



REPUBLIC OF ZAMBIA

REPORT

OF THE

**COMMITTEE ON LEGAL AFFAIRS, GOVERNANCE, HUMAN RIGHTS, GENDER
MATTERS AND CHILD AFFAIRS**

ON THE

SUPREME COURT (AMENDMENT) BILL N.A.B. NO. 19 OF 2016

FOR THE

**FIFTH SESSION OF THE ELEVENTH NATIONAL ASSEMBLY
APPOINTED ON 24TH SEPTEMBER, 2015**

PRINTED BY THE NATIONAL ASSEMBLY OF ZAMBIA

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REPORT OF THE COMMITTEE ON LEGAL AFFAIRS, GOVERNANCE, HUMAN RIGHTS, GENDER MATTERS AND CHILD AFFAIRS ON THE SUPREME COURT (AMENDMENT) BILL, N.A.B NO. 19 OF 2016, FOR THE FIFTH SESSION OF THE ELEVENTH NATIONAL ASSEMBLY APPOINTED ON 24TH SEPTEMBER, 2015

Consisting of:

Mr C Mweetwa, MP (Chairperson); Mr H Kunda, MP; Mr B M Ntundu, MP; Ms V Kalima, MP; Mr M A Malama, MP; Ms M Miti, MP; Mr M Kapeya, MP; and Mr S Masumba, MP.

The Honourable Mr Speaker
National Assembly
Parliament Buildings
LUSAKA

Sir,

Your Committee has the honour to present its Report on the Supreme Court (Amendment) Bill, N.A.B. No. 16 of 2016, for the Fifth Session of the Eleventh National Assembly referred to it by the House on Tuesday 26th April, 2016.

Functions of the Committee

2.0 In addition to any other duties conferred upon it by the Honourable Mr Speaker, or any other order of the House, your Committee is mandated to consider any Bills that may be referred to it by the House.

Meetings of the Committee

3.0 Your Committee held three meetings to consider the Supreme Court (Amendment) Bill, N.A.B. No. 19 of 2016.

Procedure adopted by the Committee

4.0 In order to acquaint itself with the ramifications of the Bill, your Committee sought both written and oral submissions from stakeholders. The stakeholders who appeared before your Committee are listed at Appendix II.

Background

5.0 Following the enactment of the *Constitution of Zambia (Amendment) Act* No. 2 of 2016, a number of changes have taken place in the Judiciary with regard to the hierarchy of the superior courts. One such change is the creation of the Court of Appeal between the High Court and the Supreme Court. This, therefore, means that appeals from the High Court will lie to the Court of Appeal, while appeals from the Court of Appeal will lie to the Supreme Court.

In view of this development, there is need to amend the *Supreme Court Act* Chapter 25 of the Laws of Zambia.

Object of the Bill

6.0 The object of the Bill is to amend the *Supreme Court Act* in order to provide for the jurisdiction of the Supreme Court to hear appeals from the Court of Appeal.

Salient Provisions of the Bill

7.0 The salient provisions of the Supreme Court (Amendment) Bill, N.A.B. No. 19 of 2016, are set out hereunder.

Clause 2

This clause amends section 2 of the principal Act by inserting the definition of ‘Court of Appeal’.

Clause 3

This clause amends section 4 of the principal Act so that it reflects that a single judge of the Supreme Court can no longer exercise any power vested in the Court to make a final decision in the exercise of the Court’s original jurisdiction.

Clause 4

This clause amends section 7 of the principal Act by the deletion of the words “or original”. This amendment implies that the Supreme Court will no longer have jurisdiction to hear matters as a court of first instance. This is consistent with the new mandate of the Supreme Court under Article 125 (2) (a) of the Constitution which only provides for the Court’s appellate jurisdiction.

Clauses 5 and 6

These clauses repeal sections 12 and 14, respectively, of the principal Act which provide for the Court’s jurisdiction vis-a-vis criminal appeals from the High Court. This amendment is necessary as criminal appeals from the High Court will no longer lie to the Supreme Court but to the Court of Appeal.

Clauses 7 and 8

These clauses repeal and replace sections 15 and 17 of the principal Act which provide for determination of appeals and time for appealing respectively. Following the amendment to the Constitution, appeals will now lie from the Court of Appeal to the Supreme Court. This amendment is necessary to delete the reference to the High Court in sections 15 and 17 and replace them with the Court of Appeal.

Clause 9

This clause repeals section 20 which makes reference to the powers of the High Court in relation to the Supreme Court.

