

Malawi

## Service of Process and Execution of Judgments Act Chapter 4:04

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## Malawi

# Service of Process and Execution of Judgments Act

## Chapter 4:04

Commenced on 1 February 1957

*[This is the version of this document at 31 December 2014.]*

*[Note: This version of the Act was revised and consolidated in the Fifth Revised Edition of the Laws of Malawi (L.R.O. 1/2018), by the Solicitor General and Secretary for Justice under the authority of the Revision of the Laws Act.]*

*[4 of 1956 (F); 7 of 1963 (F); G.N. 114/1964 (N); G.N. 263/1969]*

**An Act to provide for the service in Malawi of civil and criminal process of any court of record of Zambia or Southern Rhodesia, the execution in Malawi of civil judgments of any such court, and for matters incidental to the foregoing and connected therewith**

### *Preliminary*

#### **1. Short title**

This Act may be cited as the Service of Process and Execution of Judgments Act.

#### **2. Interpretation**

In this Act, unless inconsistent with the context—

“**court**” means any court established by or under any law of Malawi, Zambia or Southern Rhodesia which is required by law to keep a record of its proceedings but shall not include a Traditional Court established in Malawi under the Traditional Courts Act, a court established in Zambia under either the Native Courts Ordinance (Chapter 158) or the Barotse Native Courts Ordinance (Cap. 160) or a court established in Southern Rhodesia under the Native Law and Courts Act (Chapter 73);

*[Cap. 3:03]*

“**defendant**” includes any party against whom relief is sought in a suit or who is required to attend the proceedings in any suit as a party thereto;

“**party**” includes the government of Southern Rhodesia, Zambia or Malawi, as the case may be, or any person suing or being sued on behalf thereof;

“**plaintiff**” includes any party seeking relief in a suit against any other party;

“**proper officer**” means the registrar of a court, or any other similar officer;

“**suit**” means any suit or action or other original proceedings in any court between parties commenced by a summons or in any such other manner as may be provided by or under any law in force in Southern Rhodesia, Zambia or Malawi, but does not include any criminal proceedings;

“**summons**” means—

- (a) in relation to suit any summons, writ of summons, concurrent writ of summons, originating summons or other process by which a suit is commenced or the object of which is to require the appearance in any court of the government of Southern Rhodesia, Zambia or Malawi or of any person against whom relief is sought in a suit, or who is interested in resisting such relief;
- (b) in relation to any criminal proceedings, a summons or other similar process which directs any person to appear before any court to answer a charge or complaint of having committed an offence.

## **Part I – Service of summons in civil proceedings and proceedings consequent thereon**

### **3. Service of certain summons and process in Malawi**

Wherever in a suit in a court in Southern Rhodesia or Zambia any summons or other process (other than a subpoena) is required to be served in Malawi, such service may be effected in such manner and by such person as may be prescribed.

### **4. Endorsement of summons**

- (1) Every summons for service under this Part shall, in addition to any other endorsement or notice required by any law in force in the country in which the summons was issued and the endorsement or annexure required by subsection (2), have—
  - (a) the following endorsement thereon—

“This summons (or other process as the case may be) is to be served out of and in Malawi under the Service of Process and Execution of Judgments Act”; and
  - (b) such other endorsement as may be prescribed.
- (2) Every summons for service under this Part shall contain and have endorsed thereon or annexed thereto a short statement of the nature of the claim made or relief sought by the plaintiff in the suit and, if the plaintiff sues in a representative capacity, shall state the capacity in which he sues.

### **5. Failure to endorse summons**

If a summons or a copy thereof does not bear all the endorsements or annexures required by or under this Part, it shall be ineffective for service under this Part.

### **6. Entry of appearance**

- (1) The period fixed by a summons for service under this Part for appearance being entered by the defendant shall, notwithstanding any rules of court governing the time for the entry of appearance, be such period, not being less than twenty-one days, as the proper officer of the court out of which the summons was issued may determine.
- (2) Every appearance entered by or on behalf of a defendant to a summons served upon him under this Part shall, subject to subsection (1), be entered in accordance with the rules of the court out of which the summons was issued and shall, in accordance with such rules, give an address at which all process, proceedings and notices may be served upon or left for him.
- (3) If such address is not given or is fictitious or illusory, the appearance may be set aside as irregular.

## **Part II – Service of summons in criminal proceedings and execution warrants**

### **7. Service of summons in criminal proceedings in Malawi**

- (1) Whenever a summons has been issued in Southern Rhodesia or Zambia directing any person to appear before a court of Southern Rhodesia or Zambia, as the case may be, to answer a charge or complaint of having committed an offence in respect of which such court has jurisdiction, the summons may be served on that person in Malawi in such manner and by such person, as may be prescribed.

