

THE REGISTERED DESIGNS (HIGH COURT) RULES [ARRANGEMENT OF RULES]

PART I

PRELIMINARY

Rule

1. Title
2. Interpretation

PART II

APPEALS

3. Entry of appeal
4. Application for an extension of time in which to appeal
5. Notice of hearing
6. Evidence
7. Attendance of witnesses
8. Security on appeal
9. Abandonment or failure to prosecute appeal
10. Frivolous or vexatious appeals

PART III

APPLICATIONS

11. Dispute as to State use
12. Rectification of register

13. Hearing of applications
14. Evidence by affidavit
15. Costs

PART IV

TAXATION OF COSTS

16. Registrar of High Court to be Taxing Officer
17. Necessary and proper costs to be allowed
18. Scale of fees to be followed
19. Witnesses' charges and allowances
20. Taxation of costs
21. Review of decision of Taxing Officer
22. Reference to Judge in Chambers

PART V

GENERAL

23. Adjournment of proceedings
24. Place of hearing
25. Prescribed forms
26. Prescribed fees
27. Endorsement of fee on document chargeable
28. Oath to be taken by assessors appointed under section 37
29. Remuneration of assessors

FIRST SCHEDULE-Prescribed forms

SECOND SCHEDULE-Prescribed fees

SECTION 38-THE REGISTERED DESIGNS (HIGH COURT) RULES

*Federal
Government
Notice*

PART I

PRELIMINARY

1. These Rules may be cited as the Registered Designs (High Court) Rules. Title
2. In these Rules, unless the context otherwise requires- Interpretation

"Office" means the Designs Office;

"section" means a section of the Act.

PART II

APPEALS

3. (1) Any person who desires to appeal to the High Court from a decision of the Registrar of Designs in any matter in which a right of appeal is given under the Act shall, within three months after the date of the decision, file with the registrar of the High Court a notice in Form D.T. No. 1. Entry of appeal

(2) A notice of appeal shall state the nature of the decision appealed against and whether the appeal is from the whole or part only and, if so, what part of the decision, and shall be accompanied by a statement in writing of the appellant's grounds of appeal.

(3) The appellant shall send a copy of the notice of appeal to the Registrar of Designs and to any person or persons who appeared or gave notice of opposition in the proceedings before the said Registrar.

(4) The appellant shall be responsible for the preparation of the record which shall be certified by the Registrar of Designs as correct in terms of sub-rule (7).

(5) The Registrar of Designs as well as the parties or their legal practitioners shall endeavour to exclude from the record all documents (more particularly such as are purely formal) that are not relevant to the subject-matter of the appeal, and generally to reduce the bulk of the record as far as practicable, and to avoid the production of unnecessary exhibits, taking special care to avoid the duplication of documents and the unnecessary repetition of headings, and furnish merely the formal particulars of documents; but the documents omitted to be copied shall be enumerated in a list to be placed after the index or at the end of the record.

(6) The Registrar of Designs, after consultation with the registrar of the High Court shall direct the number of copies of the record to be prepared, having regard to whether or not one or more assessors are likely to sit upon the hearing of the appeal.

(7) After the completion of the preparation of the record, the Registrar of Designs shall certify the record to be correct and forward it to the registrar of the High Court together with such copies thereof as he has directed to be prepared in terms of sub-rule (6).

4. (1) Any application for an extension of time in which to appeal shall be in Form D.T. No. 2 and shall state briefly the grounds upon which the application is based and, where facts are alleged, such facts shall be verified by affidavit.

Application for an extension of time in which to appeal

(2) The application accompanied by supporting documents shall be delivered to the registrar of the High Court and copies shall forthwith be served by the appellant on the Registrar of Designs and on any person or persons who appeared or gave notice of opposition in the proceedings before the said Registrar.

(3) The respondent shall be entitled to file an affidavit in reply within fourteen days from the date of service or within such longer period as may be ordered by the High Court, and the Tribunal may permit further

affidavits to be filed. Copies of such affidavits shall be served on the Registrar of Designs and on the appellant or the respondent, as the case may be, immediately after the affidavits are filed.

5. (1) The registrar of the High Court shall, after obtaining directions from the High Court, give to the Registrar of Designs, to the appellant and to any opposing party not less than fourteen days' notice of the time and place appointed for the hearing of the appeal, unless the president of the Tribunal directs that shorter notice shall be given.

