

## Determining Costs In The Zambian Court Of Appeal

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**ABSTRACT:-** Well-written law is vital for guiding courts on costs taxation proceedings. While Zambian lawmakers have enacted various Statutory Instruments (SIs) for this purpose, they failed to provide any law specifically covering taxation of costs in the Zambian Court of Appeal (CoA). Legislators have only enacted the Legal Practitioners Costs Orders (LPCOs) under SIs No 5 and 6 of 2017 for the Supreme Court and High Court, respectively<sup>3</sup> (replacing the 2001 SIs). This creates a significant lacuna in the law for the CoA, as its taxation procedure remains unregulated and dependent on subsidiary legislation from lower-ranked courts. This paper attempts to elucidate the inadequacies and problems caused by the lack of law on taxing costs in the CoA. Lessons will be drawn from comparable jurisdictions, including Uganda, South Africa, and the USA, to motivate the enactment of specific laws to regulate CoA taxation proceedings.

**Keywords:** Costs, Taxation, Courts,

### I. BACKGROUND TO STUDY

The subject of costs is deeply rooted in common law, tracing its origins back to the Statute of Gloucester (1275)<sup>4</sup>. In Zambia, the Constitution establishes the hierarchical court structure, positioning the CoA with jurisdiction over appeals from various courts. While the CoA is principally governed by the Court of Appeal Act<sup>5</sup>, supplemented by rules set by the Chief Justice, Order XII of the Court of Appeal Rules<sup>6</sup> specifically addresses cost provisions, permitting cost determination based on prescribed scales or by a taxing officer. Despite this framework, deficiencies exist, including the application of HC scales in default situations, ambiguities when determining costs, particularly for multiple defendants, and a lack of a satisfactory review process for taxing decisions. These acknowledged limitations collectively underscore the urgent need to refine the cost regulation within the CoA.

### II. SUPERIOR COURT HIERARCHY IN ZAMBIA

As the changes to the cost orders affect the superior courts, the paper will only consider three superior courts, namely the HC, the CoA, and the SC.

#### 2.1. The High Court

Article 133 of the Zambian Constitution establishes the HC,<sup>7</sup> which has original and appellate jurisdiction. The Constitution gives the HC, except for matters reserved to the Industrial Relations Court, "unlimited jurisdiction to hear and determine any civil or criminal proceedings under any law, and such

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<sup>3</sup> Statutory Instrument No. 5, *The Banking and Financial Services (Minimum Liquidity Ratio) Regulations* (Zambia 2017), art. 3; Statutory Instrument No. 6, *The Banking and Financial Services (Minimum Capital and Reserves) Regulations* (Zambia 2017), art. 5.

<sup>4</sup> 6 Edw. 1, c. 5 (1278).

<sup>5</sup> Court of Appeal Act, 2016 (Act No. 7 of 2016)

<sup>6</sup> Court of Appeal Rules (SI 65 of 2016), Order XII (Zambia).792

<sup>7</sup> Constitution of Zambia (Amendment) Act, 2016 (Act No. 2 of 2016), Article 133-134. 58.

*jurisdiction and powers as may be conferred on it by this Constitution or any other law.*"<sup>8</sup> The HC Act adds that, within specified limits, the HC may also exercise "all the jurisdiction, powers and authorities vested in the High Court of Justice in England."<sup>9</sup> This means with such modifications as would be required to apply in Zambia. Before January 2017, the HC managed all matters requiring taxation, regulated by the [Legal Practitioners' Costs Order SI No. 9 of 2001](#).<sup>10</sup> Around 2016, the Remuneration Committee of the Law Association of Zambia (LAZ) recommended amendments to the Legislation, which led to the enactment of [SI No. 6 of 2017](#).<sup>11</sup> The law that now governs taxation in the HC through all its divisions.

## **2.2. The Court of Appeal**

[Article 130 of the Zambian Constitution](#) establishes the Court of Appeal.<sup>12</sup> This Court determines matters from the HC before they are appealed to the SC of Zambia, and it also determines matters from quasi-judicial bodies<sup>13</sup>. The CoA is primarily regulated by the [Court of Appeal Act of 2016](#),<sup>14</sup> which is used to determine matters that are brought before it. The CoA, unlike the other superior Courts, has not enacted any SI for the regulation of taxation of matters brought before it. The CoA, in determining matters before it for taxation, relies on the HC SIs.

## **2.3. The Supreme Court**

The [Supreme Court of Zambia, established by Article 124 of the Constitution](#)<sup>15</sup> and the [SC Act](#)<sup>16</sup> is the highest appellate Court in Zambia. It primarily comprises five judges, including the Chief Justice and Deputy Chief Justice, appointed by the President.<sup>17</sup> Before 2017, taxation in the SC relied on [SI No. 5 of 2001](#).<sup>18</sup> Because this SI was not comprehensive,<sup>19</sup> any excluded items of work were taxed pursuant to the [HC SI No. 9 of 2001](#).<sup>20</sup> It is submitted that this appears to be a drafting oversight by the legislature, as this same provision was re-enacted in [SI No. 5 of 2017](#).<sup>21</sup> Consequently, the SC still relies on the HC SI for taxation of costs.