- (2) Every summons for service under this Part shall, in addition to any other endorsement required by any law in force in the country in which the summons was issued, have—
  - (a) the following endorsement thereon—

“This summons (or other process, as the case may be) is to be served out of and in Malawi under the Service of Process and Execution of Judgments Act”; and
  - (b) such other endorsement as may be prescribed.
- (3) If a summons or copy thereof does not bear all the endorsements required by or under this Part, it shall be ineffective for service under this Part.
- (4) If there is produced to a magistrate a warrant for the apprehension of the person upon whom a summons was so served in respect of the failure of such person to appear at the time and place mentioned in the summons and the magistrate is satisfied that such summons was duly served within a sufficient time before the day appointed for the hearing and that such warrant was issued by the court from which the summons was issued, he shall endorse the warrant in the manner prescribed and thereafter it may be executed within Malawi and shall be sufficient authority for any person charged with the execution of warrants in Malawi to apprehend the person against whom the warrant was issued and bring him before a magistrate having jurisdiction in the area in which the person was apprehended.
- (5) Such magistrate may—
  - (a) order the person to be sent to the country in which the warrant was issued and, for that purpose, direct that he be detained in a prison for a period not exceeding ten days pending his delivery into the custody of any person to whom the warrant was originally directed; or
  - (b) admit the person to bail on such recognizance as he thinks fit on condition that such person appears at an appointed time and place in the country in which the warrant was issued.
- (6) Whenever any person has been admitted to bail in accordance with subsection (5) (b), and the court admitting the person to bail is satisfied that the person has failed to comply with the conditions of the recognizance on which he was admitted to bail, the court may declare the recognizance to be forfeited and the payment of any sum due by any person under the recognizance may be enforced in the same manner as a fine imposed by that court.
- (7) Any sum recovered by virtue of subsection (6) shall be transmitted to the proper officer of the court out of which the warrant was issued.

## 8. Execution of warrant of imprisonment for non-payment of fine

Whenever a court in Southern Rhodesia or Zambia issues a warrant for the imprisonment of a convicted person who has failed to pay a fine imposed by that court, the warrant may, if it is endorsed in the manner prescribed, be executed in Malawi and shall be sufficient authority for—

- (a) any person charged with the execution of warrants in Malawi to apprehend such convicted person and lodge him in the nearest prison; and
- (b) the officer in charge of any prison and all other persons to carry into effect the sentence described in the warrant:

Provided that, if such convicted person tenders to the person executing the warrant the full amount of the fine imposed by the court, the warrant shall not be executed and the full amount of the fine shall be transmitted to the proper officer of the court out of which the warrant was issued.

### Part III – Service of a subpoena

#### 9. Service of a subpoena in Malawi

- (1) Wherever a subpoena has been issued by a court in Southern Rhodesia or Zambia requiring any person to give evidence or to produce any books or documents in any criminal or civil proceedings before such court, such subpoena may be served on that person in Malawi in such manner and by such person as may be prescribed. This subsection shall not apply unless there has been transmitted to the person who is to effect service of the subpoena the expenses of such service and the reasonable expenses to be incurred by the person required to appear to give evidence or to produce the books or documents, in going to and returning from the court named in the subpoena and to be incurred by him during his detention at the place where his evidence has to be given or the books or documents have to be produced.
- (2) If there is produced to a magistrate a warrant for the apprehension of the person upon whom a subpoena was so served in respect of his failure to appear at the time and place mentioned in the subpoena, and the magistrate is satisfied that—
  - (a) the subpoena was duly served within a sufficient time before the time mentioned in the subpoena; and
  - (b) the warrant was issued by the court from which the subpoena was issued; and
  - (c) a reasonable sum was paid or tendered for such person's expenses, the magistrate shall endorse the warrant in the manner prescribed and thereafter it may be executed in Malawi and shall be sufficient authority for any person charged with the execution of warrants in Malawi to apprehend the person against whom the warrant was issued and bring him before a magistrate having jurisdiction in the area in which the person was apprehended.
- (3) [Section 7](#) (5), (6) and (7) shall apply in relation to a warrant endorsed under subsection (2) in the same manner as if the warrant had been endorsed under [section 7](#) (4).

### Part IV – Enforcement of a judgment in Malawi

#### 10. Interpretation

In this Part—

“**judgment**” means—

- (a) any judgment or order whereunder a sum of money is payable given or made by a court in any civil proceedings, but does not include an order, other than an order made against a father for the maintenance of an illegitimate child, for the periodical payment of sums of money towards the maintenance of the wife or other dependants (including any woman from whom he has been divorced) of the person against whom the order is made;
- (b) an award in proceedings on an arbitration, if the award has, in pursuance of the law in force in the country where it was made, become enforceable in the same manner as a judgment given by a court in that country; or
- (c) any judgment or order given or made by a court in any criminal proceedings whereunder a sum of money is payable in respect of compensation or damages to an injured person.

#### 11. Enforcement of a judgment in Malawi

- (1) Where a judgment is given or has, before the 1st day of January, 1964, been given in a court of Southern Rhodesia or Zambia, the party in whose favour such judgment is or has been given may

obtain registration in Malawi of the certificate of such judgment by the production of a certificate of such judgment to the proper officer of—

- (a) the High Court of Malawi, in the case of a certificate granted by the proper officer of the High Court of Southern Rhodesia or Zambia; or
- (b) a subordinate court of Malawi, in the case of a certificate granted by the proper officer of an inferior court of Southern Rhodesia or Zambia.

