

## CHAPTER 7:10 MAGISTRATES COURT ACT

*Order in Council, 1898 (ss. 69, 70, 71(1) and (3) and 73); Ord. 5/1899; Acts 18/1931, 3/1935, 19/1936 (ss. 8, 9 and 10), 37/1938 (ss. 33 and 40), 3/1949, 29/1951 (s. 2), 18/1952, 57/1954, 25/1956 (s. 4), 8/1957 (Federal) (s. 14), 4/1958, 29/1960, 53/1960 (ss. 53 and 54), 14/1962 (s. 2), 19/1963, 12/1964 (s. 54), 71/1064, 18/1965, 45/1965, 25/1966, 5/1967 (s. 93), 11/1968, 12/1969, 24/1969 (s. 33), 39/1971, 51/1971 (s. 32), 61/1971 (s. 11), 33/1973, 3/1974, 27/1975, 26/1976, 37/1977(s. 3), 41/1978 (s. 3), 17/1979 (s. 5), 31/1979 (ss. 2 and 3), 6/1981 (s. 30), 15/1981 (s. 16), 26/1981, 29/1981 (s. 59), 15/1982 (ss. 3 and 4), 33/1983, 3/1984 (s. 2), 28/1984 (s. 3), 12/1986 (s. 2), 13/1989, 2/1990, 11/1991 (s. 6), 1/1992, 2/1992, 15/1992, 22/1992 (s. 2), 15/1994;9/1997, 8/2001 (s. 25), 22.2001 (s. 4), 14/2002 (s. 8), 9/2003, 23/2004 (s. 282), 9/2006 (s. 29), 10/2006, 5/2014 (s. 33), 3/2016(Part XI), 7/2017 (ss. 6-9).*  
*R.G.Ns. 217/1970 (as read with Act 29/1970 (s. 16)), 698/1970, 707/1970, 354/1972, 155/1993, 173/1993, 86/1995, 227/2006.*

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**AN ACT to consolidate and amend the law relating to courts of magistrates, and to provide for the examination, by interrogatories, of persons resident in Zimbabwe, whose evidence is required in civil cases pending in any magistrates court in any neighbouring state.**

[Date of commencement: 1st January, 1932.]

### PART I

#### PRELIMINARY

#### 1 Short title

This Act may be cited as the Magistrates Court Act [*Chapter 7:10*].

## 2 Interpretation

In this Act—

“business” includes a trade, profession, vocation, occupation and venture, and an isolated transaction of a business character, but does not include employment;

[Definition inserted by Act 7 of 2017]

“clerk of the court” includes any official carrying out the duties of such clerk on the instruction of the magistrate;

“commercial court” means a magistrates court before which a commercial dispute is brought;

[Definition inserted by Act 7 of 2017]

“commercial dispute” means a dispute of a civil nature arising out of a transaction in the course of business, including but not limited to—

- (a) the formation, management, transfer or dissolution of a business entity;
- (b) the contractual relationship of a business entity with another such entity or with another person or persons undertaken in the course of business;
- (c) the contractual or delictual liability of a business or of a person engaged in a business that arises in the course of business activities;
- (d) disputes primarily involving banking and financial services;
- (e) the restructuring or payment of business debts;
- (f) the enforcement of an arbitral award of a business character;

[Definition inserted by Act 7 of 2017]

“court” means a court of a magistrate;

“judgment”, in relation to civil cases, includes a sentence, decree, order or rule;

“magistrate” means any person who has been appointed to hold magisterial office in terms of this Act;

“messenger” includes a deputy messenger;

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

“periodical court” means a court of a magistrate sitting at some place, other than the ordinary stated place of holding of the court, appointed for the periodical holding of such court;

“province” means a province created in terms of section *three*;

“regional division” means a regional division created in terms of section *four*;

“registrar” means registrar of the High Court;

“rules” means rules made in terms of section *seventy-three*.

## 3 Regional divisions and provinces

The President may, by statutory instrument—

- (a) create regional divisions consisting of one or more provinces or of one or more provinces and a portion or portions of a province or provinces or of one or more portions of a province or provinces and declare the name by which any regional division shall be known;
- (b) create provinces and define the boundaries of each of them and declare the name by which any province shall be known;
- (c) abolish or alter the boundaries of any regional division or province.

## 4 Regional and provincial courts

(1) The Minister may, by statutory instrument—

- (a) establish one or more courts for any regional division;
- (b) appoint one or more places within each regional division for the holding of a court for that regional division;
- (c) abolish the courts established for any regional division when such regional division has been abolished.

(2) There shall be one or more courts for each province as the Minister may determine.

(3) The Minister may, by statutory instrument, appoint one or more places within each province for the holding of a court for that province.

## 5 Nature of courts and proceedings

(1) Every court shall be a court of record.

(2) Subject to this Act and except as provided in any other law—

- (a) the proceedings in all cases shall be in the English language and shall be carried on in open court:
 

Provided that, in any matter to be determined according to customary law, the proceedings may be conducted in any other language agreed upon by the parties and the presiding magistrate;
- (b) the records of the proceedings of the court shall be kept in the English language and shall be accessible to the public under the supervision of the clerk of the court at all convenient times and upon payment of such fees as may be prescribed in rules;
- (c) in all criminal cases the witnesses shall deliver their evidence *viva voce*.

(3) If any person disturbs the peace or order of the court, the court may order that person to be removed and detained in custody until the rising of the court or if, in the opinion of the court, the peace or order of the court cannot otherwise be secured, may order the court room to be cleared and the doors thereof to be closed to the public.

(4) The court may change its place of hearing of any case to any other place within its jurisdiction if, through the inability from illness or other cause of the accused in a criminal case or of a witness in any case to attend at a place where the court usually sits or for other reasonable cause, it appears desirable to do so, and may adjourn the hearing for that purpose.

## 6 Magistrate to preside over court

Every court shall be presided over by a magistrate.

## 7 Appointment of magistrates

(1) Subject to section 182 of the Constitution, the Judicial Service Commission may appoint any person to hold magisterial office.

[Subsection amended by Act 10 of 2006 and by Act 3 of 2016]

(2) From the persons appointed to hold magisterial office in terms of subsection (1) the Judicial Service Commission may, subject to the Judicial Service Act [*Chapter 7:18*], appoint any person to be a senior magistrate if such person—

- (a) has held magisterial office for not less than four years; or
- (b) has held magisterial office for not less than two years and—
  - (i) for a period of not less than two years, or for a number of periods which together amount to not less than two years, has been employed upon such duties as the Minister, after consultation with the Chief Justice, may approve; or
  - (ii) has obtained such qualifications as the Minister, after consultation with the Chief Justice, may approve;

[Subsection amended by Act 10 of 2006]

or

- (c) is and has been for a period which in the aggregate is not less than four years qualified to practise—
  - (i) as a legal practitioner in Zimbabwe; or
  - (ii) in a capacity comparable to that of a legal practitioner—
    - A. in a country in which the common law is Roman-Dutch and English is an official language; or
    - B. if he is a citizen of Zimbabwe, in a country in which the common law is English and English is an official language; or
- (d) has served as a public prosecutor for a period which in the aggregate is not less than four years.

[Paragraph inserted by Act 10 of 2006]

(3) From the persons appointed to be senior magistrates in terms of subsection (2) the Judicial Service Commission may, subject to the Judicial Service Act [*Chapter 7:18*], appoint—

- (a) a person to be chief magistrate of Zimbabwe;
- (b) a person to be deputy chief magistrate of Zimbabwe
- (c) one or more persons to be regional magistrates;
- (d) one or more persons to be provincial magistrates.

[Subsection amended by Act 10 of 2006]

(4) For the purposes of paragraph (c) of subsection (2), any period during which a person held judicial office after having qualified to practise as a legal practitioner or to practise in a comparable capacity shall be included in the period during which he has so been qualified.

## 8 Powers and jurisdiction of magistrates

(1) The chief magistrate and the deputy chief magistrate shall possess the powers and jurisdiction—

- (a) of a regional magistrate in any regional division; and
- (b) of a provincial magistrate in any province.

(2) A regional magistrate may exercise the powers and jurisdiction conferred upon him by this Act and any other enactment in any regional division.

(3) A magistrate, other than a regional magistrate, may exercise the powers and jurisdiction conferred upon him by this Act and any other enactment in any province.

## 9 Oath

A magistrate on appointment in terms of subsection (1) of section *seven* shall, before exercising any of the functions of his office, in open court take the following oath—

“I, A.B., do promise and swear that I will faithfully, impartially and diligently execute to the best of my abilities the duties of the office of magistrate. So help me God.”

## PART II

### CIVIL

#### 10 Messengers of court

(1) Subject to such conditions as he may determine, the Minister may appoint messengers of court.

(2) A messenger may, with the approval of the magistrate, appoint one or more deputy messengers for whom he shall be responsible.

(3) The magistrate may appoint a person to act as messenger when, by reason of the illness, absence or interest of the messenger, or on the application of any person interested, he may consider it necessary or expedient so to do.

(4) Where no messenger or deputy messenger has been appointed for the court of a regional magistrate, every messenger and deputy messenger appointed for a court of a provincial magistrate within the regional division concerned shall be qualified to act as the messenger or deputy messenger, as the case may be, of that regional court as if he had been duly appointed as such.

(5) When process of the court in a civil case is to be served and no messenger or deputy messenger has been appointed at the place where the court is held, a police officer shall, subject to the rules, be as qualified to serve such process in such a case as if he had been duly appointed deputy messenger.

(6) A messenger who—

- (a) is negligent or dilatory in the service or execution of process; or
- (b) wilfully demands payment of more than his proper fees or expenses or makes a false return; or
- (c) becomes incompetent to perform his work; or
- (d) conducts himself in any manner or is addicted to any habits inconsistent with the discharge of his duties as a messenger; or
- (e) for any other reason is, in the opinion of the provincial magistrate, unsuitable or unable to perform his duties;

may be suspended by the provincial magistrate, who may appoint a person to act in his place during the period of suspension.

(7) The provincial magistrate shall forthwith report to the Minister any action he has taken under subsection (6) and the Minister may, after consideration of the report, set aside the suspension or confirm it and dismiss the messenger from his office.

