited v. Hays Management Consultants & 2 others made a certain important observation. The case was filed on the 12th of January 2001 and involved an amount of K29, 592, 325 and $2, 744, 65 respectively. It was case number 5 to be filed that year.

The parties had received the notice of scheduling conference and in fact the Applicant was not committed to the case and on the basis of Order 53 rule 6 it was sought that the application be struck off.
This is what the Judge stated: -

"Having said all this, I wish to stress the fact that the applicant chose to bring the action under the Commercial list, which is a fast track, court, and ought to have known that it would be walking on a very tight rope" regarding procedure" 26

If we considered things from the point of view of this we shall see that the general outlook and the spirit as to how Commercial matters ought to be handled has been maintained. It is only the articulate details in terms of what is relevant for our setting that have been dealt with selectively as far as the Zambian court situation is concerned.

Given the picture above it can be agreed that;

While there is reference to the laws as has been provided for in the bulk of the U.K 's Practice and Procedure there, the Zambian Commercial Court makes reference to Order 53 which is in fact what it emphasizes whenever a party is filing documents especially those to do with orders and certain interlocutory applications. So far it seems no problems seem to be encountered as regards this approach, which is very good for our system. The other interesting thing is that some of these references come barely a few months after the commencement of the commercial causes list in Zambia, which is quite encouraging.

Of the twenty cases picked at random for instance, two of these referred to rule 3 of Order 53 where both statements of witnesses and skeleton arguments are mentioned. The other nine (9) cases referred to rule 11 of the same order, thus representing about have the cases looked at. If we agree that these rules enhance process then we would also agree that half the time is thus spent on matters brought before the Commercial Court.

If we considered the table below we also see that the Commercial Court also faces the problem of cases where there is abuse of court process. That being the case it can only be hoped that the rules in place are applied strictly if such is not happening.

**The summary of cases on how Order 53 has been applied**

<table>
<thead>
<tr>
<th>CAUSE No</th>
<th>ISSUES INVOLVED</th>
<th>RULES REFERRED TO</th>
<th>STATUS</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001/HCP/005</td>
<td>Damaging in amount of K29, 592, 325 and $2,744.65 respectively</td>
<td>6</td>
<td>Application dismissed for lack of merit.</td>
</tr>
<tr>
<td>2001/HCP/24</td>
<td>Declaration the defendant was wrongly debited in sum of K41, 769, 070. 50</td>
<td>5</td>
<td>Judgement and costs in the sum of K156, 695, 316.50 was delivered in favour of defendant;</td>
</tr>
<tr>
<td>Case Number</td>
<td>Description</td>
<td>Page</td>
<td>Notes</td>
</tr>
<tr>
<td>------------------</td>
<td>-----------------------------------------------------------------------------</td>
<td>------</td>
<td>------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>2001/HCP/94</td>
<td>Damages in sum of $82,779.03 as balance for supplies</td>
<td>3</td>
<td>Case was adjourned to 15/01/03. It was also reallocated to another Judge.</td>
</tr>
<tr>
<td>2001/HCP/199</td>
<td>Damages in the sum of K74,214,080.77</td>
<td>6</td>
<td>Went for taxation on the 21/08/02</td>
</tr>
<tr>
<td>2002/HCP/299</td>
<td>Suit for specific performance of contract of sale in the sum of K42,000,000.00</td>
<td>2</td>
<td>By consent order dated 10/02/03 the Plaintiff was granted relief. Case was concluded after taxation on the 11/05/04</td>
</tr>
<tr>
<td>2003/HCP/266</td>
<td>Suit for immediate payment for breach of agreement</td>
<td>4 &amp; 9</td>
<td>Restored to active list pending hearing</td>
</tr>
</tbody>
</table>

**NB**

- All reference to other currencies is in United States (US) Dollars.
As has been shown above and from various analysis, it can be said that Order 53 commercial Action Practice Directions does not indeed replace all other orders that apply to civil matters and the commercial court guide. It is not all encompassing but only supplementary.
CHAPTER 4
Views and Recommendations

(i) Catching up with the set standards

The Zambian Judiciary visa vie the commercial court has been around for about four years now. In the circumstances, we would say it is on the right track though a lot more needs to be done if it has to stand out as a truly fast track court and the changes brought about in the commercial court are obviously part of this.