## **3. Taxation of Costs**

Taxation of costs is legally defined in the case of *Uram v Uram*<sup>22</sup>, where Justice Huddart defined taxation of costs as the required process of calculating and certifying the exact amount of costs a party is entitled to or responsible for.<sup>23</sup> This calculation enables the winning party to legally enforce payment for the specific amount. Meredith. J., in the case of *Flexlume Sign Co. v. Globe Securities Co*<sup>24</sup> further advises that when calculating costs, reimbursement should only be granted for actual services rendered, money paid, and expenses incurred, strictly within the specified limits. No reimbursements should be given for hypothetical or unperformed services.<sup>25</sup>

### **3.1. Taxation of Costs in Zambian Superior Courts**

Taxation is a technical process that involves time and effort as well as costs for drafting the bill, preparation of the hearing, attendance in Court, and payment of taxes. Parties are advised to agree on the amount of costs without resorting to taxation by the court. Taxation usually comes in when there is a default in the parties agreeing on the costs. Taxation of costs follows three specific stages: the commencement of taxation

<sup>8</sup> Constitution of Zambia (Amendment) Act, 2016 (Act No. 2 of 2016).

<sup>9</sup> Constitution of Zambia (Amendment) Act, 2016 (Act No. 2 of 2016), Art 134.

<sup>10</sup> Legal Practitioners (Costs) Order, 2001 (SI 9 of 2001) (Zambia).

<sup>11</sup> Legal Practitioners (Costs) Order, 2017 (SI 6 of 2017) (Zambia).

<sup>12</sup> Constitution of Zambia (Amendment) Act, 2016 (Act No. 2 of 2016), Art 130

<sup>13</sup> These include the Lands Tribunal, the Tax Appeals Tribunal, the Human Rights Commission, the Local Government Elections Tribunal, and the Anti-Corruption Commission

<sup>14</sup> Court of Appeal Act, 2016 (Act No. 7 of 2016)

<sup>15</sup> Constitution of Zambia (Amendment) Act, 2016 (Act No. 2 of 2016), Article 133-134. 58.

<sup>16</sup> Constitution of Zambia (Amendment) Act, 2016 (Act No. 2 of 2016).

<sup>17</sup> Constitution of Zambia (Amendment) Act, 2016 (Act No. 2 of 2016), Art 134.

<sup>18</sup> Legal Practitioners (Costs) Order, 2001 (SI 9 of 2001) (Zambia).

<sup>19</sup> Legal Practitioners (Costs) Order, 2017 (SI 6 of 2017) (Zambia).

<sup>20</sup> Legal Practitioners (Costs) Order, 2001 (SI 9 of 2001).

<sup>21</sup> Legal Practitioners (Costs) Order, 2001 (SI 9 of 2001) (Zambia).

<sup>22</sup> 66 B.C.L.R.236 (BCSC, 1985).

<sup>23</sup> Ibid.

<sup>24</sup> *Flexlume Sign Co.*, 47 D.L.R. at 28.

<sup>25</sup> Ibid.

proceedings, provisional taxation, oral hearing for the taxation of the bill, and finally completion of the tax process.

### **3.1.1. Commencement of Taxation Proceedings**

The receiving party must draft a Bill of Costs containing the following mandated information: the title of the action, the relevant costs order the fee earner and their hourly rate, and items of work done.<sup>26</sup> Costs charged per item must be either a fixed sum (as permitted by rules like the HC's) or on an hourly basis. The bill must also include the costs of taxation, such as time spent drafting the bill, preparation, court attendance, calculation, and applying for the certificate of costs. All bills must indicate disbursements and profit costs, clearly stating the specific scale and schedule head applicable to each item. While these scales are prescribed in the SIs for specific courts, the Court of Appeal has no prescribing SI and currently relies on the rules contained in the HC's SI.

### **3.1.2. Provisional Taxation**

Provisional taxation refers to a process whereby the Court assesses the amount of costs payable under the costs order for the time being. After provisional taxation, the bill is set down for provisional taxation without a hearing by a chief judicial clerk or a taxing master, after which the parties will be notified of the preliminary assessment. Where parties need to seek clarification on an amount, the court rules allow parties a period of fourteen days to have the clarification dealt with or disallowed. Any party objecting to the order *nisi* should apply within fourteen days of the notification to the taxing master for a hearing, to identify any objections he may have and allow him to give an estimation of the hearing time. Upon receipt of an application for a hearing, the taxing master will set the bill down (wholly or in part) for taxation with a hearing and give further directions as he deems fit. Where no clarification is sought and no objection is made to the order *nisi* within fourteen days of the notification, the order *nisi* becomes *absolute*, and there will be no oral hearing allowed after this.

### **3.1.3. Oral Hearing for Taxation of the Bill**

A court hearing is held if the bill is scheduled for taxation with a hearing or if there is an objection to the order *nisi*. During the hearing, the court reviews each contested item, allowing each party to present their case before the taxing master announces the approved amount. Failure of either the receiving or paying party to appear may result in the court dismissing the bill or the amount claimed.