(8) A messenger shall give security to the satisfaction of the magistrate for the due fulfilment of his office and for the due and punctual payment by him to the parties entitled thereto of all moneys which come into his hands by virtue of his office.

#### 11 Jurisdiction in civil cases

(1) Every court shall have in all civil cases, (whether determinable by the general law of Zimbabwe or by customary law, the following jurisdiction—

(a) excepting any other jurisdiction assigned to any court by this Act or any other enactment, the persons in respect of whom the court shall have jurisdiction shall be—

- (i) any person who resides, carries on business or is employed within the province;
- (ii) any partnership whose business premises are situated, or any member whereof resides, within the province;
- (iii) any person whatever, in respect of any proceedings incidental to any action or proceedings instituted in the court by such person himself;
- (iv) any person, whether or not he resides, carries on business or is employed within the province, if the cause of action arose wholly within the province;

(b) with regard to causes of action—

- (i) in any cases founded upon any bill of exchange, promissory note, good-for, bond or other written acknowledgement of debt, commonly called a liquid document, to such amount as may be prescribed in rules, together with any interest due thereon;
- (ii) in actions in which is claimed the delivery or transfer of any property, movable or immovable, where the value of such property does not exceed such amount as may be prescribed in rules, whether in lieu of or in addition to any other claim, which shall include a claim for the cancellation of any agreement relating to such property;
- (iii) in actions of ejectment against the occupier of any house, land or premises situate within the province:

Provided that, where the right of occupation of any such house, land or premises is in dispute between the parties, such right does not exceed such amount as may be prescribed in rules in clear value to the occupier;

- (iv) in actions in which is claimed a decree of divorce, judicial separation or nullity of a marriage solemnised in terms of the Customary Marriages Act [*Chapter 5:07*], including actions relating to the division, apportionment or distribution of the assets, whether movable or immovable, of spouses or former spouses of such marriages and the payment of maintenance in terms of the Matrimonial Causes Act [*Chapter 5:13*];
- (v) in actions relating to the guardianship and custody of children of marriages solemnised in terms of the Customary Marriages Act [*Chapter 5:07*];
- (vi) subject to subsection (2) of section *fourteen*, in all cases relating to the validity, effect or interpretation of oral wills made in terms of section 11 of the Wills Act [*Chapter 6:06*];
- (vii) in all actions other than those already specified in this paragraph, where the claim or the value of the matter in dispute does not exceed such amount as may be prescribed in rules:

Provided that a court shall have jurisdiction to try any action or case referred to in subparagraph (i), (ii), (iii) or (vii) otherwise beyond its jurisdiction in terms of this paragraph if the defendant has consented thereto in writing;

- (c) with regard to all actions, except such as are set out in section *fourteen*, if both parties agree by a memorandum signed by them or their respective legal practitioners that the court named in such memorandum shall have power to try such action, such court shall have jurisdiction to try the same therein;
- (d) if two or more claims, each based upon a different cause of action, are combined in one summons, the court shall have the same jurisdiction to decide each such claim as it would have had if each claim had formed the sole subject of a separate action;
- (e) if a claim for the confirmation of an interdict or arrest granted *pendente lite* is joined in the same summons with a claim for relief of any other character, the court shall have the same jurisdiction to decide each such claim as it would have had if each claim had formed the sole subject of a separate action, even though all the claims arise from the same cause of action;
- (f) in actions wherein the sum claimed, being within the jurisdiction, is the balance of an account, the court may inquire into and take evidence if necessary upon the whole account even though such account contains items and transactions exceeding the amount of the jurisdiction;
- (g) where the amount claimed or other relief sought is within the jurisdiction, such jurisdiction shall not be ousted merely because it is necessary for the court, in order to arrive at a decision, to give a finding upon a matter beyond the jurisdiction, and, in considering whether a claim is or is not within the jurisdiction, no prayer for interest on the principal sum claimed or for costs or for general or alternative relief shall be taken into account;
- (h) in order to bring a claim within the jurisdiction, a plaintiff may in his summons explicitly abandon part of such claim and if any part of a claim is so abandoned, it shall be thereby finally extinguished:

Provided that, if the claim is upheld in part only, the abandonment shall be deemed first to take effect upon that part of the claim which is not upheld;

- (i) in order to bring a claim within the jurisdiction a plaintiff may in his summons deduct from his claim, whether liquidated or unliquidated, any amount admitted by him to be due by himself to the defendant;
- (j) a substantive claim exceeding the jurisdiction may not be split with the object of recovering the same in more than one action if the parties to all such actions would be the same and the point at issue in all such actions would also be the same;
- (k) in paragraphs (d) to (j) “action,” “claim” and “summons” include “claims in reconvention”, and “plaintiff” and “defendant” include “plaintiff in reconvention” and “defendant in reconvention”, respectively.

(2) In relation to a court of a regional magistrate, any reference in subsection (1) to a province shall be construed as a reference to the regional division for which that court has been established.

(2a) For the avoidance of doubt it is declared that every court (which, for this purpose, is called a “commercial court”) has jurisdiction in the first instance to adjudicate a commercial dispute if the amount at stake in such dispute is within the limit prescribed under subsection (2)(b), and—

- (a) the commercial dispute arose wholly within the province; or
- (b) either or both of the parties to the commercial dispute reside, carry on business or are employed within the same province; or
- (c) either or both of the parties to the commercial dispute are entities that conduct any business in the same province, whether the entities in question are companies, co-operatives, partnerships, syndicates, trusts or any other kind of entities; or
- (d) the commercial dispute is between an individual and a company, co-operative, partnership, syndicate, trust or other entity, and both parties reside, carry on business, are employed or conduct business (as the case may be) in the same province.

[Subsection inserted by Act 7 of 2017]

(3) Notwithstanding anything in this section, any amount due and payable under the Debt Adjustment Tax Act, 1965 (No. 5 of 1965), or the Income Tax Act [*Chapter 23:06*] shall be recoverable by action in the court of the magistrate having jurisdiction in respect of the person by whom such amount is so payable as aforesaid.

## 12 Arrests and interdicts

(1) Subject to the limits of jurisdiction prescribed by this Act, the court may grant against persons and things orders for arrest *tamquam suspectus de fuga*, attachments, interdicts and *mandamenten van spolie*.

(2) Confirmation by the court of any attachment or interdict in the judgment in the action shall operate as an extension of the attachment or interdict until execution or further order of the court.

(3) No order of personal arrest *tamquam suspectus de fuga* shall be made unless the following conditions are complied with—

- (a) the cause of action appears to amount, exclusive of costs, to such amount as may be prescribed in rules; and
- (b) the applicant appears to have no security for the debt, or only security falling short of the amount of the debt by such amount as may be prescribed in rules; and
- (c) it appears that the respondent is about to remove from Zimbabwe.

## 13 Attachment to found or confirm jurisdiction

A court may order attachment of person or property to found or confirm jurisdiction against any person who does not reside in Zimbabwe in respect of an action within its jurisdiction where the claim or the value of the matter in dispute amounts to such amount as may be prescribed in rules, exclusive of any costs in respect of the recovery thereof, and may grant an order allowing service of any process in such action to be effected in such manner as may be stated in such order.

## 14 When court has no jurisdiction

(1) No court shall have jurisdiction in or cognisance of any action or suit wherein—

- (a) is sought—
  - (i) the dissolution of a marriage, other than a marriage solemnised in terms of the Customary Marriages Act [*Chapter 5:07*]; or
  - (ii) separation from bed and board or of goods of spouses of a marriage, other than a marriage solemnised in terms of the Customary Marriages Act [*Chapter 5:07*]; or
  - (iii) a declaration of nullity in relation to a marriage, other than a marriage solemnised in terms of the Customary Marriages Act [*Chapter 5:07*]; or
- (b) the validity or interpretation of a written will or other testamentary document is in question; or
- (c) the status of a person in respect of mental capacity is sought to be affected; or
- (d) the specific performance of an act is sought without an alternative of payment of damages:
 

Provided that a court shall have jurisdiction to order—

  - (a) the rendering of an account in respect of which the claim does not exceed such amount as may be prescribed in rules; and
  - (b) the delivery or transfer of property, movable or immovable, not exceeding such amount as may be prescribed in rules; or
- (e) is sought a decree of perpetual silence; or
- (f) provisional sentence is sought; or
- (g) a declaration is sought as to any existing, future or contingent right or obligation, where the person seeking the declaration does not or cannot claim any relief consequential upon such declaration:

Provided that—

- (i) any court may—
  - (a) in the course of any action or suit to recover damages for adultery with the wife of the plaintiff, or for the amount or value of necessaries lawfully supplied to the wife of any person, determine upon or in regard to the fact of marriage;
  - (b) in the course of any action or suit for the amount or value of maintenance lawfully supplied to the child, legitimate or illegitimate, of any person, determine upon the question of affiliation;
  - (c) in the course of any inquiry held under the Maintenance Act [*Chapter 5:09*], determine upon or in regard to the fact of marriage or upon the question of affiliation;

so far as may be necessary for the decision of any such action, suit or inquiry, without thereby binding or being deemed or taken to bind rights in future;
- (ii) the evidence in every such case mentioned in paragraph (a) or (b) of proviso (i) shall be recorded, and the same may be put in as evidence by either plaintiff or defendant in any subsequent suit or action in the same court between the same parties in which the matters in question in the former suit or action shall again come into dispute.

(2) A court shall not have jurisdiction in any case relating to the validity, effect or interpretation of an oral will made in terms of section 11 of the Wills Act [*Chapter 6:06*], unless—

- (a) the testator of the will concerned was normally resident within the province either when he made the will or when he died; or
- (b) the testator of the will concerned was born within the province; or
- (c) the majority, by number or value, of the beneficiaries under the will concerned were normally resident within the province when the testator died; or
- (d) the will was made within the province; or
- (e) to the extent that the will disposes of any interest in immovable property, the immovable property is situated within the province.

(3) In relation to a court of a regional magistrate, any reference in subsection (2) to a province shall be construed as a reference to the regional division for which that court has been established.