From the picture already given it can thus be confirmed that;

The plaintiff has advantages, which include: -

Less adjournments since such are not easy to get in the Commercial Court. Secondly, Judgement on admission has been introduced and the rule relating to the same is applied to the latter if the defence and memorandum of appearance are filed but the defence is not clear enough. Thirdly, once the case has been commenced and 60 days passes without progress (or remains dormant) the case is dismissed for lack of prosecution; and fourthly a case struck out twice for non-attendance is struck out indefinitely – the only recourse being to appeal to the Supreme Court. The same is true for any matter that is struck out and the applicant fails to restore it within 30 days.

(ii) Conclusion of Cases

The commercial court as has been shown is indeed a fast - track court. When all has been done and judgement is delivered the
next thing that must follow is the execution of the same. However getting a fast judgement is one thing and having it executed is yet another.

**Recommendation**

Since ordinary procedure does come into effect here, there is need to come up with additional rules to cater for this and or to strengthen Rule 2 of Order 53 Commercial Actions it is one that deals with some aspect of judgement. However it is a matter that needs expert evaluation though it must be borne in mind as it is popularly stated that justice delayed is justice denied.

**(iii) Appeals to the Supreme Court**

Secondly, not every case commenced from the Commercial Court has been concluded there – some go to Supreme Court where different rules apply even though the Court will not ignore issues as they happen and apply in the court below.

According to the Supreme Court rules on appeals for instance it is stated that:

50(1) leave to appeal to the court may be granted or refused by the High Court without formal application at the time when Judgement is given,...

49 (1) Any person desiring to appeal to the Court shall give notice of appeal
(2)... and shall be so filed within thirty days after the Judgement complained of.

54. Subject to any extension of time and to any order made under rule 12, the appellant shall within Sixty days after filing notice of appeal lodge the appeal by filing in the Registry...27

This rule as seen does not give regard to the urgency of matters and all cases are treated the same way. This is because rules on appeal are different here.

The Recommendations here are that 1) it would be best if rules for appeal in the commercial actions were introduced for instance a rule that the Notice of Appeal be filed together with the record of Appeal and 2) Five (5) Judges constitute a quorum for purposes of hearing any Commercial matter and 3) Judgement must be delivered within sixty days after the filed of the said Notice and Record of Appeal. Fees concerning the same process could also be raised and that they be paid before such sitting. This would obviously maintain the urgency that goes with the commercial process.

Since our Supreme Court handles all kinds of cases some of which involve serious human rights issues hence an obvious priority area this implies establishing other Courts on the model of Malta.

In that country there is a civil court, a commercial court, a family court, and a criminal court. The court of appeal for instance hears appeals from decisions of the civil court and of the commercial court while the court of criminal appeal hears appeals from judgments of conviction by the criminal court. The highest court, the Constitutional Court, hears appeals in cases involving violations of human rights, interpretation of the constitution, and invalidity of laws. It also has jurisdiction in cases concerning disputed parliamentary elections and electoral corrupt practices. It is good that the Mung’omba Constitution Review Commission recommended that their be a Constitutional Court in place and it is hoped that government will take the recommendation seriously and we can be sure that issues as those raised above would be carted for.

(iv) Learning from other jurisdictions

The Commercial court like all other courts in Zambia generally, records its proceedings manually. The use of computers is thus vital and apart from attaining better efficiency, more work will be done with less effort hence further boosting the moral of workers and

28. The Bureau of Public Affairs, U.S. Department of States. A: \ Malta [09-05] htm. Check under the subtitle ‘Government’ in the 4th paragraph. It became a parliamentary democracy within the Commonwealth in 1964 and a republic within the same, with executive authority vested in a Maltese president on the 13th of December 1974 under the revised constitution hence being like Zambia in terms of background as a former British colony.
consequently making the Commercial Court more efficient. It is good that there is the PSCAP Project supported by the World Bank which has started the erection of an 'electronic database' for the Supreme Court, High Court and Subordinate Courts to increase efficiency and reducing the backlog of cases.\(^\text{29}\)