Notice of hearing

(2) In any case where the setting down of the hearing of an appeal has been delayed, any party may apply to the registrar of the High Court to fix a date for the hearing, and thereupon the registrar of the High Court, after consulting any other party and the High Court, shall set down the appeal for hearing after having given to the Registrar of Designs and to any other party not less than fourteen days' notice or such shorter notice of the time and place appointed for the hearing of the appeal as directed by the High Court.

(3) If in the opinion of the registrar of the High Court an appeal is not being prosecuted timeously, he may lay the matter before the High Court for directions and, if the High Court is satisfied that the parties do not intend or are unable to proceed with the appeal, he may direct that the parties attend before him to show cause why the appeal should not be dismissed.

6. Subject to the provisions of subsection (6) of section *thirty-five*, the evidence used on appeal to the High Court shall be the same as that used before the Registrar of Designs, and no further evidence shall be given except with the leave of the Court.

Evidence

7. The High Court may, at the request of any party, order the attendance at the hearing for the purpose of cross-examination of any person who has given evidence in the matter to which the appeal relates.

Attendance of witnesses

8. (1) Subject to the provisions of section *forty-four*, any party may, at any time before the hearing of an appeal, apply to the High Court for an order that any opposing party shall, within such time, in such amount and in such manner as the High Court directs, give security for the payment of any costs which such opposing party may be ordered to pay.

Security on appeal

(2) The party applying for an order for security for costs shall serve upon the opposing party a copy of the notice of the application for security at least seven days before the date of the hearing thereof.

(3) Any party ordered to give security for costs in terms of this rule may apply to the High Court for an order extending the time within which any security is to be given, and shall give not less than four days' notice of such application to the other party.

(4) In the event of the security not being given or being only partly given within the time directed by the High Court or any extension thereof, all proceedings in the appeal shall be deemed to be stayed, unless the High Court otherwise orders, and the appeal shall be set down for such order, whether of dismissal or otherwise, as the High Court may think fit.

9. (1) An appellant may at any time abandon his appeal by giving notice of abandonment in Form D.T. No. 3 to the registrar of the High Court and, upon such notice being given, the appeal shall be deemed to have been dismissed by the High Court.

Abandonment
or failure to
prosecute
appeal

(2) The appellant shall serve a copy of the notice of abandonment on the respondent and on the Registrar of Designs.

(3) The respondent may, upon receipt of such notice, apply to the High Court for an order in respect of any costs incurred by him.

10. If it appears to the High Court that any notice of appeal against a decision of the Registrar of Designs discloses grounds of appeal which are frivolous or vexatious and that the appeal can be determined without a hearing, the High Court may dismiss the appeal summarily without calling on any person to attend the hearing of such appeal.

Frivolous or
vexatious
appeals

PART III

APPLICATIONS

11. (1) Any reference to the High Court under section *twenty-one* by a party to a dispute (hereinafter referred to as "the claimant") shall be made in Form D.T. No. 4 and shall be filed with the Registrar of Designs. Dispute as to State use

(2) The claimant shall by affidavit verify the facts upon which he relies and shall state fully the nature of his interest in the matter in dispute and the relief which he seeks.

(3) The claimant shall serve a copy of his claim and of the relevant affidavit upon the other party to the dispute.

(4) The other party shall within two months from the date of receipt of such copy deliver to the Registrar of Designs a counter-statement, verified by affidavit, setting out fully the nature of his interest and the facts upon which he relies, and shall at the same time serve upon the claimant a copy of the counter-statement and of such affidavit.

(5) Proof of service shall be furnished to the satisfaction of the Registrar of Designs.

(6) When the provisions of this rule have been complied with to the extent herein required, the Registrar of Designs shall hand all relevant papers to the registrar of the High Court.

(7) Any party to the dispute may at any time during the proceedings under this rule make application to the Tribunal for an order for the hearing of oral evidence, and the Tribunal shall make such order as it deems fit.

12. An application for the rectification of the register under section *twenty-four* shall be made to the Tribunal in Form D.T. No. 5 and a copy thereof shall be served on the Registrar of Designs and on any other person appearing from the register to be interested in the design. Rectification of register

13. (1) When the registrar of the Tribunal has received from the Registrar of Designs the papers or written proceedings in relation to any Hearing of applications

application or other matter made to the High Court under the provisions of the Act, he shall, after taking directions from the High Court, appoint a time and place for the hearing of the case, and shall give the parties at least fourteen days' notice of the appointment.

(2) After hearing the party or parties desiring to be heard or, if none of the parties desires to be heard, then without a hearing, the High Court shall decide the case and notify its decision to the parties.