### **15 Counterclaim exceeding jurisdiction**

(1) When in answer to a claim within the jurisdiction of a court the defendant sets up a counterclaim exceeding the jurisdiction, the claim shall not on that account be dismissed, but the court may, if satisfied that the defendant has *prima facie* a reasonable prospect on his counterclaim of obtaining a judgment in excess of its jurisdiction, stay the action for a reasonable period in order to enable him to institute an action in a competent court; and the plaintiff in the magistrates court may, notwithstanding his action therein, counterclaim in such competent court and in that event all questions as to the costs incurred in the magistrates court shall be decided by that competent court.

(2) If the period for which any action referred to in subsection (1) has been stayed has expired and the defendant has failed to issue and serve a summons in a competent court in relation to the matters and the subject of the counterclaim, the magistrates court shall on application either—

- (a) stay the action for a further reasonable period; or
- (b) dismiss the counterclaim, whether the defendant does or does not reduce such counterclaim to an amount within the jurisdiction of the court.

(3) If the defendant has failed to institute action within such further period or if the action instituted by the defendant be stayed, dismissed, withdrawn or abandoned, or if the competent court has granted absolution from the instance thereon, the magistrates court shall, upon application, dismiss the counterclaim and shall proceed to determine the claim.

### **16 Assessors**

In any action the court may, with the approval of the Minister, summon to its assistance to act as assessors, in an advisory capacity, one or more persons who are willing so to do and who have skill and experience in any matter which may have to be considered in the action.

### **17 Change of place of hearing**

(1) Any action or proceedings may, with the consent of all the parties thereto, or upon the application of any party and with due regard to the relative expense and inconvenience which would result from the trial of such action or proceedings in the court wherein summons has been issued, be transferred by the court to any other court having jurisdiction in such action or proceedings.

(2) An interpleader summons, if issued in the court of the province in which the property was attached, may, at the discretion of the court, be remitted for trial to the court in which the judgment was given.

(3) An action commenced in a periodical or circuit court may, at the discretion of the court, be transferred to the ordinary stated place of sitting of the court or *vice versa*.

### **18 Judgments**

The court may, as the result of the trial of an action grant—

- (a) judgment for the plaintiff in respect of his claim in so far as he has proved the same;
- (b) judgment for the defendant in respect of his defence in so far as he has proved the same;
- (c) absolution from the instance, if it appears to the court that the evidence does not justify the court in giving judgment for either party;
- (d) such judgment as to costs as may be just, including an order that one party pay the costs of the other party on a legal practitioner and client basis.

### **19 Costs caused by default of witness**

The court may order the costs of any postponement or adjournment occasioned by the default of a witness or any portion of such costs to be paid out of any fine imposed upon such witness.

### **20 Writs of execution**

(1) When a court gives judgment for the payment of money the amount shall be recoverable, in case of failure to pay the same forthwith or at the time or times and in the manner ordered by the court, by execution against the movable property and, if there is not found sufficient movable property to satisfy the judgment, then against the immovable property of the party against whom such judgment has been given.

(2) No immovable property which is subject to any claim preferent to that of the judgment creditor shall be sold in execution unless—

- (a) the judgment creditor has caused such notice in writing of the intended sale in execution to be served personally upon the preferent creditor as may be prescribed in rules; or
- (b) a magistrate of the regional division or, as the case may be, province in which the property is situate has, upon the application of the judgment creditor and after inquiry into the circumstances of the case, directed what steps shall be taken to bring the intended sale to the notice of the preferent creditor, and those steps have been carried out;

and unless—

- (i) the proceeds of the sale are sufficient to satisfy the claim of such preferent creditor in full; or
- (ii) the preferent creditor confirms the sale in writing, in which event he shall be deemed to have agreed to accept such proceeds in full settlement of his claim.

(3) A sale in execution of such immovable property as is referred to in subsection (2) shall take place within such period of the date of attachment and in such manner as may be provided in rules.

(4) No writ of execution shall be issued after the lapse of two years, calculated from the day on which judgment is pronounced, unless the said judgment has first been revived, but writs of execution once issued shall remain of force until such time as the judgment has been satisfied.

(5) A judgment may be revived either in the court in which it was pronounced or in any other court having jurisdiction in respect of the judgment debtor.

## **21 Report by officer charged with execution of writ**

An officer charged with the execution of any writ in terms of section *twenty* shall once a month, calculated from the date of issue of such writ, and oftener if thereto required by the magistrate, report to the clerk of the court by endorsement on such writ what he has done thereon and shall send a copy of such endorsement to the judgment creditor, his legal practitioner or agent.

## **22 Messenger's powers**

(1) A messenger executing any process of execution against movable property may, by virtue of such process, also seize and take any money or bank notes, and may seize, take and sell in execution cheques, bills of exchange, promissory notes, bonds or securities for money belonging to any person against whom the execution was issued.

(2) The messenger may also hold any cheques, bills of exchange, promissory notes, bonds or securities for money which have been seized or taken as security for the benefit of the execution creditor for the amount directed to be levied by the execution so far as it is still unsatisfied, and the execution creditor may, when the time for payment has arrived, sue in the name of the execution debtor or in the name of any person in whose name the execution debtor might have sued, for the recovery of the sum secured or made payable thereby.

(3) The messenger may also under any process of execution against movable property attach and sell in execution the interest of the execution debtor in any movable property belonging to him and pledged or sold under a suspensive condition to a third person, and may also sell the interest of the execution debtor in property, movable or immovable, leased to the execution debtor or sold to him under any hire-purchase contract or under a suspensive condition.

(4) When, if the sale had not been in execution, it would have been necessary for the execution debtor to endorse a document or to execute a cession in order to pass the property to a purchaser, the messenger may so endorse the document or execute the cession as to any property sold by him in execution.

(5) The messenger may also, as to immovable property sold by him in execution, do anything necessary to effect registration of transfer and anything done by the messenger under this subsection or subsection (4) shall be as valid as if he were the execution debtor.

(6) Where judgment is given against a member of a partnership or syndicate in an action in which he individually was plaintiff or defendant, his interest in the partnership or syndicate, or other property held jointly with any other person or persons, may be attached and sold in execution.

## **23 Force of process**

(1) Every process out of any court shall have force throughout Zimbabwe.

(2) Any process issued out of any court may be served or executed through the messenger of the court out of which process is issued or through any other messenger:

Provided that no costs shall be payable in excess of the costs of personal service in the cheapest and most effective manner suited to the circumstances.

## **24 Return of messenger, deputy messenger, etc.**

The return of a messenger, a deputy messenger or a police officer referred to in sub-section (5) of section *ten* as to what has been done upon any process issued out of any court shall be *prima facie* evidence of the matters stated therein.

## 25 What property may not be attached

In respect of any process of execution issued against any person out of any court, the following property shall be protected from seizure and shall not be attached or sold—

- (a) the necessary beds, bedding and wearing apparel of the person against whom the execution is levied and of his family;
- (b) the necessary furniture and household utensils in so far as the same do not exceed in value such sum as may be prescribed in rules;
- (c) the supply of food and drink in the house sufficient for the needs of the family during one month;
- (d) necessary tools and implements of trade or the tools necessarily used in the cultivation of land by the said person in so far as the same do not exceed in value such sum as may be prescribed in rules;
- (e) professional books, documents or instruments necessary to the calling of the said person in so far as the same do not exceed in value such sum as may be prescribed in rules.

## 26 Summons for civil imprisonment

(1) Where it appears either that a judgment has remained unsatisfied for seven clear days or, from the admission in writing or in open court of any judgment debtor or by the return of the messenger to any process of execution, that such judgment debtor has not sufficient property liable to be attached in execution to satisfy the judgment debt and costs, the judgment creditor may take out a summons calling upon the judgment debtor to show cause why a decree of civil imprisonment should not be made against him.

(2) Such summons may be taken out either in the court wherein the original judgment was given or in the court of any regional division or province wherein the judgment debtor is for the time being residing, carrying on business or employed.

(3) Where it appears from the return of the summons that service was effected elsewhere than within the province of the court from which the summons was issued, the proceedings shall, unless the judgment debtor appears, be stayed until the court is satisfied that the judgment debtor has been paid or tendered the sum which would have been payable to him if he had been subpoenaed as a witness.

## 27 Decree of civil imprisonment

The court may, upon the return of the summons and whether the judgment debtor appears or not, make a decree of civil imprisonment against such judgment debtor and authorize the issue of a warrant for his arrest and detention in any prison named in such warrant:

Provided that—

- (i) the court may at any time suspend the execution of or suspend or altogether discharge any such decree or warrant upon such terms as may appear to the court to be fair and reasonable;
- (ii) no such decree shall be pronounced and no such warrant shall be issued if the judgment debtor proves to the satisfaction of the court that he has no means of satisfying the judgment debt either wholly or in part and either out of his present means or out of future earnings or income, unless it appears that the judgment debtor—
  - (a) has wilfully made away with any property in order to defeat or delay payment of the judgment debt; or
  - (b) is able to earn sufficient to satisfy the judgment debt by instalments or otherwise to settle the same, but in order to defeat or delay payment of the judgment debt wilfully refuses to do so; or
  - (c) is squandering his money or is apparently living beyond his means;
- (iii) in computing the degree to which the debtor can satisfy such debt the court shall take into consideration the conditions under which he obtains his income and the amount of his necessary expenses and those of the persons dependent on him;
- (iv) the court of any regional division or province wherein a judgment debtor is arrested shall have the same jurisdiction as the court from which the warrant was issued to suspend such warrant, and may cancel or vary any order of suspension made by itself, but such first-mentioned court may not discharge altogether any warrant issued out of any other court.

## 28 Costs in proceedings for civil imprisonment

(1) Upon the hearing of any proceedings for civil imprisonment, unless it appears to the court that the debtor has, within seven days after having notice of the judgment upon which proceedings are founded, made a *bona fide* offer to the judgment creditor to satisfy such judgment by instalments which the court considers fair and reasonable or notified the judgment creditor that he is unable to make any offer, which the court finds to be true, the court shall order the debtor to pay the costs of such proceedings, but if it appears that the judgment creditor, notwithstanding such offer or a true statement of the debtor that he is unable to make an offer, has instituted such proceedings, the court may order such creditor to pay the costs of the same.