Justice Dr Malila SC, in *Mpongwe Farms Limited vs Dar Farms Limited*<sup>27</sup>, established that a taxing master has the authority to approve or disallow any item but must exercise this discretion carefully, fairly, and reasonably. Decisions must consider the case's complexity, the time spent by counsel, and the reasonableness of the costs. If the master neglects these factors, their exercise of discretion is reviewable. Ultimately, the final amount of taxed costs relies heavily on the taxing master's discretion<sup>28</sup>

### **3.1.4. Completion of the Taxation Process**

Upon completion of the process of taxation parties ought to calculate the amount that the taxing master has allowed. Parties are allowed to jointly submit the completed certificate to the taxing master for approval. If the taxing master approves it, the certificate will be issued upon payment of the taxing fee, which normally amounts to ten percent of the total bill of costs. With the certificate, costs can be enforced just like any judgment sum that falls due under the provisions of the *Judgment Act*.<sup>29</sup>

Where a party is dissatisfied with a taxing master's decision may apply for a review within fourteen days<sup>30</sup>. This requires delivering written objections specifying the items and grounds to the taxing master, with a copy sent to the other party. If still dissatisfied after the master's review, the party may apply to a Judge to review the taxation, issuing a summons within fourteen days of the allocatur.<sup>31</sup> The case *Zambia Revenue*

<sup>26</sup> High Court Rules, Cap. 27, Laws of Zambia. read together with Legal Practitioners (Costs) Order, 2017 (Statutory Instrument No. 6 of 2017) (Zambia).

<sup>27</sup> *Mpongwe Farms Ltd v Dar Farms Ltd*, Supreme Court of Zambia, Appeal No. 208 (2005).

<sup>28</sup> *Mpongwe Farms Ltd. (Appeal No.2008)*.

<sup>29</sup> Judgments Act, Cap. 81 of the Laws of Zambia (1961).(Act No.10 of 1961).

<sup>30</sup> *Finsbury Investments Limited\ v. Antonio Ventriglia and Anor*, [2019]ZMCA 366 (Court of Appeal of Zambia). See also *Bank of Zambia (As Liquidator of Credit Africa Bank Ltd Liquidation) v. Al Shams Building Materials Trading Company Ltd*, [2017] ZMSC 1 (Supreme Court of Zambia, July 13, 2017).

<sup>31</sup> *Ibid*.

*Authority v Gilford Malenji*<sup>32</sup> illustrates how costs are awarded equitably when a party suffers loss due to the opposing party's unfair actions. Here, the court awarded costs against ZRA after allowing an appeal on the appropriate tax rate for a separation package. The procedure for commencing taxation is set out in Order 62, Rule 21 of the Rules of the Supreme Court<sup>33</sup> and Practice Direction 14.3.<sup>34</sup> A party requiring costs to be taxed must file a Bill of Costs and obtain an 'appointment to tax' from the taxing master<sup>35</sup>. The bill and appointment must be served on the paying party, and the filing party must deposit a fee equivalent to the full taxing fee upfront. If the bill is only partially allowed, the balance of the deposit is refunded after deducting the actual taxing fee.

#### IV. TYPES OF COST APPLICATIONS MADE TO THE REGISTRAR.

Orders made in respect of costs in interlocutory proceedings can be made in numerous ways like costs in the cause, costs of the interlocutory application, no order as to costs reserved costs, and taxed costs as follows:<sup>36</sup>

- a) **Costs in the Cause.** This means that the costs of those interlocutory proceedings are to be awarded according to the final award of costs in the action.
- b) **Costs of the interlocutory application** denotes that the applicant (or opponent) is to have the costs of the interlocutory proceedings, subject to immediate taxation, without waiting for a final decision in the action.
- c) **Costs of the interlocutory application be to the applicant/opponent in any event**, connotes that, no matter who wins or loses when the case is finally decided or settled, the applicant (or respondent) is to have the costs of those interlocutory proceedings although it does not confer upon him a right to tax the costs until the case is finally decided or settled, unless the Registrar expressly states that costs are to be taxed and paid forthwith.
- d) **No order as to costs** implies that each party must bear their own costs.
- e) **Reserved costs** signify costs that will not be allowed on taxation unless the Registrar makes a specific order dealing with them and are not included in the costs of the action.
- f) **Taxed costs**, denotes costs taxed (as mentioned above).

The scales of costs for taxation are contained in the [First and Second Schedules of Order 62](#)<sup>37</sup> aforesaid.

##### 4.1. Basis of Taxation of Costs in Courts

As far as proceedings before the Registrar are concerned, taxation of costs is usually conducted on a "party to party" basis which comprises all allowed costs and such costs as are necessary or proper for the attainment of justice or for enforcing or defending the rights of the party whose costs are being taxed. The "party to party costs" chargeable under taxation are all that are necessary or proper to enable the adverse party to conduct the litigation and no more. Unless the costs order specifies taxation on some other basis, the costs should be taxed on a party-to-party basis.

Zambian law primarily determines costs taxation based on [Order 62 of the Rules of the Supreme Court 1999 Edition Volume 1](#).<sup>38</sup> The two most common bases are party-to-party costs and lawyer to client costs. The lawyer to client cost basis is used when a client contests the fees charged by their lawyer after a matter concludes. A lawyer must wait thirty days after issuing the bill to the client before filing a bill of costs for taxation under this basis. This 30-day waiting period allows the client to decide whether to pay the bill or proceed with taxation. The case of *AKM Legal Practitioners (Suing as a Firm) V. Fragas Business Investments Limited*<sup>39</sup> clearly illustrates the 'lawyer to client' cost basis, showing a scenario where lawyers filed a bill for ZMW 60,094.10 after the expiration of the stipulated waiting period.