However it would achieve much if it were run as the DANIDA project in Ghana and Tanzania. It was specifically meant for the designing, constructing and furnishing the commercial court which project was finished especially in Tanzania and the court there is fully functional because the project concentrated on the judiciary unlike PSCAP, which is targeting the entire civil service at once. The other thing that it has looked into is the establishment of the business law sector reform program, a business law division that it set up in the Attorney General's Office.\(^\text{30}\)

The use of computers must not be undermined because elsewhere they are being used with a lot of successes. In Scotland for instance they

\(^{29}\)Times Reporter; Well continue graft crusade' Times of Zambia 22\(^{nd}\) September 2004, P. 3. The term 'PSCAP' stands for Public Service Capacity Building Project and according to the article entitled "Reforming the Public Service" at least US $20 million has been used in the past three years.

\(^{30}\)File // A:\ Official Web Site for the Judicial Service of Ghana. htm. The Ghanaian government is taking after the Tanzanian example and Officials from that country have visited just to see how things are done in that country.
have been identified as an important feature of the arrangements for commercial actions. The judges' court diaries are available on a computer in the courtroom. Accordingly, when it is necessary to fix a further hearing, the date and time of the hearing can be fixed there and then. The computer is also used in framing court orders and in other ways to improve the speed and quality of information available. Most documents required during the course of an action can be e-mailed to the Commercial Clerk. Similarly, Interlocutors, once signed, are e-mailed to the solicitors for the parties.31

Ghana and Tanzania have again moved a step further and are working towards making their judiciary more autonomous. In Ghana for instance although the Commercial Court is a High Court and therefore falls within the general court structure and administration of the Judicial Service, it is semi autonomous in its administration. It has its own registrar of the status of a deputy chief Registrar, an accountant, and an administrator who, together with the president of the court, are responsible for the day-to-day administration and running of the court. In addition, there are two committees guiding the Court in its efforts to render quality justice. These include the Users Committee and the Management Committee.

31.// A: \ Court of Session – Commercial actions - Introduction. htm. The e-mail address used is mailto:commercial@scotcourts.gov.uk.
The Users Committee oversees the general performance of the court and is composed of:

~A chairman,  
~President of the Commercial Court,  
~Two other judges of the Commercial Court,  
~A representative from DANIDA,  
~A representative from the Attorney General's Department, preferably head of the business section of that department,  
~A representative of the Bar Association,  
~Representatives from the business Community—the Banks, chamber of commerce, and such others and the  
~Administrator of the Court, as Secretary.

The Management Committee is the in-house Committee responsible for the day-to-day operations of the Court, chaired by the following: -

~The chairman of the user’s committee,  
~The Judicial Secretary,  
~The President of the Commercial Court  
~Two other judges of the Court,  
~the registrar of the Court, and the  
~Administrator of the court as secretary.
In the case of Tanzania sustainability of the Court, is such that it is financially autonomous and operates on a “Fees Retention Scheme” which permits it to retain 62% of all fees collected for its operation. The Court prepares its own budget estimates, and if it’s annual fiscal year’s budget is below the amount retained the balance is returned to the government chest. If the collection is below, government makes up the difference. But this has never happened.\(^{32}\)

In Zambia such is yet to be realized as the judiciary depends on government funding and allocation, which as Dr. Munalula observes is inadequate to support staff and all other necessary needs.\(^{33}\)

In terms of the U.K. much has been said already except to add that one interesting feature that remains in place is that concerning the Lord Chancellor who is the head of the commercial list. A Committee to look into various aspects of operations affecting the Court and issues relating to the work of the same is also in place.

There are also committees to survey certain areas of business that is likely to affect the court in future even before any proceedings are brought before court.\(^{34}\)


\(^{33}\)Dr Mwela M. Munalula ‘position paper on governments watch dog institutions in Zambia’ (Lusaka: Transparency International, 2002), P.2; The institution like many others is too dependent on government for Resources.

\(^{34}\)Ibid; P. 11 the court in the UK has in place The Financial Markets Law Committee’ that provides information on wholesale marketing.
Conclusion

As has been said about the U.K. Malta, Ghana and Tanzania certain similarities and differences have been seen all depending on how each country has seen it fit that its Commercial Court should operate. In the case of Ghana and Tanzania for instance certain distinctive features have been maintained and these encompassing:

- The filling and other process fees for the initiation and conduct of proceedings are slightly higher than that of the normal High Courts. This also applies to Zambia and is in line with the practice in a number of jurisdictions.