(2) Upon any proceedings for the suspension or discharge of any decree, warrant or order for civil imprisonment, the costs thereof shall be borne by the judgment debtor unless it appears to the court that such proceedings are due to some default or omission by the judgment creditor.

(3) Nothing in this section shall be considered as depriving the court of its discretion to make such order as to costs in any particular case as to it may appear just.

### **29 Superannuation of decrees of civil imprisonment**

The period of superannuation of a decree of civil imprisonment shall be two years and shall run from the date of the last payment made thereunder or, if no payment has been made thereunder, from the date of the decree, but it may be revived in the same manner as a judgment.

### **30 Warrant of imprisonment**

When any court makes a decree of civil imprisonment against any defendant, the process for the execution of the same shall be by warrant which shall in substance be in the form prescribed in rules.

### **31 Period of imprisonment and effect of liberation**

No judgment debtor shall be detained in prison under any such warrant as aforesaid in any case in which the debt and costs mentioned in such warrant together amount to less than ten dollars for any period longer than one month, nor in any case whatsoever for any period longer than three months; and no judgment debtor once discharged, except when discharged under an order of court suspending imprisonment, shall ever be again arrested for the same debt or cause of action:

Provided that—

- (i) when any judgment debtor is discharged from prison by reason merely that any such period as aforesaid has expired, or by reason of any charges for maintenance remaining unsatisfied, such imprisonment and discharge shall not be deemed to be a satisfaction of the debt or costs for which he was taken in execution so as to prevent the judgment creditor from further executing against the property of such judgment debtor;
- (ii) every judgment debtor imprisoned under any such warrant shall be discharged forthwith upon payment of the amount of the debt and costs mentioned in the said warrant, or when the judgment creditor gives his written consent to such discharge.

### **32 Imprisonment and maintenance during imprisonment**

The officer in charge of whatever prison is in any such warrant mentioned and referred to shall receive into his custody and retain therein according to the tenor of such warrant the person against whom the same has been sued out:

Provided that—

- (i) the judgment creditor suing out the same shall pay and satisfy the charges for the maintenance of the judgment debtor;
- (ii) it shall be lawful for such officer in charge as aforesaid, in case any such charges remain unsatisfied, to discharge the judgment debtor from custody forthwith.

### **33 Garnishee orders**

(1) On the *ex parte* application to a court, hereinafter called “the court”, of any person who has obtained in a magistrates court, community court or primary court any judgment for the payment of any money, and upon such evidence as may be required, that such judgment is still unsatisfied and of the amount still payable thereunder, and that any other person living or carrying on business within the jurisdiction of the court is indebted to the person against whom such judgment has been obtained, hereinafter called “the debtor”, the court may order such other person, hereinafter called “the garnishee”, to pay to the messenger, or to the judgment creditor or to his legal practitioner or agent, so much of the debt actually due from him to the debtor as may be sufficient to satisfy the judgment, together with the costs of the garnishee proceedings and any costs previously incurred in attempting to obtain execution of the judgment, or failing such payment, to appear before the court on a day to be named in the order and show cause why he should not pay the debt.

(2) Subject to subsection (8), an order in terms of subsection (1) shall be served on the garnishee and a copy thereof on the judgment debtor by the messenger either personally or in such other manner as the court directs in the same manner as a summons is directed to be served by any law or rule relating to the service of a summons in civil proceedings, and the service of such order shall operate as an interdict restraining the alienation of the debt by the garnishee except as directed in the order.

(3) If the garnishee does not dispute that the debt is due from him to the debtor, or allege that he has a set-off against the debtor, or that the debt sought to be attached belongs to or is subject to a lien by some other person, or if he does not appear to show cause, as is mentioned in subsection (1), the court may, if satisfied by the return endorsed upon the order that the same has been duly served, further order execution to issue against the garnishee for so much of the debt as may be sufficient to satisfy the judgment, together with the costs of the garnishee proceedings, and the process for the execution of the order shall be as nearly as possible in accordance with the laws in force relative to the process for the execution of judgments:

Provided that the judgment debtor shall have the right to appear and to be heard.

(4) If the garnishee disputes his liability to pay the debt, or alleges that the debt sought to be attached is subject to a set-off or belongs to or is subject to a lien by some other person, the court, instead of making a further order as in subsection (3) is provided, shall, subject to the limitations as to jurisdiction imposed in civil cases, proceed to hear and determine the question of such liability or of the rights of such other person and may order such other person to appear and state the nature and particulars of his claim to or upon the said debt.

(5) After hearing the garnishee or such other person referred to in subsection (4) and their witnesses or, in case of the non-appearance after order of such other person, the court may order execution to issue against the garnishee in the manner provided by subsection (3) and may declare the claim of such other person to be barred, or may make such other order as to the court seems proper, upon such terms in all cases with respect to any set-off, lien or charge of such other person, and upon such terms with respect to costs, as the court thinks just and reasonable.

(6) A garnishee order may authorize the attachment of salary or wages, whether due and payable at the time of the grant of the order or to be earned in the future, and may order the payment of the debt and costs by instalments therefrom:

Provided that—

- (i) the court is satisfied that, after satisfaction of the order, sufficient means will remain for the maintenance of the debtor and those dependent upon him;
- (ii) the court may at any time, on the application of the judgment creditor or the judgment debtor, suspend, vary or discharge the order.

(7) Payment made by or execution levied upon the garnishee under this section shall be a valid discharge of the debt due from him to the debtor to the amount paid or levied.

(8) In any case where the State is the garnishee, the order to be served in terms of subsection (2) shall be served—

- (a) where the order relates to salary or wages of a person who is employed by the State and whose salary or wages are paid by the Salary Service Bureau, upon the person in charge of the Salary Service Bureau in Harare;
- (b) in any other case, upon such person as may be prescribed in rules.

(9) The costs of any proceedings under this section shall be in the discretion of the court.

(10) The magistrate shall transmit certified copies of any orders made, and a certificate of the amounts paid or levied under this section, to the clerk of the court in which the judgment was obtained against the debtor.

### **34 Order of attachment of property in security of rent**

(1) Upon an affidavit by or on behalf of the landlord of any house, land or premises situate within the court's regional division or province, as the case may be, that an amount of rent not exceeding the jurisdiction of the court is due and in arrear in regard to that house, land or premises, and that the rent has been demanded in writing for the space of seven days and upwards or, if not so demanded, that the deponent believes that the tenant is about to remove the movable property in and upon the premises in order to defeat and avoid the payment of the rent due and in arrear, and upon security being given to the satisfaction of the clerk of the court to pay and satisfy all damages, costs and charges which the tenant of such house, land or premises, or any other person, may sustain or incur by reason of the seizure or arrest hereinafter mentioned if such seizure and arrest are thereafter set aside, the court may, upon application, issue an order to the messenger authorizing and requiring him to seize and arrest so much of the movable property in or upon the house, land or premises in question, and subject to the landlord's hypothec for rent, as may be sufficient to satisfy the amount of rent due and in arrear, together with the costs of such application and of any action for the rent due and in arrear.

(2) Any person affected by the order referred to in subsection (1) may apply to have it set aside.

(3) A respondent whose property has been attached in terms of subsection (1) may, by notice in writing to the clerk of the court, admit that such property is subject to the landlord's hypothec for an amount to be specified in the notice, and may consent that such property be sold in satisfaction of the amount specified and costs; and the notice shall have the same effect as a consent to judgment for the amount specified.

### **35 Proceedings for recovery of possession of house upon return of nulla bona in action for rent**

When a judgment of any court has been obtained for the amount of any rent of any house, land or premises, and it appears by the messenger's return that no movable property has been found with which to satisfy the judgment, it shall be lawful for the plaintiff to serve upon the defendant a notice in writing informing him that application will be made to that court for an order directing him to deliver possession of the house, land or premises in respect of which the rent is due:

Provided that no claim or demand for the delivery of possession as aforesaid shall be entertained in any case in which the lease or the term thereof yet to come and unexpired is of a value which is above the jurisdiction of the court.

### **36 Decree of delivery of possession and its effects**

(1) It shall be lawful for the court, upon proof of the return and of the due service of the notice referred to in section *thirty-five*, and after hearing the plaintiff and also the defendant if he appears, to direct the defendant to deliver possession of the house, land or premises in question at such time and date as may be specified by the court, and thereupon the clerk of the court shall, upon the application of the plaintiff, issue a warrant in terms of such order authorizing and requiring the messenger to put the plaintiff into possession of the house, land or premises.

(2) A warrant in terms of subsection (1) shall in substance be in the form prescribed in the rules, and the messenger shall execute such warrant against the defendant and all persons claiming from, through or under him, and thereupon every previous contract or agreement for the lease or use of the house, land or premises in question by the defendant from the plaintiff shall become void:

Provided that the execution of the warrant referred to in subsection (1) shall not operate as a satisfaction or extinction of the rent recovered by the judgment referred to in section *thirty-five*.

### **37 Court in certain cases may, in action for rent, decree delivery of possession**

If it is made to appear to any court at the time of the hearing of any action brought for the recovery of any rent referred to in section *thirty-five*, either by the admission of the defendant or otherwise, and whether such defendant personally appears at any such hearing or not, that there is not sufficient property to satisfy any process of execution in respect of such rent, the court may then, and without the issue of any such process or any fresh summons, direct the defendant to deliver possession as aforesaid in like manner as if he had been duly served with a notice in manner and form as provided in section *thirty-five*.

### **38 When summons operates as interdict**

(1) Where a summons is issued in which is claimed the rent of any house, land or premises, the plaintiff may include in such summons a notice prohibiting any person from removing any other furniture or other effects therein or thereon which are subject to the plaintiff's hypothec for rent until an order relative thereto has been made by the court.

(2) A notice in terms of subsection (1) shall operate to interdict any person having knowledge thereof from removing any such furniture or effects.

(3) Any person affected by a notice in terms of subsection (1) may apply to the court to have the same set aside.