14. (1) All evidence shall be by affidavit unless otherwise directed by the High Court. Evidence by affidavit

(2) Whenever a time is specified in this Part within which any act or thing is to be done, the Registrar of Designs may, on application made to him in writing, extend the time either before or after its expiration or within any extended period.

15. If the applicant notifies the High Court that he does not desire to proceed with an application, the High Court in deciding whether costs should be awarded to the other party shall consider whether proceedings might have been avoided if such other party had given reasonable notice to the applicant before the application to the High Court was filed. Costs

PART IV

TAXATION OF COSTS

16. The registrar of the High Court shall be the Taxing Officer for the purpose of taxing a bill of costs of a legal practitioner, and in the taxation of costs shall comply with such instructions as may from time to time be given to him by the High Court for that purpose. Registrar of Tribunal to be Taxing Officer

17. (1) With a view to affording the party who has been awarded an order for costs a full indemnity for all costs reasonably incurred by him in relation to his application or opposition, and to ensure that all such costs shall be borne by the party against whom such order has been awarded by the High Court, the Taxing Officer shall on every taxation allow all such costs, charges and expenses as appear to him to have been Necessary and proper costs to be allowed

necessary or proper for the attainment of justice or for defending the rights of any party, but, save as against the party who incurred the same, no costs shall be allowed which appear to the Taxing Officer to have been incurred or increased through over-caution, negligence or mistake, or by payment of a special fee to counsel, unless the High Court otherwise orders, or special charges and expenses to witnesses or other persons or by other unusual expenses.

(2) Upon the taxation of costs the Taxing Officer may, in determining the remuneration to be allowed, have regard to the skill, labour and responsibility involved, If, on having regard to the said matters, the Taxing Officer considers that there are special reasons why costs in excess of those prescribed in the Second Schedule should be allowed, he may, in respect of any particular application made or business done, allow such costs as seem to him reasonable and shall certify his decision in writing.

(3) Any person aggrieved by the charges made by any legal practitioner in respect of work performed by him under the provisions of the Act may refer such charges to the Taxing Officer for taxation.

18. In the taxation of costs the Taxing Officer shall be guided, as far as the circumstances of each particular case will permit, by the scale of fees prescribed in Part IV of the Second Schedule. In addition to these charges, all disbursements shall be separately charged and shall be allowed by the Taxing Officer when reasonable. Scale of fees to be followed

19. (1) Witnesses requiring payment shall be paid for their attendance and travelling in accordance with the tariff prescribed in Part II of the Second Schedule. Witnesses' charges and allowances

(2) The charges for witnesses as fixed by tariff are to be considered as payable to the witness by the party who summoned or produced him and, in the event of any such party being awarded his costs against any other party, the said charges shall be allowed against such other party in the taxation of costs.

(3) Any person applying to the registrar of the Tribunal for the issue of a subpoena to compel the attendance of any witness shall by endorsement of such subpoena give an undertaking that all expenses due to the

witness shall be tendered to such witness upon service of the subpoena, failing which no subpoena shall issue. If upon service of the subpoena all expenses due to such witness have not been paid the subpoena shall have no force and effect.

(4) In the taxation of costs between party and party, no amount shall be allowed for any witness whether for attendance or travelling expenses unless there is produced to the Taxing Officer proof that such amount has already been paid or tendered to or claimed by such witness.

(5) In the taxation of costs between party and party, nothing shall be allowed for any witness not examined unless upon proof that his evidence might reasonably have been believed to be material and necessary.

(6) If the number of witnesses summoned, or if the number of affidavits filed, is manifestly greater than is reasonably necessary, there shall only be allowed against the other party the charges for such witnesses or affidavits as were reasonably necessary.

(7) In the taxation of costs between party and party, no amount shall be allowed for any witness in respect of personal attendance or travelling expenses if the fact or facts which such witness is subpoenaed to prove have, before the issue of such subpoena, been admitted to the party taking out the subpoena by the opposite party:

Provided that such admission shall be in writing, signed by the party making it or his legal practitioner acting on his behalf.

(8) When the same person is a witness in more cases than one heard on the same day, he shall be entitled to no more than one fee for personal attendance and one allowance for travelling expenses, which shall be equally divided between such cases.

20. (1) In all cases where a notice of taxation is necessary, seven days' notice together with a copy of the bill of costs shall be given by the legal practitioner on behalf of the party whose costs are to be taxed to the other party or to the legal practitioner of such other party. Taxation of costs

(2) When the dwelling-house or place of business of the party against whom costs are to be taxed is more than thirty-six miles from the seat of the High Court, the time for the service of such notice shall be extended to fourteen days.