Such certificate shall be in such form and contain such particulars of the judgment as may be prescribed.

- (2) Upon the production to him of such certificate, the proper officer shall register the certificate by entering the particulars thereof in a register to be kept by him and to be called “The Register of Southern Rhodesia and Zambia Judgments.”
- (3) On registration thereof, such certificate shall be a record of the court in which it is registered and shall have the same force and effect in all respects as a judgment of that court, and the like proceedings, including, as the case may be, proceedings in insolvency or for the compulsory winding up of a body corporate, may be taken upon the certificate as if the judgment had been a judgment of that court, and interest shall be payable thereunder at the rate, if any, and from the date specified therein.
- (4) No such certificate shall be registered after the expiration of a period of twelve months from the date of the judgment to which the certificate relates without the leave of the court in which it is desired to register the certificate.

## 12. Costs

- (1) Upon being satisfied that the registration of a certificate was reasonable and justifiable under the circumstances, the court in which the certificate has been registered may order that the plaintiff’s costs of registration and other proceedings under this Act, in an amount to be determined by the court, but not exceeding such amount as may be prescribed, shall be paid by the defendant to the plaintiff.
- (2) Any such order shall be deemed to be incorporated in the certificate and the amount payable thereunder shall be deemed to be payable under the certificate.
- (3) For the purposes of this section, “plaintiff”, in relation to a judgment referred to in [section 10](#) (c), means the person to whom the sum of money is payable under the judgment, and “defendant” means the person liable to pay such sum of money.

## 13. Affidavit of liability to be filed

No execution shall be issued or other proceedings taken upon any such certificate unless there is filed in the court out of which it is intended to issue execution or take such other proceedings an affidavit made by the person in whose favour the judgment is given or by some other person cognizant of the facts of the case stating that the amount for which execution is proposed to be issued or other proceedings to be taken is actually due and payable.

## 14. Stay of proceedings

The court in which any such certificate has been registered may, on the application of any person against whom the judgment was given—

- (a) order a stay of the proceedings on such terms as to the giving of security or as to the making of an application to the court by which the judgment was given to set aside the judgment; or
- (b) grant such other relief;

as it may deem fit.

## 15. Notification of proceedings upon a certificate

- (1) Whenever—
  - (a) any such certificate is registered in any court; or
  - (b) any execution is issued or any other proceedings are taken upon any such certificate;the proper officer shall forthwith notify the proper officer of the court in which the judgment was given accordingly.
- (2) Whenever a judgment in respect of which a certificate has been registered in a court of Southern Rhodesia or Zambia has been set aside or varied, the proper officer of the court in which the judgment was given shall forthwith—
  - (a) in the case where the judgment has been set aside, notify in writing the proper officer of the court in which the certificate has been registered; and
  - (b) in the case where the judgment has been varied, forward to the proper officer of every court in which the certificate was registered notice in writing that the judgment has been varied and a certificate under his hand and seal of the judgment so varied.
- (3) Whenever any judgment in respect of which a certificate has been registered in any court in Southern Rhodesia or Zambia has been satisfied in whole or in part, the proper officer of the court in which the judgment was given shall forthwith, upon such satisfaction being made or notified, as the case may be, enter such satisfaction upon the judgment and notify in writing the proper officer of every court in which the certificate has been registered.
- (4) Where a certificate in respect of a judgment given in Southern Rhodesia or Zambia has been registered in any court in Malawi and—
  - (a) the proper officer of that court receives notice in writing from the proper officer of the court in which the judgment was given that the judgment has been set aside, the first-mentioned proper officer shall cancel the registration of the certificate;
  - (b) the proper officer of that court receives notice in writing from the proper officer of the court in which the judgment was given of the variation of the judgment and a certificate under the hand and seal of that proper officer of the judgment so varied, the first-mentioned proper officer shall cancel the registration of the certificate and register the new certificate of the judgment in the manner provided in [section 11](#) (2), and thereafter sections [11](#) (3), [13](#) and [14](#) and subsection (1) shall apply in relation thereto.
- (5) Whenever the proper officer of a court in Malawi receives notice in writing from the proper officer of a court in Southern Rhodesia or Zambia that a judgment in respect of which a certificate has been registered in the court of such first-mentioned proper officer has been satisfied in whole or in part, the proper officer receiving such notice shall enter such satisfaction upon the certificate so registered.

## Part V – General

### 16. Proof of service

Whenever any process issued in Malawi has been served in Southern Rhodesia or Zambia, such service may be proved—

- (a) by an affidavit sworn before a commissioner of oaths, notary public, or any other person having authority to administer oaths in the country in which the service was effected; or
- (b) in such other manner as may be prescribed.



## 17. Regulations

- (1) The Minister may make regulations for the better carrying out of the objects and purposes of this Act, and without derogation from the generality of the foregoing, may make regulations—
  - (a) in respect of any matter which may be prescribed; and
  - (b) prescribing fees for the service of any process under this Act.
- (2) Different regulations may be made under this section in respect of Southern Rhodesia or Zambia and in respect of different courts in each country.