### **39 Rescission and alteration of judgment**

(1) In civil cases the court may—

- (a) rescind or vary any judgment which was granted by it in the absence of the party against whom it was granted;
- (b) rescind or vary any judgment granted by it which was void *ab origine* or was obtained by fraud or by mistake common to the parties;
- (c) correct patent errors in any judgment in respect of which no appeal is pending.

(2) The powers given in subsection (1) may only be exercised after notice by the applicant to the other party and any exercise of such powers shall be subject to appeal.

(3) Where an application to rescind, correct or vary a judgment has been made, the court may direct either that the judgment shall be carried into execution or that execution thereof shall be suspended pending the decision upon the application and the direction shall be made upon such terms, if any, as the court may determine as to security for the due performance of any judgment which may be given upon the application.

### **40 Appeals**

(1) No appeal shall lie from the decision of a court if, before the hearing is commenced, the parties lodge with the court an agreement in writing that the decision of the court shall be final.

(2) Subject to subsection (1), an appeal to the High Court shall lie against—

- (a) any judgment of the nature described in section *eighteen* or *thirty-nine*;
- (b) any rule or order made in a suit or proceeding referred to in section *eighteen* or *thirty-nine* and having the effect of a final and definitive judgment, including any order as to costs;
- (c) any decision overruling an exception when the parties concerned consent to such an appeal before proceeding further in an action or when it is appealed from in conjunction with the principal case or when it includes an order as to costs.

[Subsection as amended by section 2 of Act 9 of 1997]

(3) Where an appeal has been noted the court may direct either that the judgment shall be carried into execution or that execution thereof shall be suspended pending the decision upon the appeal or application.

(4) A direction in terms of subsection (3) shall be made upon such terms, if any, as the court may determine as to security for the due performance of any judgment which may be given upon the appeal or application.

#### **41 Abandonment of whole or part of judgment appealed against**

The following provisions shall apply in civil cases where an appeal has been noted, except in defamation or seduction cases—

- (a) the respondent in any appeal may, by notice in writing to the appellant and the clerk of the court, abandon the whole or any part of the judgment against which such appeal is noted;
- (b) where the party abandoning any judgment in terms of paragraph (a) was the plaintiff or applicant, judgment in respect of the part abandoned shall be entered for the defendant or respondent with costs;
- (c) where the party abandoning any judgment in terms of paragraph (a) was the defendant or respondent, judgment in respect of the part abandoned shall be entered for the plaintiff or applicant in terms of the claim in the summons or application;
- (d) a judgment entered in terms of paragraph (b) or (c) shall have the same effect in all respects as if it had been the judgment originally pronounced by the court in the action or matter.

#### **42 Agents**

No person shall be admitted or enrolled as an agent in any court.

#### **43 Costs**

(1) The stamps, fees, costs and charges in connection with any civil proceedings in magistrates courts shall, as between party and party, be payable in accordance with the scales prescribed in rules.

(2) As between legal practitioner and client, the same scales as provided in subsection (1) shall apply; but the clerk of the court may in his discretion allow, at rates based so far as may be upon such scales, additional costs and charges for services reasonably performed by the legal practitioner at the request of the client for which no remuneration is prescribed as between party and party.

(3) Payment of costs awarded by the court, otherwise than by a judgment in default of the defendant's appearance to defend or on the defendant's consent to judgment before the time for such appearance has expired, may not be enforced until they have been taxed by the clerk of the court or agreed to in writing by the parties:

Provided that the messenger's necessary charges and disbursements according to the prescribed scales for the execution of any process shall in the execution of such process be recoverable from the debtor without taxation.

(4) Any person who is liable to pay or who is sued for costs of any proceedings in a court, otherwise than under an award by the court or under a special agreement, may require that those costs shall be taxed by the clerk of the court as between legal practitioner and client, and thereupon any action for the recovery of those costs shall be stayed pending the taxation.

(5) The costs of and incidental to a taxation in terms of subsection (4) shall be borne, if not more than one-sixth is disallowed on taxation, by the person requiring the taxation and if more than one-sixth is so disallowed, by the person claiming the costs.

#### **44 Curator ad litem, appointment of**

The court may appoint a *curator ad litem* to any party to any proceedings in such court where such appointment is permitted or required by law.

#### **44A Electronic sittings of court**

(1) Rules may provide for the sittings of a court and of a magistrate, whether sitting in court or in chambers, to be conducted by the use of any electronic or other means of communication by which all the parties to the proceedings at the sitting can hear and be heard at the same time without being physically present together (hereinafter referred to as "virtual sittings"):

Provided that the parties concerned must consent to their proceedings being conducted by way of a virtual sitting.

(2) A party who participates in a virtual sitting for which provision is made under the rules is taken for all purposes to have been present at the sitting.

[Section inserted by Act 7 of 2017]

### **PART III**

#### **INTERROGATORIES NEIGHBOURING STATES**

#### **45 Examination by interrogatories**

When any witness in any civil case brought in any magistrates court in any neighbouring state to which this Part applies, resides or is in Zimbabwe and it is certified to the magistrate of the regional division or province in which the witness resides or is, by the magistrate of the court in the neighbouring state that the evidence of the witness is required in that civil case in such court and that interrogatories to be put to the witness have been duly framed and approved under the laws as to interrogatories in force in such state, it shall be the duty of the magistrate of the regional division or province in which the witness resides or is, upon the receipt of the interrogatories together with the reasonable expenses of the witness in accordance with the tariff in force in the court to which he is subpoenaed—

- (a) to summon the witness to appear in his court and upon his appearance to take his evidence in manner and form as of a witness in a case pending in the court to which the witness is subpoenaed; and
- (b) to put to the witness the interrogatories and all other questions calculated to obtain full and true answers to the interrogatories; and
- (c) to take down or cause to be taken down in writing the evidence of the witness and to transmit the same certified as correct to the magistrate in whose court the civil case is pending.

#### **46 Manner of summoning and penalty for non-attendance**

Every witness summoned by a magistrate in terms of section *forty-five* to appear to answer any interrogatories referred to in that section shall be summoned in like manner and be liable to the like penalties in case of non-attendance as if the summons were a summons to give evidence in the court of the magistrate.

#### **47 Reciprocal provision for cases pending in Zimbabwe**

If at any time provision is made by law in any neighbouring state to which this Part applies for taking, by means of interrogatories, the evidence of witnesses who reside or are in that state and whose evidence is required in any civil case pending in any magistrates court in Zimbabwe, such evidence, certified as correct by the officer proper for the purpose, shall be received as evidence in such case, subject to all lawful exceptions.

#### **48 When this Part takes effect**

This Part shall take effect so far as concerns any neighbouring state as soon as the President, by statutory instrument, declares that that state has made due provision for taking, by interrogatories, the evidence of witnesses who reside or are in that state and whose evidence is required in civil cases in the courts of magistrates in Zimbabwe, and for the transmission of such evidence to such magistrates.

### **PART IV**

#### CRIMINAL

#### **49 Jurisdiction in criminal cases**

- (1) Subject to this Act and any other enactment, the court shall have jurisdiction over all offences except—
- (a) treason;
  - (b) murder;
  - (c) any offence where an enactment requires that a person convicted of the offence shall be sentenced to death.
- (2) The jurisdiction of the court, other than the court of a regional magistrate, over the offence of rape shall be exercised only—
- (a) on remittal by the Prosecutor-General of a case for trial or sentence in such court; or
  - (b) on summary trial where the person charged has not attained the age of eighteen years and the Prosecutor-General has in writing authorized the trial.

#### **50 Ordinary jurisdiction as to punishment**

- (1) Subject to this Act and any other enactment, the jurisdiction of a court of a magistrate, other than a senior, provincial or regional magistrate, in respect of punishment for any offence shall be—
- (a) on summary trial—
    - (i) imprisonment for a period not exceeding two years;
    - (ii) a fine not exceeding level seven;
  - (b) on remittal by the Prosecutor-General under the increased jurisdiction given by this paragraph—
    - (i) imprisonment for a period not exceeding four years;
    - (ii) a fine not exceeding level nine.
- [Subsection amended by Act 22 of 2001 and by Act 14 of 2002]
- (2) Subject to this Act and any other enactment, the jurisdiction of a court of a senior magistrate in respect of punishment for any offence, whether on summary trial or on remittal by the Prosecutor-General, shall be—
- (a) imprisonment for a period not exceeding four years;
  - (b) a fine not exceeding level nine.
- [Subsection amended by Act 22 of 2001 and by Act 14 of 2002]
- (3) Subject to this Act and any other enactment, the jurisdiction of a court of a provincial magistrate in respect of punishment for any offence, whether on summary trial or on remittal by the Prosecutor-General, shall be—
- (a) imprisonment for a period not exceeding five years;
  - (b) a fine not exceeding level ten.
- [Subsection amended by Act 22 of 2001 and by Act 14 of 2002]
- (4) Subject to this Act and any other enactment, the jurisdiction of a court of a regional magistrate in respect of punishment for any offence, whether on summary trial or on remittal by the Prosecutor-General, shall be—
- (a) imprisonment for a period not exceeding ten years;
  - (b) a fine not exceeding level twelve.

[Subsection amended by Act 22 of 2001 and by Act 14 of 2002]

(5) Subject to this Act and any other enactment, a court may impose upon a person convicted of an offence a punishment of both a fine and imprisonment.

(6) Subject to section 353 of the Criminal Procedure and Evidence Act [*Chapter 9:07*], a court shall have jurisdiction to impose corporal punishment in terms of that section, not exceeding six cuts, upon a convicted person who has not attained the age of eighteen years.

(7) Where any enactment provides that for any offence there may be imposed any forfeiture or confiscation, the court before which such offence is prosecuted may impose such forfeiture or confiscation in addition to any other penalty.

(8) This section shall not be construed as—

- (a) authorizing a court to impose a punishment for any offence which is greater than may lawfully be imposed for that offence; or
- (b) preventing a court from imposing a greater or different punishment for any offence, if the court is expressly authorized to do so by any enactment.