(3) In the taxation of costs, the notice of taxation with a copy of the bill of costs may be transmitted by registered post to the party appearing in person.

21. Any party aggrieved by the decision of the Taxing Officer may apply to the High Court within four weeks after the taxation to review such taxation. Copies of the application shall be served on the Taxing Officer and on the opposite party. The application shall specify the items forming the subject of the grievance but the grounds upon which such items are sought to be reviewed shall not require to be verified by affidavit.

Review of
decision of
Taxing Officer

22. The Taxing Officer may, without filing any formal documents, submit any point arising at a taxation for decision by a Judge in Chambers, and it shall be competent for the Taxing Officer and for the legal practitioners who appeared at the taxation to appear before the High Court respecting such point.

Reference to
president of
Tribunal in
chambers

PART V

GENERAL

23. The hearing of any application or other matter before the High Court may from time to time be adjourned upon such terms as the High Court thinks fit.

Adjournment of
proceedings

24. (1) Except as provided in sub-rule (2), every hearing before the High Court shall be in Lusaka.

Place of hearing

(2) One or more of the parties may, not later than fourteen days before the date approved for the hearing, apply to the High Court to conduct the hearing at some other place in Zambia. The High Court may, in its

discretion and subject to such conditions as to notice and costs as it thinks fit, conduct the hearing at the place named in the application.

(3) Where an application under sub-rule (2) is not made by all the parties to the proceedings, the High Court shall not decide the application without giving the parties an opportunity to be heard.

25. The forms set out in the First Schedule shall be used in all cases to which they are applicable and may be modified as directed by the High Court. Prescribed forms

26. The High Court fees prescribed in Part I of the Second Schedule shall be paid to the Registrar of Designs at the Office. Prescribed fees

27. (1) Upon receipt of any document chargeable with any fee payable in terms of these Rules, the Registrar of Designs shall endorse upon the original of such document the amount of the fee paid and the date of payment. Endorsement of fee on document chargeable

(2) The Registrar of Designs shall refuse to accept any document in respect of which a fee is payable under these Rules, unless the appropriate fee accompanies such document.

28. The form of oath to be taken by assessors appointed under section *thirty-seven* shall be as follows: Oath to be taken by assessors appointed under section 37

I, hereby declare that I will to the best of my ability faithfully and diligently discharge any duties as assessor without favour, fear or prejudice.

29. The remuneration of any assessor appointed under section *thirty-seven* shall be as prescribed in Part III of the Second Schedule. Remuneration of assessors

FIRST SCHEDULE

(Rule 25)

PRESCRIBED FORMS

Form D.T. No. 1
Sections 35 and 39
Rule 3 (1)
THE REGISTERED DESIGNS ACT
Fee units: 8
NOTICE OF APPEAL TO THE TRIBUNAL

IN THE MATTER of an application (1)

and

(1) State nature of application or proceedings, the name of the applicant(s) and the number of the application for registration of design

IN THE MATTER of an opposition by (2)

(2) State the name of the opponent(s) if the application is opposed

I/We (3)
of

(3) State full name and address of appellant(s)

hereby give notice of appeal to the Tribunal from (4)

(4) Here insert "the decision" or "that part of the decision", as the case may be

of the Registrar of Designs, dated the day of , 19 whereby he

(5)

(5) Here insert "refused application for registration of a design" or "refused (or granted) application for compulsory licence" or otherwise, as the case may be

Dated this day of, 19

(6)

(6) To be signed by the appellant(s) or his/their practitioner

My/Our address for service in Zambia:

The Registrar of the Patents Tribunal,
Lusaka,
Zambia.

Form D.T. No. 2
Section 39
Rule 4 (1)
THE REGISTERED DESIGNS ACT
Fee units: 8

APPLICATION FOR AN EXTENSION OF TIME IN WHICH TO APPEAL

IN THE MATTER of an application (1)

(1) State nature of application or proceedings, the name of the applicants (s) and the number of the application for registration of design

and

IN THE MATTER of an opposition by (2)

(2) State the name of the opponent(s) if the application is opposed

I/We (3)

of

(3) State the full name and address of appellant(s)

hereby make application for an order of the Tribunal extending the time in which to appeal

from (4)

(4) Here insert "the decision"

or "that part of the decision", as the case may be

of the Registrar of Designs on the following grounds (5)

(5) Here state briefly the grounds upon which the application is based, and where facts are alleged such facts shall be verified by affidavit

Dated this day of, 19

(6)

The Registrar of the Patents Tribunal,
Lusaka,
Zambia.