- The use of mediation or their alternative dispute resolution mechanism is mandatory at the pre-trial settlement conference state.35

- Again at the pre-trial settlement conference proceedings, experts in the field of the claim may be invited to assist in the amicable resolution of the case.

- And finally, at the trial, the judge may seek the services of not more than two assessors to sit with him, and render their individual written opinions. The opinions of the assessors are however not binding on the judge.

35. See supra note 22 and in particular the second paragraph on page 26 for a Clarification concerning the Zambian situation.
As for our situation in Zambia it can only be re-emphasized that the commercial court requires the services of experts and assessors in its adjudication process, and it is hoped that well qualified personnel in various fields of business would readily offer their services to the court. And as a new court, it needs assistance in the supply of computer accessories and other electronic equipments, and more especially books for the library. Realizing the fact that the rationale for setting up this court is to promote efficient, speedy and effective determination of commercial disputes, it can only be hoped further that parties, litigants and lawyers in particular are to desist from employing delay tactics to frustrate the process of the court. The Court works strictly according to prescribed time and no adjournments would be entertained. Additionally, for the judges and the supporting staff to work well all the parties involved must play their respective roles failure to which these noble objective would not be properly realized.

The need to also visit other countries where the commercial court is run more effectively within the African Union is necessary. Further, a conference for the African Union Commercial Court Judges can be organized. The Comesa level is another platform where this can be further achieved. Countries like Uganda, Tanzania, Ghana and such others seem to be making a lot of progress; such need interacting with. All in all it can still be said as we have seen that areas of reform are still
vast and much more needs to be done especially if our Court is to expand beyond the existing boarders.
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Luywa v Council of the University of Zambia (SCZ Judgement no. 6 of 1995), p.59.

Ngenda Sipalo vs. Stanbic Bank (z) limited 2001/HCP/199.

KBS Insurance Brokers Limited v. Hays Management Consultants & 2 others 2001/HCP/005

STATUTES

The Constitution of Zambia, Chapter1 of the Laws of Zambia

The Supreme Court Act, Chapter 25

The Supreme Court (Number of judges) Act, Chapter 25

The high court rules (subsidiary legislation) CAP 27.
WEB SITES


File // A: \ Court of Session – Commercial actions - Introduction. htm.

File // A:\ Malta [09-05] htm.
APPENDIX 1:
THE SUPREME COURT AND HIGH COURT
(NUMBER OF JUDGES) ACT

CHAPTER 26 OF THE LAWS OF ZAMBIA

ARRANGEMENT OF SECTIONS

SECTION

1. Short title

2. Number of supreme court judges

3. Number of puisne judges

22 of 1976
20 of 1977
21 of 1988
10 of 1997

An Act to prescribe the number of Supreme Court Judges and of puisne judges of the High Court.

(29th July 1988)

1. This Act may be cited as the Supreme Court and High Court (Number of judges) Act.

2. There shall be nine judges of the Supreme Court, including
   Number Of
   The Chief Justice and The Deputy Chief Justice.
   Supreme Court Judges.

3. There shall be thirty puisne judges of the High Court. Number of puisne judges

   (As amended by Act No. 20 of 1977, No. 21 of 1988 and No. 10 of 1997)
APPENDIX 2:  SAMPLE OF CASES REFERRED TO IN THE SUMMARY

- KBS Insurance Broker's Limited vs. hays Management Consultants & 2 Others – 2001/HCP/005
- Union Bank (Z) Limited vs. Kaoma Central Milling and Another – 2001/HCP/024
- Zambia National Commercial Bank (Z) Limited vs. Western D. Outtutters Limited – 2001/HCP/199
- Barclays Bank of Zambia vs. Mukuba Investments Limited – 2003/HCP/266

NB. Three of these cases could not be concluded. Check on page 4 for some of the reasons why some cases could not be concluded.
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Barry V. Peruvian Corporation Limited (1896) 1 Q. B. 208 at 209.

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KBS Insurance Brokers Limited v. Hays Management Consultants & 2 others 2001/HCP/005

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