## 51 Special jurisdiction as to punishment

(1) Notwithstanding section *fifty*, the jurisdiction of a court of magistrate, other than a regional magistrate, in respect of punishment for—

- (a) public violence; or
- (b) malicious injury to property; or
- (c) an attempt to commit either offence referred to in paragraph (a) or (b);

whether on summary trial or remittal by the Prosecutor-General, shall be—

- (i) imprisonment for a period not exceeding seven years;
- (ii) a fine not exceeding level eleven.

[Subsection amended by Act 22 of 2001 and by Act 14 of 2002 and by section 29 of Act 9 of 2006]

(2) Notwithstanding section *fifty*, the jurisdiction of a court of a regional magistrate in respect of punishment for—

- (a) public violence, malicious damage to property or an attempt to commit either offence; or
- (b) robbery or attempted robbery, if the court finds in terms of section 126(3) of the Criminal Law Code that aggravating circumstances were present;

whether on summary trial or remittal by the Prosecutor-General, shall be—

- (i) imprisonment for a period not exceeding twelve years;
- (ii) a fine not exceeding level thirteen.

[Subsection amended by Act 8 of 2001, 22 of 2001 and by Act 14 of 2002]

(3) Notwithstanding section *fifty*, every magistrate shall have special jurisdiction to impose the penalties prescribed in sections 113 (“Theft”), 114 (“Stock theft”) and 131 (“Unlawful entry into premises”) of the Criminal Law Code.

[Subsection substituted by section 29 of Act 9 of 2006.]

(4) Notwithstanding section *fifty*, the jurisdiction of—

- (a) a regional magistrate in respect of punishment for a sexual offence, whether on summary trial or remittal of the case for trial or sentence by the Prosecutor-General, shall be—

- (i) imprisonment for a period not exceeding twenty years;
- (ii) a fine not exceeding level fourteen;

or both such fine and such imprisonment;

- (b) a regional magistrate in respect of the offence prescribed or any offender referred to in section 78 (“Deliberate infection of another with a sexually-transmitted disease”) or 79 (“Deliberate transmission of HIV”) of the Criminal Law Code, the penalties prescribed in those provisions;

- (c) a magistrate, other than a regional magistrate, in respect of punishment for a contravention of Chapter VII of the Criminal Law Code (“Offences Relating to Dangerous Drugs”), whether on summary trial or remittal of the case for trial or sentence by the Prosecutor-General, shall be—

- (i) imprisonment for a period not exceeding ten years;
- (ii) a fine not exceeding level twelve;

or both such fine and such imprisonment;

- (d) a regional magistrate in respect of punishment for a contravention of Chapter VII of the Criminal Law Code (“Crimes Relating to Dangerous Drugs”), whether on summary trial or remittal of the case for trial or sentence by the Prosecutor-General, shall be—

- (i) imprisonment for a period not exceeding fifteen years;
- (ii) a fine not exceeding level thirteen;

or both such fine and such imprisonment:

Provided that nothing in this subsection shall be construed as authorising any magistrate to impose for any such offence or contravention a punishment greater than that prescribed by the Criminal Law Code for such offence or contravention.

[Subsection substituted by section 282 of Act 23 of 2004]

(5) For the purposes of paragraph (a) of subsection (4)—

“sexual offence” means—

- (a) a contravention of section 65 (“Rape”), 66 (“Aggravated indecent assault”), 67 (“Indecent assault”), 70 (“Sexual intercourse or performing indecent acts with a young person”), 73 (“Sodomy”), 74 (“Bestiality”), 75 (“Sexual intercourse within a prohibited degree of relationship”) or 76 (“Complicity in sexual crimes”) of the Criminal Law Code; or
- (b) an attempt to commit an offence referred to in paragraph (a).

[Subsection substituted by section 282 of Act 23 of 2004]

## 52 Magistrate may be assisted by assessors

(1) In the case of any summary trial or trial on remittal by the Prosecutor-General—

- (a) a regional magistrate may, subject to the directions of the chief magistrate and before any evidence has been led, choose to sit with him at the trial as assessor or assessors any person who is, or any two persons who are, qualified in terms of section 6 of the High Court Act [*Chapter 7:06*] to act as assessors in the High Court; and
- (b) any other magistrate may, subject to the approval of the Minister and before any evidence has been led, choose to sit with him at the trial as assessor or assessors any person who has, or any two persons who have, in his opinion, experience in the administration of justice or skill in any matter which may have to be considered at the trial.

(2) If, in a case remitted by the Prosecutor-General, the magistrate summons to his assistance any assessor or assessors to sit with him, then the trial shall, notwithstanding anything to the contrary in subsection (2) of section 206 of the Criminal Procedure and Evidence Act [*Chapter 9:07*] be commenced afresh before such magistrate and assessor or assessors.

(3) Before the trial the magistrate shall administer an oath to the person or persons whom he has so called to his assistance that he or they will give a true verdict, according to the evidence upon the issues to be tried, and thereupon he or they shall be a member or members of the court, subject to the following provisions—

- (a) any matter of law arising for decision at the trial and any question arising thereat as to whether a matter for decision is a matter of fact or a matter of law and any question arising thereat as to the admissibility of evidence, shall be decided by the magistrate and no assessor shall have a voice in any such decision;
- (b) the magistrate may adjourn the argument upon any such matter or question as is mentioned in paragraph (a) and may sit alone for the hearing of such argument and the decision of such matter or question;
- (c) when the magistrate has given a decision in terms of paragraph (a) he shall give his reasons for that decision;
- (d) upon all matters of fact the decision or finding of the majority of the members of the court shall be the decision or finding of the court:

Provided that when only one assessor sits with the magistrate the decision or finding of the magistrate shall be the decision or finding of the court if there is a difference of opinion;

- (e) the magistrate shall have the sole responsibility for fixing the sentence but he may consult the assessor or assessors if he thinks fit.

(4) Where the decision or finding of the court is a decision or finding referred to in paragraph (d) of subsection (3), the court shall give—

- (a) the reasons for that decision or finding; and
- (b) the reasons for the decision or finding of the dissenting member of the court

(5) If any assessor appointed in terms of this section is not a person employed in a full-time capacity in the Civil Service he shall be entitled to a refund of any reasonable expenditure which he may have necessarily incurred in connection with his attendance at the trial and to such remuneration for his services as assessor as may be prescribed in the rules.

## 53 Incapacity of assessor

(1) If at any time during a trial before a magistrate and an assessor or assessors, an assessor dies or becomes, in the opinion of the magistrate, incapable of continuing to act as assessor, the magistrate may, if he thinks fit, with the consent of the accused and the prosecutor, direct that the trial shall proceed without such assessor.

(2) Where the magistrate has given a direction in terms of subsection (1) the trial shall proceed as if the assessor concerned had not been called by the magistrate to his assistance.

(3) If the magistrate does not give a direction in terms of subsection (1), the accused, unless already released on bail, shall remain in custody and may be tried again, but a judge or magistrate may in a proper case, as provided in Part IX of the Criminal Procedure and Evidence Act [*Chapter 9:07*], release him on bail accordingly and

the magistrate and any assessor who were members of the court before which the accused was first tried shall not be competent to be members of the court which tries him again on the same charge.

#### **54 Stopping and conversion of trials**

(1) When in the course of a trial, whether or not any evidence has been led, it appears that the offence is from its nature only subject to the jurisdiction or more proper for the cognisance of a court of greater jurisdiction, or when the public prosecutor so requests, the magistrate shall stop the trial and immediately adjourn the case and remand the accused and submit a report to the Prosecutor-General, together with a copy of the record of the proceedings in the case.

(2) If upon the conviction of an accused person upon summary trial or trial on remittal by the Prosecutor-General, before sentence is passed, the magistrate is of the opinion that a sentence in excess of his jurisdiction is justified, he may adjourn the case and remand the person convicted and submit a report to the Prosecutor-General, together with a copy of the record of the proceedings in the case.

#### **55 Imposition or bringing into operation of sentences suspended by High Court**

(1) If, upon the conviction of an accused person, before sentence is passed the magistrate is satisfied, whether on the admission of the convicted person or on evidence produced by the prosecutor, that—

- (a) the convicted person has been previously convicted by the High Court of an offence and the passing of sentence therefor has been postponed, or the whole or part of the sentence therefor has been suspended, under section 358 of the Criminal Procedure and Evidence Act [*Chapter 9:07*], and
- (b) the conviction by the magistrate or the commission of the offence in question constitutes a breach by the convicted person of any of the conditions of such postponement or suspension within the period of such postponement or suspension;

the magistrate shall sentence the convicted person for the offence of which he has convicted him and adjourn the case, and thereupon—

- (i) unless he is admitted to bail under Part IX of the said Act, grant a warrant committing him to prison, there to be detained until brought before a judge of the High Court to show cause why the sentence so postponed or suspended should not be imposed or brought into operation or until admitted to bail or liberated in due course of law; and
- (ii) forthwith transmit the record of the proceedings, together with his reasons for convicting the person concerned, to the registrar and a copy thereof to the Prosecutor-General.

(2) Upon receipt of the documents mentioned in subparagraph (ii) of subsection (1), the registrar shall with all convenient speed lay them before a judge of the High Court in chambers and, if the judge considers the proceedings to be in accordance with real and substantial justice, he shall cause the convicted person to be brought before him in open court, on a date and at a place to be notified by the registrar to the convicted person and to the Prosecutor-General, to show cause why the sentence so postponed or suspended should not be imposed or brought into operation.

#### **56 Local limits of jurisdiction**

(1) Subject to subsection (1) of section *forty-nine*, any person charged with any offence committed within any province or regional division may be tried by the court of that province or that regional division, as the case may be.

(2) When any person is charged with an offence—

- (a) committed within the distance of five kilometres beyond the boundary of the province or the regional division; or
- (b) committed in or upon any vehicle, including a railway train, on a journey any part whereof was performed within the province or regional division or within the distance of five kilometres of the province or the regional division; or
- (c) begun or completed within the province or the regional division;

such person may be tried by the court of the province or of the regional division, as the case may be, as if he had been charged with an offence committed within that province or that regional division.

(3) A person charged with committing an offence may be tried by any court within whose jurisdiction any act or omission or event which is an element of the offence takes place.