(6) To be signed by the appellant(s) or his/their legal practitioner

Form D.T. No. 3
Rule 9 (1)
THE REGISTERED DESIGNS ACT
Fee units: 12

NOTICE OF ABANDONMENT OF APPEAL

IN THE MATTER of an application (1)

(1) State nature of application or proceedings, the name of the applicant(s) and the number of the application for registration of design

and

IN THE MATTER of an opposition by (2)

you are hereby notified that the above-named appellant(s) hereby abandon(s) all further proceedings in the above matter.

Dated this day of, 19

(2) State the name of the opponent(s) if the application is opposed

(3)

The Registrar of the Patents Tribunal,
Lusaka,
Zambia.

(3) To be signed by the appellant(s) or his/their legal practitioner

Form D.T. No. 4
Section 21
Rule 11 (1)
THE REGISTERED DESIGNS ACT
Fee units: 12

REFERENCE TO THE TRIBUNAL UNDER SECTION 21 OF THE ACT

IN THE MATTER of a reference by (1)

(1) State the name of claimant(s) and nature of matter in dispute

against

(2)

(2) State name of other party to dispute

I/We (3)

(3) State full name and address of claimant(s)

hereby refer for the determination of the Tribunal my/our claim against (4)

(4) State full name of respondent

The following are the grounds on which I/we base my/our claim:

(5)

(5) Here state briefly the nature of the grounds

Dated this day of, 19

(6)

My/Our address for service in Zambia:

(6) To be
signed by
the
claimant(s)
or his/their
legal
practitioner

The Registrar,
The Designs Office,
Lusaka,
Zambia.

NOTE-The claim must be accompanied by an affidavit verifying the facts and stating fully the nature of the interest in the matter in dispute and the relief sought.

Form D.T. No. 5
Section 24
Rule 12
THE REGISTERED DESIGNS ACT
Fee units: 4

APPLICATION FOR RECTIFICATION OF REGISTER OF DESIGNS

I/We (1)

(1) State name and address of applicant(s)

hereby apply in respect of Design No. _____ that the register

may be rectified in the following manner (2)

(2) State manner in which register is to be rectified

The grounds upon which I/we base this application are as follows:

(3)

(3) State briefly the grounds

Dated this _____ day of _____, 19 _____

(4)

(4) To be signed by the applicant(s) or his/their legal practitioner

My/Our address for service in Zambia:

The Registrar,
The Designs Office,
Lusaka,
Zambia.

(As amended by Act No. 13 of 1994)

SECOND SCHEDULE

(Rules 18, 19, 26 and 29)

PRESCRIBED FEES

PART I

TRIBUNAL FEES

<i>ITEM</i>	<i>MATTER</i>	<i>AMOUNT FEE UNITS</i>
1.	On every appeal to the Tribunal from decision or order of the Registrar of Designs-inclusive fee	75
2.	On a reference to the Tribunal under section 21	75
3.	On application for rectification of register of designs	30
4.	On every search	4
5.	For typewritten copies of judgements or records, for additional copies of orders or for copies of documents or proceedings furnished upon direction of the registrar of the Tribunal: The first copy for each folio of 100 words or part thereof Additional copies for each folio of 100 words or part thereof	3 1
6.	On certifying any document as an office copy	8
7.	Transcript of shorthand writer's notes	Such fee as may be determined by the Minister

PART II

SUBSISTENCE AND TRAVELLING ALLOWANCES PAYABLE TO WITNESSES

Witnesses attending the High Court shall be paid subsistence and travelling allowances at the rates prescribed in Part III of the First Schedule to the Supreme Court Rules.

PART III

REMUNERATION OF ASSESSORS

An assessor shall be remunerated at the rate of K2.10 per hour or part thereof, but his remuneration shall not exceed K10.50 per day, unless the Minister, with the approval of the Minister responsible for finance, otherwise directs. An assessor shall in addition be paid a travelling allowance at the rates prescribed in Part III of the First Schedule to the Supreme Court Rules.

PART IV

LEGAL PRACTITIONERS' FEES

Legal practitioners' fees in any appeal, application, opposition or other matter heard before the High Court shall be in accordance with the tariff of fees prescribed in Part II of the Second Schedule to the Supreme Court Rules, save as hereinafter provided-

Persual of any necessary documents-	<i>Fee units</i>
For the first 10 folios-per folio	4
For each subsequent folio	2

(As amended by Act No. 13 of 1994)