<sup>32</sup> *Zambia Revenue Authority v Malenji*, [2017] ZMSC 231 (Supreme Court of Zambia, December 8, 2017).

<sup>33</sup> Supreme Court Rules 1999, Order 62 Rule 21, in *The Supreme Court Practice, 1999* (Sweet & Maxwell 1999).

<sup>34</sup> Legal Practitioners (Costs) Order, 2017, S.I. No.6 of 2017 (Zambia).

<sup>35</sup> Order 62 Rule 21 of the Supreme Court Rules, 1999 Edition (White Book)

<sup>36</sup> Chris Jones and Alicia Taylor, "Costs Orders Cheat Sheet - Victoria," CBP Lawyers, accessed December 3, 2025, <https://www.cbp.com.au/insights/publications/costs-orders-cheat-sheet-victoria>. See also Intellectual Property Department of Hong Kong, "Taxation of Costs," accessed December 3, 2022, [https://www.ipd.gov.hk/eng/intellectual\\_property/trademarks/registry/Taxation\\_of\\_costs](https://www.ipd.gov.hk/eng/intellectual_property/trademarks/registry/Taxation_of_costs).

<sup>37</sup> Supreme Court Rules 1999, O. 62, r 21.

<sup>38</sup> Statutory Instrument No. 65 of 2016, *The Court of Appeal Rules, Order III, Rule 11(3)*, made under *The Court of Appeal Act, No. 7 of 2016* (Zambia). 764.

<sup>39</sup> 2019/HP/1161.

## V. TAXATION OF SUPERIOR COURTS

### 5.1. Taxation of Costs in the Court of Appeal

The following orders guide costs in the CoA:

- (i) **Order III rule 11(3) of the Court of Appeal Rules**<sup>40</sup> provides that the taxing officer shall, by whatever medium of reproduction may be adopted on taxation, allow only those costs which would, in the taxing officer's opinion, have been reasonably incurred by using the most economical method permitted. This provision shows that it is up to the discretion of the taxing master to allow costs based on what seems economical to him. The problem with this provision is that a method that is not favorable to parties may be used if the taxing officer sees fit.
- (ii) **Order VII rule 4(I) of the Court of Appeal Rules**<sup>41</sup>  
The rule provides that if the respondent fails to reply to an application within the set time, the Court may decide the matter in their absence. The Court can later set aside this default decision, but this action is subject to an order of costs. A key issue arises because the rule, while mentioning a cost order, fails to specify the scale of costs to be applied (usually HC scales), which is identified as a potential problem.
- (iii) **Order IX Rule 9 of the Court of Appeal Rules**<sup>42</sup>  
This rule which relates to criminal law, states that a criminal appeal abates upon the death of either the appellant or the respondent (if the State is the appellant). However, this abatement does not apply to appeals against a sentence that involves fines, compensation, forfeiture, or costs. This exception regarding costs is designed to safeguard the surviving party, ensuring they do not lose the ability to recover costs awarded to them simply because the opposing party has died, thus maintaining security on the liability. This rule specifically governs criminal matters before the CoA.
- (iv) **Order IX Rule 13 of the Court of Appeal Rules**<sup>43</sup>  
This rule allows the Court to permit an appeal or cross-appeal by a person who was prevented from proceeding due to failing to observe a formality or requirement of the Rules. The Court grants this permission subject to terms, including orders as to costs, and any necessary directions to ensure substantial justice is done. This means a party who does not follow stipulated rules may be required to bear the costs of those irregularities. This provision applies to criminal matters before the CoA.
- (v) **Order X Rule 8(1) of the Court of Appeal Rules**<sup>44</sup>  
*Order X Rule 8(1)* provides that in civil appeals, the Court may, at any time (either upon application or on its own initiative), order a party to provide security or further security for costs. This includes ordering security for past costs related to the appeal. The Court can also make compliance with this order a condition for the appeal to be heard, ensuring the opposing party's costs are protected. This grants the Court broad discretion to order security whenever it deems appropriate.
- (vi) **Order X Rule 6 (b) of the Court of Appeal Rules**<sup>45</sup>  
These rules provide that the Court may, in its discretion, hear any such contention and may, if it thinks fit, impose terms as to costs, adjournment, or otherwise. This applies to civil matters, where it sees fit; the Court may award or impose costs to the parties or one of the parties to the matter.
- (vii) **Order X Rule 15 (1) of the Court of Appeal Rules**<sup>46</sup>  
An Appellant may withdraw an appeal at any time before the hearing by filing a notice of withdrawal (Form XX). While the other party's consent is normally required, Rule 12(3) specifies that if consent is not given, the appeal remains on the list only for the hearing of outstanding issues, such as costs. The

<sup>40</sup> Court of Appeal Rules, Statutory Instrument No. 65 of 2016 (Zambia).