(4) A person charged with theft of any property or with obtaining by any offence any property, or with an offence which involves the receiving of any property by him, may be tried by any court within the jurisdiction of which he has or has had any part of the property in his possession.

(5) A person charged with counselling or procuring the commission of an offence, or with becoming an accessory after the fact to an offence, may be tried by any court by whom the principal offender might be tried.

(6) Where a person is charged with an offence in terms of any enactment which has extra-territorial operation and any act, omission or event which is an element of the offence took place outside Zimbabwe, he may be tried by any court, notwithstanding the fact that no act, omission or event which is an element of the offence took place in the province or regional jurisdiction for which that court is established.

(7) Where any court has remanded a prisoner for trial before any other court such prisoner shall, unless liberated on bail, forthwith be transferred to a prison for trial before such court.

(8) Where it is uncertain in which of several jurisdictions an offence has been committed, a person charged with such offence may be tried in any of such jurisdictions.

(9) Notwithstanding anything in this section, the Prosecutor-General may, with the consent of the accused person charged with having committed an offence, cause such person to be tried for such offence in the court of any province.

(10) Notwithstanding anything in this section, subsections (6), (7) and (8) of section 95 of the Criminal Procedure and Evidence Act [*Chapter 9:07*] shall apply, *mutatis mutandis*, in respect of the trial of any person by any court.

## 57 Review

(1) When any court sentences any person—

- (a) to be imprisoned for any period exceeding twelve months; or
- (b) to pay a fine exceeding level six;

the clerk of the court shall forward to the registrar, not later than one week next after the determination of the case, the record of the proceedings in the case, together with such remarks, if any, as the magistrate may desire to append:

Provided that—

- (i) where any of the evidence in the case has been taken down in shorthand writing or recorded by mechanical means, it shall, unless the magistrate otherwise directs, be a sufficient compliance with this subsection if the clerk of the court forwards to the registrar the manuscript notes of such evidence made by the magistrate in accordance with rules;
- (ii) this subsection shall not apply in relation to any person—
  - (a) who is represented by a legal practitioner;
  - (b) which is a company as defined in the Companies Act [*Chapter 24:03*];

unless within three days after the determination of the case the legal practitioner of the accused or the person representing the company in terms of subsection (2) of section 385 of the Criminal Procedure and Evidence Act [*Chapter 9:07*], as the case may be, in terms of subsection (2) requests the clerk of the court to forward the case on review.

[Subsection amended by Act 22 of 2001

(2) A request made in terms of proviso (ii) to subsection (1) shall be—

- (a) made in writing; and
- (b) accompanied by a brief statement of the reasons for the request;

and the magistrate shall comment upon the reasons referred to in paragraph (b) before the record of the proceedings is forwarded, together with such comments, in terms of subsection (1).

(3) The accused person in any criminal case in which the court has imposed a sentence which is not subject to review in the ordinary course in terms of subsection (1) may, if he considers that such sentence is not in accordance with real and substantial justice, within three days after the date of such sentence, in writing, request the clerk of the court to forward the record of the proceedings in terms of subsection (1) and the clerk of the court shall thereupon deal with the matter in terms of subsection (1) as if the case were subject to review in the ordinary course.

[Proviso repealed by section 3 of Act 9 of 1997]

(4) The registrar shall with all convenient speed lay papers forwarded to him in terms of this section before a judge of the High Court in chambers for review in accordance with the High Court Act [*Chapter 7:06*].

## 58 Scrutiny of certain cases not falling within section 57(1)

(1) Where any court, other than the court of a regional magistrate, sentences any person—

- (a) to be imprisoned for any period exceeding three months but not exceeding twelve months; or
- (b) to pay a fine exceeding level four but not exceeding level six;

the clerk of the court shall forward to a regional magistrate, not later than one week next after the determination of the case, the record of the proceedings in the case together with such remarks, if any, as the magistrate may desire to append:

Provided that—

- (i) where any of the evidence in the case has been taken down in shorthand writing or recorded by mechanical means, it shall, unless the magistrate otherwise directs, be a sufficient compliance with this subsection if the clerk of the court forwards to the regional magistrate the manuscript notes of such evidence made by the magistrate in accordance with the rules;
- (ii) this subsection shall not apply in relation to—
  - (a) any person—
    - (i) who is represented by a legal practitioner; or

- (ii) which is a company as defined in the Companies Act [*Chapter 24:03*];
- (b) any person who has made a request in terms of subsection (3) of section *fifty-seven*;
- (c) a conviction and sentence in terms of subsection (1) of section 356 of the Criminal Procedure and Evidence Act [*Chapter 9:07*].

[Subsection amended by Act 22 of 2001]

(2) Where the manuscript notes of any evidence are forwarded to a regional magistrate in terms of proviso (i) to subsection (1) the regional magistrate may direct that the record of such evidence taken down in shorthand writing or recorded by mechanical means be transcribed and that a transcription thereof be forwarded to him.

(3) The regional magistrate shall, as soon as possible after receiving the papers referred to in subsection (1), upon considering the proceedings—

- (a) if he is satisfied that the proceedings are in accordance with real and substantial justice, endorse his certificate to that effect upon the proceedings which shall then be returned to the court from which they were transmitted;
- (b) if it appears to him that doubt exists whether the proceedings are in accordance with real and substantial justice, cause the papers to be forwarded to the registrar, who shall lay them before a judge of the High Court in chambers for review in accordance with the High Court Act [*Chapter 7:06*].

## 59 Accused's right to submit statement on review

In any criminal case which is subject to review in terms of section *fifty-seven* the accused person may, if he thinks the sentence passed upon him is excessive, deliver to the clerk of the court within three days after the date of such sentence any written statement of arguments setting out the grounds or reasons upon which he considers such sentence excessive, which statement or arguments shall be forwarded with the proceedings of the case to the reviewing judge and shall be taken into account in the review of the proceedings.

## 60 Appeal from magistrates courts in criminal cases

(1) Subject to this section and any other enactment, any person who is convicted of any offence by a court may appeal to the High Court against the conviction and additionally, or alternatively, any sentence or order of the court following upon the conviction?

[Subsection as substituted by section 5 of Act 9 of 1997]

(2)....

(Subsection repealed by s. 5 of Act 9 of 1997)

(3) A person who is convicted of any offence by a court and who is discharged after conviction in terms of any provision of the Criminal Procedure and Evidence Act [*Chapter 9:07*] may appeal against such conviction to the High Court.

[Subsection as amended by section 5 of Act 9 of 1997]

(4) Any person who has been convicted by a court but sentenced by a judge of the High Court in terms of Part IX of the Criminal Procedure and Evidence Act [*Chapter 9:07*] may appeal to the Supreme Court against such conviction or any sentence imposed upon him or any order of court following upon such sentence as though he had been both convicted and sentenced in the High Court.

## 61 Prosecutor-General may appeal to High Court on point of law or against acquittal

If the Prosecutor-General is dissatisfied with the judgment of a court in a criminal matter—

- (a) upon a point of law; or
- (b) because it has acquitted or quashed the conviction of any person who was the accused in the case on a view of the facts which could not reasonably be entertained;

he may, with the leave of a judge of the High Court, appeal to the High Court against that judgment:

Provided that the person who was the accused in the case shall have the right, should he so desire, at his own expense to appear in person or to be legally represented or a judge of the High Court may order that such representation shall be defrayed out of moneys appropriated for the purpose by Act of Parliament.

[Section as amended by section 6 of Act 9 of 1997]

## 62 Prosecutor-General may appeal to High Court against sentence

(1) If the Prosecutor-General considers that the sentence imposed in any criminal case by a court is—

- (a) incompetent in law, he may appeal to the High Court against that sentence; or
- (b) inadequate—
  - (i) in the light of the findings of fact made by the court and the nature of the charge; or
  - (ii) because it was based on findings of fact for which there was no evidence or on a view of the facts which could not reasonably be entertained;

he may, with the leave of a judge of the High Court, appeal to the High Court against that sentence.

[Subsection as amended by section 7 of Act 9 of 1997]

(2) Where an offender has been discharged with a caution or reprimand such offender shall, notwithstanding anything in any law, be deemed for the purposes of this section, to have been convicted and sentenced.

### **63 Execution of sentence of imprisonment, fine or community service not suspended pending review or appeal unless bail granted**

The execution of any sentence of imprisonment, fine or community service shall not be suspended by—

- (a) the transmission of or the obligation to transmit the record of the proceedings in the case for review in terms of section *fifty-seven* or for scrutiny by a regional magistrate in terms of section *fifty-eight*; or
- (b) the noting of an appeal referred to in section *sixty*;

unless—

- (i) in the case of imprisonment or fine, bail is granted by a judge or magistrate in terms of section 123 of the Criminal Procedure and Evidence Act [*Chapter 9:07*]; or
- (ii) in the case of community service, an application is granted by the magistrate to suspend the operation of the sentence pending determination of the appeal

[Section substituted by section 2 of Act 9/2003].

### **64 Execution of corporal punishment suspended pending appeal**

(1) The punishment of a moderate correction of whipping referred to in section 353 of the Criminal Procedure and Evidence Act [*Chapter 9:07*] shall not, where an appeal is noted before its execution, be executed until the appeal has been determined or abandoned or is deemed to have been abandoned.

(2) Notwithstanding subsection (1), corporal punishment in terms of section 353 of the Criminal Procedure and Evidence Act [*Chapter 9:07*] may be executed before the expiry of the period referred to in subsection (1), if the person sentenced to such punishment has given written notice to the registrar of the High Court or the clerk of the appropriate magistrates court that he wishes the sentence to be carried out without further delay and that he does not intend to appeal or intends to abandon his appeal as the case may be.

[Subsection as amended by section 8 of Act 9 of 1997]

(3) Where the person sentenced to receive the punishment of whipping referred to in subsection (1) is not also sentenced to be imprisoned for such period as allows time for the provisions of that subsection to be satisfied, he shall, unless he is granted bail in terms of section 123 of the of the Criminal Procedure and Evidence Act [*Chapter 9:07*], be detained in custody until that subsection is so satisfied.

