



**REPUBLIC OF ZAMBIA**

**REPORT**

**OF THE**

**COMMITTEE ON LEGAL AFFAIRS, HUMAN RIGHTS AND GOVERNANCE  
ON THE SUBORDINATE COURT (AMENDMENT) BILL, N.A.B. NO. 30 OF  
2023**

**FOR THE**

**THIRD SESSION OF THE THIRTEENTH NATIONAL ASSEMBLY**

*Published by the National Assembly of Zambia*

## **FOREWORD**

Honourable Madam Speaker, the Committee on Legal Affairs, Human Rights and Governance, has the honour to present its Report on the consideration of the Subordinate Court (Amendment) Bill N.A.B No. 30 of 2023, for the Third Session of the Thirteenth National Assembly.

In order to acquaint itself with the ramifications of the Bill, the Committee sought both written and oral submissions from different stakeholders, the list of which is at Appendix I. The Report highlights a summary of submissions from stakeholders and the observations and recommendations made by the Committee.

Madam Speaker, the Committee is grateful to the stakeholders who tendered both written and oral submissions. The Committee also wishes to thank you, for affording it the opportunity to scrutinise the Subordinate Court (Amendment) Bill, N.A.B No. 30 of 2023. Further, appreciation is extended to the Clerk of the National Assembly for the support and guidance rendered throughout the Committee's deliberations.



Mr Chinga Miyutu, MP  
**CHAIRPERSON**

December, 2023  
**LUSAKA**

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## **1.0 COMPOSITION OF THE COMMITTEE**

The Committee consisted of Mr Chinga Miyutu, MP (Chairperson); Ms Tasila E Lungu, MP (Vice Chairperson); Mr Clement Andeleki, MP; Mr Pavyuma Kalobo, MP; Mr Sunday Chanda, MP; Mr Monty Chinkuli, MP; Mr Joseph S Munsanje, MP; Mr Lameck Hamwaata, MP; Mr Mulenga F Fube, MP; and Mr Menyani Zulu, MP.

## **2.0 BACKGROUND**

The *Subordinate Courts Act, Chapter 28 of the Laws of Zambia*, did not provide for the establishment of specialised divisions of the subordinate courts and the regulation of the times at which the sessions of the subordinate court should have been held. This had created challenges in the expeditious resolution of matters. Additionally, the setting of the monetary limits of the civil jurisdiction of magistrates in the Subordinate Courts Act, had proved to be a hindrance to access to justice because always it had to be amended to revise the monetary limit in order to take into consideration inflationary changes.

Arising out of the above, the Subordinate Court (Amendment) Bill, N.A.B No. 30 of 2023 was introduced to amend the Subordinate Courts Act.

## **3.0 OBJECTS OF THE BILL**

The Bill sought to provide for the constitution of divisions of a subordinate court; revise the provisions relating to the civil jurisdiction of the Subordinate Courts; empower the Chief Justice to set the limits of the civil jurisdiction of magistrates by statutory instrument; and to provided for the holding of sessions in the Subordinate Courts.

## **4.0 SPECIFIC CLAUSES OF THE BILL**

### **Clause 2 – Amendment of section 3**

The clause amended the principal Act by inserting a new clause 3A, immediately after section 3 of the Act. This created divisions of the Subordinate Court, such as the General Division, the Economic and Financial Crimes Division and Gender-Based Violence Division, among others. Furthermore, the clause empowered the Chief Justice to create additional divisions of the Subordinate Court.

### **Clause 3 – Amendment of section 20**

The clause amended section 20 of the principal Act by the deletion of subsection (1)(a) and (c) and substituted it with a new paragraphs so as to empower the Subordinate Court of the first class to have jurisdiction in civil causes and matters.

This amendment sought to remove the reference to a specific amount for civil jurisdictions of the magistrates so that the limits were provided in a statutory instrument making it easier to revise when need arose.