<sup>41</sup> Statutory Instrument No. 65 of 2016, The Court of Appeal Rules, Order VII, Rule 4(1), made under The Court of Appeal Act, No. 7 of 2016 (Zambia).769.

<sup>42</sup> Statutory Instrument No. 65 of 2016, The Court of Appeal Rules, Order IX, Rule (9), made under The Court of Appeal Act, No. 7 of 2016 (Zambia).777.

<sup>43</sup> Ibid. *Order IX Rule 13* of the Court of Appeal Rules 778.

<sup>44</sup> Statutory Instrument No. 65 of 2016, The Court of Appeal Rules, Order X, Rule 8(1), made under The Court of Appeal Act, No. 7 of 2016 (Zambia). 783.

<sup>45</sup> Order X, Rule 6(b).783.

<sup>46</sup> Order X, Rule 15.788.

rule also covers ordering the disposal of any security lodged for costs. This provision ensures appellants know the implications of withdrawal, namely that costs will fall on them, discouraging the lodging of unnecessary appeals.

(viii) ***Order XII Rule 1 of the Court of Appeal Rules***<sup>47</sup>

The rule grants the Court of Appeal the power to make any just order concerning the whole or part of the costs of an appeal, including costs from a lower court. The Court may either assess the costs itself or direct taxation (calculation) using prescribed scales. If no specific scales are prescribed, costs will be determined using the scales provided for the HC under the HC Act. Essentially, the Court has broad discretion to manage and determine the method for calculating all appeal costs. Under the [High Court Act](#).<sup>48</sup>

Challenges arise from the legal provision firstly because the CoA has not enacted a law that prescribes scales of Taxation of Costs, and this therefore implies that the CoA, which is a Superior Court, automatically must adopt the scales provided for the HC, which is a lower Court. It is worth noting that the CoA was established in May 2016, and the law regulating proceedings on matters before the CoA was enacted on the same date of establishment-January 2017- which was precisely eight months after the establishment of the CoA, the lawmakers decided to enact amendments to SIs for the Taxation of Costs before the High Court and the Supreme Court but omitted the enactment of SI prescribing scales for the CoA.<sup>49</sup>

## **5.2. High Court Taxation Scales.**

The Scales below illustrate the maximum fees that legal practitioners are entitled to charge their clients for legal work. The scales below outline the amended fees and provided in the SIs enacted for the HC in 2017, which are as follows:

### **5.2.1. High Court Scales (Part II)**

1. A practitioner with less than five years' standing and experience or a legal executive can charge his client a maximum fee of K2,467 for work done for the client.
2. A practitioner with more than five but not more than ten years of standing and experience can charge his client a maximum fee of K3,701 for work done for the client.
3. A practitioner of more than ten but not more than fifteen years of standing and experience can charge his client a maximum fee of K4,441 for work done for him.
4. A practitioner with fifteen or more years of standing and experience can charge his client a maximum fee of K5,675. For work done for the client.
5. State Counsel can charge his client a maximum fee of K6,661 for work done for the client.

### **5.2.1. High Court Scales (Part III)**

1. A practitioner of less than five years of standing can charge his client a maximum of K1,481 for work done for him.
2. A practitioner of more than five but not more than ten years of standing and experience can charge his client a maximum of K2467 for work done for him.
3. A practitioner of more than ten but not more than fifteen years of standing and experience can charge his client a maximum of K4,934 for work done for him.
4. State Counsel can charge his client a maximum of K6,167 for work done for him.

It is worth noting that [SI No. 6 of 2017 for High Court Rules](#) <sup>50</sup> which provides the scales above omitted the scale under part III which relates to practitioners of fifteen or more years standing and therefore leaves a serious lacuna when ascertaining the amount due to practitioners of more than fifteen years standing at the Bar. The serious question that arises is whether practitioners of fifteen or more years standing at the Bar are ineligible to claim costs for work described under [part III of the SI](#).<sup>51</sup> One of the questions that remains unresolved is whether the taxing officer attending a particular taxation hearing is supposed to assume which amount would be applicable? Another conundrum is that while [Order XII Rule 1 of the Court of Appeal Rules](#)<sup>52</sup> expressly provides for the application of HC scales to the CoA, how is it possible for the CoA to use these scales

<sup>47</sup> Order XII rule 1.792.

<sup>48</sup> Order XII rule 1 792.

<sup>49</sup> Statutory Instrument No. 5 of 2017 and Statutory Instrument No. 6 of 2017.

<sup>50</sup> Legal Practitioners (Costs) Order, 2017 (Statutory Instrument No. 6 of 2017) (Zambia).

<sup>51</sup> Ibid.