Clause 10

This clause amends section 22 of the principal Act. The purpose of the amendment is to substitute the word “High Court” for “Court of Appeal” and to provide that the Court of Appeal shall determine a bail application in exercise of its powers under the *Court of Appeal Act* and not under the *Criminal Procedure Code Act*, Chapter 88 of the Laws of Zambia.

Clauses 11 and 12

These clauses amend the principal Act in the heading of Part IV and section 23 by merely substituting the words 'High Court' for the words 'Court of Appeal'.

Clauses 13

This clause deletes and replaces section 24 of the principal Act. The new section 24 is essentially the same as the current one except that it refers to the Court of Appeal and not the High Court, and removes the power of a single judge to give unconditional leave to defend an action.

Clause 14

This clause amends section 25 of the principal Act by the deletion of paragraph (b) which provides for the powers of the Supreme Court on an appeal in civil matters and among them, the power to order production of documents and receive evidence or remit a matter to the High Court for further hearing. The amendment is necessary as the powers are redundant since they will be exercised by the Court of Appeal.

Clause 15

This clause amends the heading of Part V of the principal Act by deleting the word 'MISCELLANEOUS' and the substitution, therefore, of the words 'GENERAL PROVISIONS', as this gives a more appropriate heading to Part V.

Clause 16

This clause amends section 26 of the principal Act, which amendment is a consequence of the change in the jurisdiction of the Supreme Court.

Clause 17

This clause amends section 29 by the deletion of subsection (3).

Submissions from Stakeholders

8.0 All the stakeholders who submitted to the Bill fully supported its enactment, stating that it is non-contentious.

Committee's Observations and Recommendations

9.0 Your Committee observes that clause 10(b) repeals Section 22 (2) of the principle Act and substitutes it with the provisions that if an appellant is in custody during the time pending the determination of the appellant's appeal, that time spent in custody shall not count as part of any term of any imprisonment under the appellant's case.

Your Committee recommends that that this provision should be amended so that if a person remains in custody during the appeal period, that time should be added towards his or her imprisonment, therefore, 2 (b) and 3 (a) should be deleted.

Your Committee finally observes that the Supreme Court (Amendment) Bill, 2016, is necessary as the amendment of the *Supreme Court Act* is consequential to the enactment of the *Constitution of Zambia (Amendment) Act No. 2 of 2016*, which brought changes to the country's judicial system. The Bill also enhances some provisions of the *Supreme Court Act*.

Your Committee, therefore, urges the House to support the enactment of this non contentious piece of legislation.

Conclusion

10.0 Your Committee wishes to express its gratitude to all the stakeholders who appeared before it and tendered both oral and written submissions; and to thank you, Mr Speaker, for affording it an opportunity to scrutinise the Bill. Your Committee also appreciates the services rendered by the Office of the Clerk of the National Assembly and the permanent witnesses from the Ministry of Justice.

We have the Honour to be, Sir, your Committee on Legal Affairs, Governance Human Rights, Gender Matters and Child Affairs mandated to consider the Supreme Court (Amendment) Bill, N.A.B. No. 19 of 2016 for the Fifth Session of the Eleventh National Assembly.

Mr C Mweetwa, MP
(Chairperson)

Mr H Kunda, MP
(Member)

Mr B M Ntundu, MP
(Member)

Ms V Kalima, MP
(Member)

Mr M A Malama, MP
(Member)

Ms M Miti, MP
(Member)

Mr M Kapeya, MP
(Member)

Mr S Masumba, MP
(Member)

April, 2016
LUSAKA

APPENDIX I

List of National Assembly Officers

Mr S C Kawimbe, Principal Clerk of Committees
Ms M K Sampa, Deputy Principal Clerk of Committees
Mr F Nabulyato, Committee Clerk (SC)
Ms C Musonda, Committee Clerk (FC)
Mrs D Mukwanka, Assistant Committee Clerk
Mrs M K Siwo, Assistant Committee Clerk
Mr S Samuwika, Assistant Committee Clerk
Mrs A S Lloyd, Stenographer
Mr M Chikome, Parliamentary Messenger

APPENDIX II

WITNESSES

Ministry of Justice (Permanent Witness)

Ms O J Sakala, Parliamentary Counsel

Law Association of Zambia

Mr M A Musukwa, Honorary Treasury

Judiciary/Judicial Service Commission

Ms E Zimba, Senior Research Advocate
Mr E Pengele, Senior Research Advocate
Ms A Sitali, Judge