#### **Clause 4 – Amendment of section 21**

The clause amended section 21 of the principal Act by the deletion of subsection (2) and substituted it with a new subsection so as to empower the Subordinate Court of the second class to have jurisdiction in personal suits, whether arising from contract, tort or both, where the value of the property, debt or damage claimed, whether as a balance of accounts or otherwise, did not exceed an amount as would be prescribed by rules of court.

This amendment sought to remove the reference to a specific amount for civil jurisdictions of the magistrates so that the limits were provided in a statutory instrument making it easier to revise when need arose.

#### **Clause 5 – Amendment of section 22**

The clause amended section 22 of the principal Act by the deletion of paragraph (a) and substituted it with a new paragraph so as to empower the Subordinate Court of the third class to have jurisdiction in all personal suits, whether arising from contract or from tort or from both, where the value of property or debt or damage claimed, whether as balance of accounts or otherwise, did not exceed an amount as may be prescribed by rules of court.

#### **Clause 6 – Insertion of section 25A**

The clause amended the principal Act by the insertion of clause 25A, immediately after section 25 of the Act, which empowered the Chief Justice, by statutory order, to appoint the time at which sessions would be held in the Subordinate Courts.

This amendment sought to remove the reference to a specific amount for civil jurisdictions of the magistrates so that the limits were provided in a statutory instrument making it easier to revise when need arises.

### **5.0 STAKEHOLDERS' SUBMISSIONS AND CONCERNS**

Stakeholders submitted that Part VIII of the *Constitution of Zambia, Chapter 1 of the Laws of Zambia*, provided for the Judiciary. Article 120(3) provided for the system of court and specifically for prescription of divisions of the courts.

Stakeholders submitted that on the strength Constitutional provisions and the *Subordinate Courts Act, Chapter 28 of the Laws of Zambia*, the Subordinate Court (Amendment) Bill N.A.B 30 of 2023 sought to amend the principal Act in four main areas as listed below.

#### **5.1. Insertion of Section 3A – Divisions of Court**

Stakeholders submitted that section 3 of the principal Act provided for the establishment of Subordinate Courts in three levels, namely; First, Second

and Third Class. The Bill sought to amend the principal Act by introducing five Divisions of the Subordinate Courts consisting of the following:

- (a) *General Division;*
- (b) *Economic and Financial Crimes Division;*
- (c) *Gender Based violence Division;*
- (d) *Roads and Road Traffic Offences Division;*
- (e) *By-Law Breaches Division; and*
- (f) *Any other division as the Chief Justice may, by statutory instrument, prescribe.*

They further submitted that once passed into law, the implications would be that there would be specialisation in the Subordinate Courts. They submitted that Magistrates with professional bias or interest in a specific area would be assigned to a particular division where they would have the opportunity to adjudicate on matters in which they had a special training. They informed the Committee that specialisation enhanced the quality of adjudication and decisions coming from such courts.

Stakeholders submitted that divisions in the Subordinate Courts would have a bearing on timely delivery of justice. This was because matters of a specific nature would be dealt with by a designated division as opposed to the practice where any Magistrate was assigned to deal with any case allocated to them.

Further, they submitted that with time, each of these divisions was likely to develop rules of court for procedure as could be seen in the Commercial Division and Industrial Relations Division of the High Court. Such rules would result in timely and efficient delivery of justice.

They noted that section 3A had left the door open to the creation of other divisions as “*the Chief Justice may, by statutory instrument, prescribe.*” The implication of this provision was that there was room in the future for the creation of more divisions as the Judiciary could determine through the Chief Justice without the need to always resort to amendment of the law.

Stakeholders also submitted that the use of delegated legislation would avoid the time and expense associated with amending the law through the National Assembly merely to create a new division of court.

The Committee was informed that although the Bill was welcome, the introduction of divisions in the Subordinate Court was not without challenges. They stated that considering that some districts, especially rural districts, were manned by not more than three Magistrates, it may not be practical to have divisions in such districts.

Stakeholders also submitted that some offences may not be prevalent in some areas, meaning that the presence of each and every division as envisioned by the proposed legislation, was not necessary in all districts.