<sup>52</sup> Court of Appeal Rules, Order XII, Rule 1.

given that in terms of hierarchy the HC is below the CoA. Added to this is the fact that the HC scales are also fraught with ambiguities and lacunae. This causes serious problems in terms of the taxation of costs in the CoA. Another serious ambiguity caused by the Scales in the HC is that the amounts indicated in the schedule of scales are fee units and are not in Kwacha denomination, the same of which the SI does not state expressly. The legislature caused a major impediment by not expressly indicating that the SI provides fee units and not fees in Kwacha. The interpretation made by the convener of the [Remuneration Committee of the Law Association of Zambia via a circular made on the 3<sup>rd</sup> of April, 2017](#)<sup>53</sup>, was three months from the date of enactment of the [SI No. 6 of 2017](#).<sup>54</sup> The circular was issued after numerous queries from legal practitioners on the scales provided for in [SI No. 6 of 2017](#).<sup>55</sup>

### **5.3 Supreme Court Taxation Scales**

The [Supreme Court SI No. 5 of 2017](#)<sup>56</sup> caused the same problems, as the fees charged were based on fee units and not Kwacha. This was further confirmed by a Circular further compounding the problem. From the point of view of the circular, it raised the serious question as to whether a law that is passed in Parliament as an SI can be amended or corrected by an ordinary circular. Notwithstanding the forgoing, the SC for Zambia, provides the following Scales in line with [SI No. 5 of 2017](#)<sup>57</sup> as follows:

#### **5.3.1. Supreme Court Scales (Part A)**

1. A practitioner with less than five years' standing and experience or a legal executive can charge his client a maximum of 2,467 for the legal work done.
2. A practitioner of more than five but not more than ten years' standing and experience can charge his client a maximum of 3,701 for the legal work done.
3. A practitioner of more than ten but not more than fifteen years' standing and experience can charge his client a maximum of 4,441 for the legal work done for the client.
4. A practitioner with fifteen or more years' standing and experience can charge his client a maximum of K5,674 for the legal work done for the client.
5. State Counsel can charge his client a maximum of K6,661 for legal work done for the client.

#### **5.3.2. Supreme Court Scales. (Part B)**

1. A practitioner of less than five years standing can charge his client a maximum of K1,481 for work done for the client.
2. A practitioner with more than five but not more than ten years standing and experience can charge his client a maximum of K2,467 for work done for the client.
3. A practitioner of more than ten but not more than fifteen years' standing and experience can charge his client a maximum of K3,701 for work done for the client.
4. A practitioner with fifteen or more years' standing and experience can charge his client a maximum of K4,934 for work done for the client.
5. State Counsel can charge his client a maximum of K6,167 for work done for the client.

There is an ambiguity because the [Supreme Court SI No. 5 of 2017](#)<sup>58</sup> contains a note stating that, "[i]n the absence of any specific Scale of fees, the High Court Scale shall apply"<sup>59</sup>. This creates a fundamental problem as a lower court's taxing instrument (the HC SI), which is itself unclear, is being impliedly used to direct taxation in the SC and, by extension, the CoA. This transfers the HCs' ambiguities to the CoA.

Because of these problems with the HC scales, it is argued the CoA should have enacted its own tax scales, particularly since the SC and HC did so eight months after the CoA's establishment. It is submitted that the reliance on lower court scales may be viewed as undermining the authority of the Court because a superior court should possess its own tax scales and not be bound by those of a subordinate court like the HC. While in the case of *Ticklay and Others v Road Transport and Safety Agency and Another*, it was held that the SC (under Rule 77) has discretion in making costs orders<sup>60</sup>, the CoA lacks similar discretion after applying the HC scales. Furthermore, although the CoA hears appeals from the [High Court](#) according to [Section 4\(1\)\(a\)](#)<sup>61</sup>, its

<sup>53</sup> Law Association of Zambia, Remuneration Committee, "Circular," April 3, 2017.

<sup>54</sup> Legal Practitioners (Costs) Order, 2017 (SI 6 of 2017).

<sup>55</sup> Legal Practitioners (Costs) Order (SI 6 of 2017), made under the Legal Practitioners Act, Cap. 31 (Zambia).

<sup>56</sup> Supreme Court (Amendment) Rules, 2017 (SI 5 of 2017) (Zambia).

<sup>57</sup> Supreme Court (Amendment) Rules, 2017 (SI 5 of 2017).

<sup>58</sup> Supreme Court (Amendment) Rules, 2017 (SI 5 of 2017).

<sup>59</sup> Ibid.

<sup>60</sup> (Appeal No. 117/2012) [2016] ZMSC 216 (20 October 2016).

<sup>61</sup> Court of Appeal Act No 7 of 2016.

constitutional ranking above the HC means there is no legal justification for relying on an inferior court's scales. Further, *Rule 2 of Order XII of the CoA Rules*<sup>62</sup> dictates that in civil appeals, the Court may, at any time (on its own initiative or by application), order a party to furnish security or further security for costs, including past costs related to the appeal. The Court can make compliance with this order a condition precedent for the appeal to be heard. This grants the Court extensive power to ensure the recovery of costs by the successful party.

*Order XII Rule 4 of the CoA Rules*<sup>63</sup> allows a dissatisfied party to seek a review of a taxation decision by the same taxing officer. This process is criticised for potentially undermining access to justice, as the taxing officer may be unwilling to change their own prior decision, leading to bias because in some instances he can give some people Advocates better rates than others. Furthermore, this required internal review prolongs the process by delaying immediate appeal to a Judge. A second major challenge is that Rule 5 makes the single Judge's decision on costs final, implying there is no right to appeal the costs decision further up the appellate ladder. This raises fundamental questions about justice and fairness of the taxing process, given that the CoA is not a final Appellate Court, but its single Judge rule on cost decisions treats it as such.