## **PART V**

### **GENERAL**

### **65 Legal representation**

Subject to this Act and except as otherwise provided in any other law—

- (a) in any civil proceedings before a court, the parties may appear in person or be represented by a legal practitioner;
- (b) in any criminal proceedings, the person who is the subject of the proceedings may appear in person or be represented by a legal practitioner.

### **66 Amendment of plaint or summons. Costs**

(1) In any civil proceedings before any court it shall be lawful for such court before or at the hearing to amend any plaint or summons or other document forming part of the record:

Provided that—

- (i) no application for amendment shall be granted except on terms which can cause no prejudice to the opposite party in the conduct of his case;
- (ii) such amendment shall be made upon such terms as to costs as the court considers reasonable.

(2) No misnomer in regard to the name of any person or any place shall vitiate any summons or other writ or plaint or proceeding in the case where the person or place is therein described so as to be commonly known.

### **67 Examination of witnesses by interrogatories**

(1) When any witness in any civil case brought in any court resides or is in a province other than that under the jurisdiction of that court, the court in which the action is brought, should it appear to be for the convenience of the witness and to be consistent with the ends of justice, may, upon the request of either party and after hearing the other party, frame or approve of such interrogatories as either party desires to have put to such witness and forward them, together with the reasonable expenses of the witness which shall be advanced by the party desiring his examination, to the magistrate of the province within which the witness resides or is.

(2) The magistrate referred to in subsection (1) shall thereupon summon the witness to appear in his court, and upon his appearance shall—

- (a) take his evidence in manner and form as if a witness in a case heard before him; and
- (b) put to the witness the interrogatories referred to in subsection (1) and all other questions calculated to obtain full and true answers to the interrogatories; and
- (c) take down or cause to be taken down in writing the evidence; and
- (d) transmit the same, certified as correct, to the court from whom the interrogatories were received;

and such evidence, subject to all lawful objections, shall be received as evidence in the case before the magistrate referred to in subsection (1).

### **68 Commission de bene esse**

Any court in any civil case where it may be necessary or expedient and consistent with the ends of justice so to do, may appoint a fit and proper person to be a commissioner to take the evidence of any witness upon application of any one of the parties, of which application due notice shall have been given to the other party, and the evidence so taken, subject to all lawful exceptions, shall be received as evidence in such case.

### **69 Administration of oath**

The oath to be taken by any witness in any proceedings, whether civil or criminal, in any court shall be administered by the officer presiding at such proceedings or by the prosecutor or the clerk of the court in the presence of the said officer or, if the witness is to give his evidence through an interpreter, by the said officer through the interpreter or by the interpreter in the said officer's presence.

### **70 Interpleader proceedings where third parties claim goods taken in execution**

(1) If any claim is made to or in respect of any movable property taken in execution under the process of any court or to or in respect of the proceeds or value thereof, by any person not being the party against whom such process was issued, the clerk of the court issuing such process shall, upon the application of the messenger, as well before as after any action brought against him, issue an interpleader summons calling before the court as well the party suing out such process as the party making such claim, which summons shall be in the form prescribed in rules.

(2) On the issue of any interpleader summons in terms of subsection (1) any action which has been brought in any other court whatsoever in respect of such claim shall be stayed and the court in which such action has been brought, or any judge or judicial officer thereof, on proof of the issue of such summons, may order the party bringing such action to pay the costs of all proceedings had upon such action after the issue of the interpleader summons.

(3) The court issuing any interpleader summons in terms of subsection (1) shall adjudicate upon the claim and make such order between the parties in respect thereof and of the costs of the proceedings as to the court seems just and lawful, and such order shall be deemed to be a judgment of the court and shall be enforced and may be appealed from in like manner as any other judgment.

### **71 Contempt of court**

(1) If any person, whether in custody or not—

- (a) wilfully insults the magistrate during his sitting in court or any clerk or messenger or other officer of any court during his attendance therein; or
- (b) wilfully interrupts the proceedings of or otherwise misbehaves in court; or
- (c) being a witness, refuses to answer any legal question relative to the matter in issue;

it shall be lawful for any police officer or private person by order of the magistrate to take such offender into custody and detain him until the rising of the court, and the magistrate may by warrant under his hand impose on the offender a fine not exceeding level three or commit him to prison for a period not exceeding one month, or impose such a fine on him and commit him to prison for such a period.

(2) Where any magistrate commits or fines any person in terms of subsection (1) he shall without delay transmit to the registrar for the consideration of a judge of the High Court in chambers a statement certified by such magistrate to be true and correct of the grounds and reasons for his action, and shall also furnish to the person convicted a copy of such statement so certified by him.

(3) If any person wilfully disobeys or neglects to comply with an order of a magistrate issued under the powers conferred upon him by this Act, the magistrate may by warrant signed by him impose on the offender a fine not exceeding level five or commit him to prison for a period not exceeding six months, or both impose such a fine on him and commit him to prison for such a period:

Provided that an appeal shall lie to the High Court against such order or warrant of commitment, as in the case of an appeal under section *sixty*, and that section shall apply, *mutatis mutandis*, to any such appeal.

[Subsection amended by Act 22 of 2001 and proviso amended by section 9 of Act 9 of 1997]

### **72 Obstruction of messenger and other offences**

Any person who—

- (a) obstructs a messenger in the execution of his duty; or
- (b) being aware that goods are under arrest, interdict or attachment by the court, makes away with, conceals, destroys, injures or receives those goods or disposes of those goods in any manner not authorized by law, or knowingly permits those goods, if in his possession or under his control, to be made away with, concealed, destroyed, injured or disposed of in any such manner; or
- (c) being a judgment debtor and being required by a messenger to point out property to satisfy any warrant issued in execution of judgment against any such person, either—

- (i) falsely declares to such messenger that he possesses no property or not sufficient property to satisfy the warrant; or
  - (ii) although owning property, neglects or refuses to point out the same;
- or
- (d) being a judgment debtor, refuses or neglects to comply with any requirement of a messenger in regard to the delivery of documents in his possession or under his control relating to the title of the immovable property under execution; or
  - (e) being a judgment debtor and having been lawfully arrested by a messenger and being in lawful custody but not yet having been lodged in any prison, escapes or attempts to escape from such custody;
- shall be guilty of an offence and liable to a fine not exceeding level five or, in default of payment, to imprisonment for a period not exceeding six months.

[Section amended by Act 22 of 2001]

### 73 Rules of court

The Minister may make rules relating to any of the following matters in respect of magistrates courts—

- (a) the manner and form of procedure;
- (b) all matters relating to the manner and form of procuring and adducing evidence;
- (c) securing the attendance of witnesses and the production of books, papers or documents, and penalties for non-attendance and non-production of such books, papers or documents;
- (d) the authentication of documents executed outside Zimbabwe;
- (e) the manner of service;
- (f) the granting of summary judgment;
- (g) the records to be kept;
- (h) when and how security shall be given;
- (i) the discovery of documents;
- (j) payment into court, whether as a tender or as an offer of settlement, or to abide the result of interpleader proceedings;
- (k) the manner of executing judgments;
- (l) the procedure for appeals in terms of subsection (3) of section *seventy-four* from decisions of assistant magistrates;
- (m) dismissal for want of prosecution;
- (n) the duties of officers of the court;
- (o) taxation of bills of costs;
- (p) the forms to be used, including, unless otherwise provided for under any other enactment, the forms to be used in connection with the powers to be exercised by magistrates and magistrates courts under this Act or any other enactment;
- (q) conditions as to payment of costs, fees and charges and otherwise upon which persons may be allowed to sue and defend as paupers;
- (r) the fees and charges to be taken by officers and legal practitioners;
- (s) generally to give effect to the jurisdiction conferred upon magistrates courts by any enactment;
- (t) the fixing of a scale of expenses payable to witnesses;
- (u) the remuneration, refunds and allowances payable to assessors;
- (v) in relation to criminal cases—
  - (i) summonses and charge-sheets, including the particulars which, for the purpose of section 146 of the Criminal Procedure and Evidence Act [*Chapter 9:07*], shall be deemed sufficient to set forth the offences specified therein;
  - (ii) the forms of complaints, depositions, judgments, records, convictions, warrants, recognisance and other documents;
  - (iii) the sittings of courts for criminal purposes;
  - (iv) the proceedings of criminal trials;
  - (v) generally, any other matter which he considers expedient for carrying the criminal law, practice and procedure into effect;
- (w) the service of process by electronic means;
 

[Paragraph substituted by Act 7 of 2017]
- (x) the authentication of documents by electronic means, whether executed inside or outside Zimbabwe;
 

[Paragraph inserted by Act 7 of 2017]
- (y) the digitisation of the records filed or lodged with a clerk of any court (whether on a centralised basis for all courts or on a decentralised basis by province or region) and the conditions of access thereto or for the copying thereof for the purpose of any judicial proceedings;
 

[Paragraph inserted by Act 7 of 2017]
- (z) anything which, in terms of this Act or any other enactment, is required or permitted to be prescribed in such rules.

[Paragraph inserted by Act 7 of 2017]

#### **74 Transitional provision: assistant magistrates**

(1) Any person who, immediately before the 25th March, 1993, was a presiding officer of a community court established in terms of the Customary Law and Primary Courts Act, 1981 (No. 6 of 1981), shall be deemed to have been appointed in terms of section *seven* to hold magisterial office with the grade of assistant magistrate.

(2) Notwithstanding any other provision of this Act, a court presided over by an assistant magistrate referred to in subsection (1) shall not have jurisdiction—

- (a) in any criminal case; or
- (b) in any civil case in which customary law does not apply.

(3) Notwithstanding any other provision of this Act—

- (a) an appeal shall lie from a decision of an assistant magistrate referred to in subsection (1) to the provincial magistrate for the province in which the court of the assistant magistrate is situated; and
- (b) a provincial magistrate may, in relation to judgments and orders of assistant magistrates referred to in subsection (1) whose courts are situated within his province, exercise the same powers as he may exercise in terms of section 25 of the Customary Law and Local Courts Act [*Chapter 7:05*], in relation to judgments and orders of local courts within his province.

(4) Subsection (1) shall not be construed as preventing an assistant magistrate referred to therein from being appointed in terms of section *seven* as a magistrate of any other grade.