## **5.2 Amendment of Section 20(1)(a) and (c), 21(2) and 22(a) – Jurisdiction**

Stakeholders submitted that the jurisdiction of the Magistrates in the principal Act was provided under the sections 20(1)(a) and (c), 21(2) and 22(a).

They stated that section 20 of the *Subordinate Court Act, Chapter 28 of the Laws of Zambia*, as amended by Act No. 4 of 2018, provided for the civil jurisdiction of the Subordinate Court of the first class, by expressly aggregating the value in monetary terms, depending on whether the magistrate was chief resident magistrate, principal resident magistrate, senior resident magistrate or a resident magistrate or magistrate of the first class.

They further stated that clause 3 of the Bill which sought to amend section 20(1) would in effect delete the limits in monetary value set by the law and substitute them with the Chief Justice's power to revise the monetary value limits by way of rules of court, in the form of a statutory instrument.

The Committee was informed that section 21 the Subordinate Courts Act as amended by Act No. 4 of 2018 provided for the threshold of how much each class of Magistrate could hear and determine in civil suits.

Stakeholders submitted that the intention of clause 4 of the Bill was to amend section 21 of the principal Act, so as to revise the limit value and enable the Chief Justice to set the limits of the civil jurisdiction of magistrates by rules of court via a statutory instrument. They submitted that it was easier to amend the law by revoking and issuing a new statutory instrument, than to amend the principal Act.

They observed that clause 5 of the Bill sought to amend section 22 of the principal Act by the deletion of paragraph (a) to allow for prescription of rules of the court by the chief Justice instead. Stakeholders submitted that the intention of the amendment was to delete the limit value and empower the Chief Justice to revise the civil jurisdiction of magistrates by rules of court via subsidiary legislation.

## **5.3 Insertion of Section 25A – Time of Sessions**

Stakeholders submitted that the Bill, having created divisions of court, proposed to introduce sessions in the Subordinate Court, to be appointed by the Chief Justice through statutory order.

They submitted that the ramification of this innovation was that some, if not all, divisions of the Subordinate Courts would begin to hear and determine matters in sessions like the Superior Courts.

They submitted that section 25 of the Subordinate Courts Act, as amended by Act No. 4 of 2018 provided that the Subordinate Court would ordinarily be held at places as directed by the Chief Justice The Act further provided that

should necessity arise, they could also legally be held at any other place within the limits of their jurisdiction.

The Committee was informed that that unlike a High Court Judge who enjoyed original and unlimited jurisdiction, each magistrate enjoyed territorial jurisdiction. The jurisdiction of a magistrate was limited to their territory, as the Chief Justice may direct.

Stakeholders stated that clause 6 of the Bill sought to allow the Chief Justice to appoint the time and order which sessions would be held in the Subordinate Court. They submitted that the implication would be that matters would be cause-listed for hearing during a given session. This meant that Magistrates would be compelled to ensure that they completed the hearing and determination of any matters scheduled for that particular session.

They further, submitted that matters being cause-listed for hearing during a session meant that all the key players would have prepared themselves for the hearing. This would result in reduced adjournments and reduced backlog over time. They however, noted that while the introduction of sessions was progressive, the lack of infrastructure could be a draw back to the holding of sessions. They stated that the Judiciary was still grappling with lack of office space and court rooms. Therefore, to have sessions may compound the problem. Stakeholders also submitted that the Judiciary needed to recruit more staff as insufficient human resource was also another issue of great concern.

Notwithstanding the infrastructure and human resource challenges, stakeholders were of the view that the holding of sessions was progressive and was an avenue to the attainment of access to justice for all. It would, however, call for collaboration among the stakeholders in the delivery of justice.

Some stakeholders submitted that the Anti-Gender-Based Violence Act, No.1 of 2011 created the Gender Based Violence Division to be a fast-track court. Therefore, the proposal to create sessions, entailed that the Gender Based Violence Division would also have to sit in sessions at appointed times and not as a daily fast-track. Stakeholders further submitted that gender-based violence offences had become rampant and therefore, there was need for the division to sit everyday to prevent offenders from tampering with evidence and inducing ill motivated reconciliation with victims.