When it comes to evaluating inconsistencies in matters relating to VAT, a reflection of inadequacies is seen firstly in the taxation of costs involving a practitioner who has moved with a case through multiple law firms making it difficult to establish which law firm bears the burden of VAT. Further, there exists ambiguity as to whether VAT is automatically applicable to the firm's amounts exceeding the K800,000<sup>64</sup> from the Court Taxation process. The preceding discussion concludes that the Zambian legal framework on cost taxation in the CoA contains inadequacies, such as the ambiguity concerning the K800,000.00 VAT threshold, which could necessitate tax evasion. Generally, a productive and well-structured tax system must achieve two core principles: efficiency (minimising distortion as agents limit tax liability) and equity (extracting tax without discrimination). While taxation has secondary aims, like income redistribution or influencing social welfare, these must not compromise efficiency and equity. Regarding the taxation process, courts acknowledge that it is not a precise science but is instead heavily reliant on the taxing master's practical knowledge and understanding of local conditions.<sup>65</sup> It therefore requires discretion and flexibility, the essential foundation for fair taxation.<sup>66</sup> This suggests the taxing master is the best person to exercise these two virtues because of the depth of their knowledge in determining the outcome of the process.

## **VI. COMPARISON OF TAXATION OF COST IN OTHER COUNTRIES**

### **6.1. United States of America.**

In the United States, *Federal Rule of Civil Procedure 54(d)*<sup>67</sup> outlines that the prevailing party may recover costs (excluding attorney's fees). This procedure requires filing a Bill of Costs Form AO 133, with the Clerk's office within fifteen days of the appeal expiration or receipt of the Appellate Court's mandate<sup>68</sup>. Crucially, costs may be denied if the prevailing party engaged in litigation misconduct, a determination reserved for a district Judge. In Zambia, misconduct cannot be used as a ground to reject costs, a stance the author argues should change to discourage irrational behaviour. Another issue is the Zambian review process: a rejected bill is initially sent back to the taxing master for a second review, which is deemed a waste of time and resources. Only after this second review can a party apply to the Court. In contrast, a grieved US party can immediately apply to the Magistrate Court. Furthermore, the Zambian position requires waiting for a matter to be concluded before costs are taxed, unlike the American system which prioritizes timely decisions.

### **6.2. South Africa**

After a successful case, a bill of costs is often prepared by a consultant and served on the unsuccessful party. It is forwarded to an officer of the Court known as the taxing master.<sup>69</sup> The taxing master performs "taxation," deciding which costs the losing party must legally pay, and certifies the total with an "allocatur" for

<sup>62</sup> Court of Appeal Rules (SI 65 of 2016), Order XII, Rule 2 (Zambia).

<sup>63</sup> Court of Appeal Rules (SI 65 of 2016), Order XII, Rule 4 (Zambia).

<sup>64</sup> Note that the amount of K800,000 is primarily a threshold for certain tax categories (like rental income tax or turnover tax) in Zambia and not a direct cap on general court fees or costs. See: Value Added Tax (VAT) Act, Cap. 331, Laws of Zambia.

<sup>65</sup> *GM Berkshire Hills LLC and GM Oberlin Berkshire Hills LLC v County Board of Assessment Appeals and Wilson School District No 16 MAP 2022 GM Berkshire Hills LLC v. Berks Co. Bd. of Assess't, 188 A.3d 1234 (Pa. Commw. Ct. 2018).*

<sup>66</sup> *Ibid.*

<sup>67</sup> Fed. R. Civ. P. 54(d).

<sup>68</sup> *Ibid.*

<sup>69</sup> Duane Marais Attorneys, "Legal Costs," accessed December 11, 2025, <https://www.d2law.co.za/legal-costs>.

enforcement. In the case of *Rogers v Rogers*<sup>70</sup> the case was a review of taxation in terms of [Rule 48, South African Uniform Rules of Court](#)<sup>71</sup> provides a mechanism for review of taxation. A dissatisfied party has 15 days to request the taxing master to refer the dispute to a Judge for a decision.<sup>72</sup> However, case law emphasises that a party forfeits the right to review if they failed to object to cost items during the initial taxation hearing<sup>73</sup> The Zambian costs process can be criticised by arguing that having a dissatisfied party return to the same taxing master for review is a waste of time, as the master is unlikely to change their own ruling. This process is problematic because it delays immediate access to the courts when a party is dissatisfied with the taxation outcome.

### 6.3. Uganda

In Uganda, taxation of costs under the Ugandan [Advocates Act](#)<sup>74</sup> is a complex process reserved solely for the taxing officer, typically a court registrar or an appointed officer. However, for party-and-party costs arising from contentious business in subordinate courts, the taxing officer is a Chief Magistrate or Magistrate Grade One. The taxation process is often tedious and emotional for parties seeking to recover or reduce litigation expenses. Ugandan courts acknowledge that billed costs are frequently exaggerated, emphasising the necessity of this regulatory mechanism. A persuasive case in point that magnifies this point is the case of [Republic v Minister for Agriculture; W'Njuguna & 8 others \(Ex parte\)](#),<sup>75</sup> wherein Ojwang J. of the High Court of Kenya stated that legal costs, representing the inherent liabilities of litigation, can only be approved if explicitly authorized by law, or if the taxing officer provides a compelling and specific justification for their discretionary decision. Additionally, advocates must clearly detail their forensic responsibilities during the substantive proceedings. They must also identify and conscientiously explain any novelty involved in the main case and provide specific information if the proceedings were exceptionally demanding in terms of industry or time, or if large volumes of documentation required classification, assessment, or simplification, ensuring that these efforts are not already covered under other cost headings.<sup>76</sup>