## **6.0 COMMITTEE'S OBSERVATIONS AND RECOMMENDATIONS**

The Committee notes that the *Constitution of Zambia, Chapter 1 of the Laws of Zambia* envisages the existence of divisions at Subordinate Court level. The Committee, therefore, views this amendment as timely as it will operationalise the establishment of the divisions envisioned by the Constitution.



The Committee observes that the bill among other divisions, operationalises Economic and Financial Crimes Court, which has had its existence questioned since it was created. This amendment, therefore, is timely. The Committee makes the observations and recommendations outlined below.

1. The Committee acknowledges that the Bill is a positive contribution to access to justice and to justice delivery. However, the Committee recommends that the Judiciary must take stock of the poor infrastructure and insufficient human resources. The Committee urges the Judiciary to make strides to ensure development of infrastructure and recruitment staff are put at the top of its agenda. Failure to do this will hamper all progressive amendments in the Bill.

In this regard, the Committee strongly urges the Executive to fund the Judiciary in order for this important arm of the Government be able to alleviate the dire need for infrastructure as well as human resource.

2. The Committee observes that the Bill proposes to remove the value of how much a class of Magistrate can hear and determine from the Principal Act so that this can be provided in the court rules. The Committee applauds this as progressive, as it means that the Act does not have to be amended every time the threshold needs to change. The Committee further observes that with the proposed increase in thresholds, litigants will not have to commence actions in the High Court for all amounts above ZMW100,000. This will enhance access to justice.

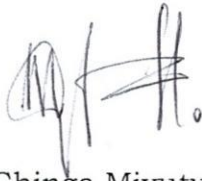
In this regard, the Committee recommends that once the Bill is enacted, the date of operationalisation of the new law; and the date court rules relating to values will be ready must be in tandem in order to avoid creating a void.

The Committee, therefore, fully supports the of the Subordinate Court (Amendment) Bill N.A.B No 30 of 2023.

## **5.0. CONCLUSION**

The Committee notes that the monetary value of the thresholds that Magistrates Court can hear and determine under the *Subordinate Courts Act, Chapter 28 of the Laws of Zambia* has been eroded over time. It is, therefore, timely to amend the Act, so as to decongest the High Court and enhance access to justice. In the same vein, the Committee views the proposed amendment to create divisions and allow for sessions at Subordinate Court as a welcome move and an opportunity to cure the backlog of cases. Therefore, the Subordinate Court (Amendment) Bill, N.A.B No. 30 of 2023, is a welcome move and is fully supported.

We have the Honour to be, Madam, the Committee on Legal Affairs, Human Rights and Governance mandated to consider the Subordinate Court (Amendment) Bill, N.A.B No. 30 of 2023.



Mr Chinga Miyutu, MP  
**CHAIRPERSON**

November, 2023  
**LUSAKA**

## **APPENDIX I – LIST OF WITNESSES**

Ministry of Justice  
Ministry of Local Government and Rural Development  
Women in Law in Southern Africa  
Law Association of Zambia  
Zambia Law Development Commission  
University of Zambia  
Law Association of Zambia  
National Legal Aid Board  
Anti-Corruption Commission  
Magistrates and Judges Association of Zambia  
Drug Enforcement Commission  
National Prosecution Authority  
Zambia Institute of Advanced legal education  
Transparency International Zambia  
The Judiciary  
The Road Transport and Safety Agency  
Zambia Police Service

## **APPENDIX II – NATIONAL ASSEMBLY OFFICIALS**

Mrs Doreen N C Mukwanka, Acting Director Social Committees

Mrs Chitalu Mumba, Deputy Director Social Committees

Ms Betty Zulu, Acting Senior Committee Clerk (SC 2)

Mr Sanford Mwiinde, Committee Clerk

Ms Grace Mbewe, Administrative Assistant

Mr Daniel Lupiya, Committee Assistant

Mr Muyembi Kantumoya, Parliamentary Messenger