In Uganda, laws relating to taxation are enacted under the [Advocates \(Remuneration and Taxation of Costs\) \(Amendments\) Rules 1996, SI No. 3 of 1996](#).<sup>77</sup> The previously mentioned SI stipulates under [paragraph \(e\) of subsection \(1\) of Section 77 of the Ugandan Advocates Act](#),<sup>78</sup> that the previously mentioned law ought to be read as one with the principal rules stipulated for taxation in the [Legal Practitioners \(Remuneration\) Rules of 1982](#), couched as follows:

*"The scale of fees to be charged by advocates for conveyancing and other non-contentious business and of costs in respect of contentious business whether as between party and party or advocate and client and providing for the manner and procedure of taxation thereof by officers of the courts and all matters connected with the allowance and disallowance of costs, fees, and disbursements."*<sup>79</sup>

The taxation of the advocate's bill of costs in the Ugandan HC and Magistrates Courts(MC) is governed by the 6<sup>th</sup> Schedule of the said rules, whilst the taxation in the Ugandan [CoA and SC is governed by the Judicature \(CoA\) Rules](#).<sup>80</sup> These rules are made pursuant to [section 48\(1\) \(b\) of the Ugandan Judicature Act](#).<sup>81</sup>

## VII. RECOMMENDATIONS

This article raises four key recommendations regarding costs and taxation in the Zambian CoA. These include a lack of specific scales, issues relating to VAT costs, the need for new and revised legislation, and lastly conflicts in the tax review process. These points are considered below in more detail:

1. **Lack of Specific Scales:** Order VII of the CoA refers to an order for costs, but it lacks its own specific scales, forcing it to use in default, the HC scales. Since the CoA is superior, it is argued that it should have independent, logical scales.

<sup>70</sup> [2012] ZANWHC 46 (14 December 2012).

<sup>71</sup> Uniform Rules of Court, Rule 48 (South Africa).

<sup>72</sup> Ibid

<sup>73</sup> Ibid

<sup>74</sup> Advocates Act, Cap. 267, Laws of Uganda

<sup>75</sup> [2006] KEHC 3504 (KLR).

<sup>76</sup> *Republic v Minister for Agriculture*, [2006] KEHC 3504

<sup>77</sup> Advocates (Remuneration and Taxation of Costs) (Amendment) Rules, 1996 (S.I. 3 of 1996) (Uganda).

<sup>78</sup> Advocates Act, Cap. 267, [section 77] (Uganda)

<sup>79</sup> Legal Practitioners (Remuneration) Rules, 1982 (Legal Notice No. 12 of 1982) (Uganda).

<sup>80</sup> The Judicature (Court of Appeal) Rules, 2005 (Statutory Instrument 43 of 2005), Rule 20 (Uganda)

<sup>81</sup> Judicature Act, Cap. 13, Laws of Uganda.

2. **VAT Related to Costs:** There appears to be a significant ambiguity in the treatment of VAT in the superior courts when it comes to taxation of costs. This is apparent when considering multiple law firms that are taxed together. Added to this, there is a lot of discussion surrounding the question of whether VAT automatically applies to firms that exceed the K800,000. earning threshold. This lack of clarity should be resolved by introducing appropriate legislation to prevent tax evasion and ensure equitable taxation.
3. **The Need for New and Revised Legislation:** It is recommended that existing legislation be repealed and replaced by a completely new SI designed specifically to regulate taxation proceedings in the CoA, addressing current weaknesses.
4. **Review Process Conflict:** The process for reviewing taxed costs is flawed because it is done by the same taxing master who originally taxed the costs, potentially leading to a conflict of interest. It is recommended that this review be handled by the Judge hearing the case instead to remove the conflict of interest.

## VIII. CONCLUSION

This paper aims to provide recommendations on laws to regulate costs taxation in the Zambian CoA, drawing analysis from Zambian statutes, case law, and common law jurisdictions like South Africa and Uganda. The central problem is that the CoA lacks its own specific tax scales due to legislative oversight when the court was created. This forces the CoA to rely on tax scales from other lower courts that are already in existence. The problem, however, is that these existing scales have shortcomings of their own and thus create ambiguity in the cost scales. A case in point of this is the subordinate HC SI. A significant finding highlights the ambiguity in the current law, SI No. 6 of 2017, regarding whether cost amounts are denominated in Kwacha or Fee Units, making it difficult to ascertain specific tax amounts. While LAZ has attempted to clarify these difficulties, the SI's enactment still lacks clarity and thus encourages ambiguity in the taxation of costs. Huddart J. and Meredith. J. note that taxation determines the specific amount owed, and costs must be taxed according to a clear and precise procedure. The current legislative weakness hinders this clarity.

### *Declaration of Generative AI Use*

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### **Competing Interests**

The author has no competing interests to declare.

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