

**The Malawi Gazette Supplement dated 30th April, 1999, containing Regulations, Rules, etc.
(No. 10A)**

GOVERNMENT NOTICE No. 16

LABOUR RELATIONS ACT. 1996

(No. 16 OF 1996)

INDUSTRIAL RELATIONS COURT (PROCEDURE) RULES, 1999

IN EXERCISE of the power conferred by section 71 (1) of the Labour Relations Act, I, RICHARD ALLEN BANDA, Chief Justice, acting on the advice of the Chairperson of the Industrial Relations Court, make the following Rules-

1. These Rules may be cited as the Industrial Relations Court (Procedure) Rules, 1999 Citation
2. In these Rules, unless the context otherwise requires- Interpretation

“Court” means the Industrial Relations Court established under section 110 (2) of the Constitution and includes any person authorised to preside over or to serve as a member of the Court in terms of section 66;

“Chairperson” means the Chairperson of the Court appointed in terms of section 66;

“Deputy Chairperson” means the Deputy Chairperson of the Court appointed in terms of section 66;

“day” means any day other than a Saturday, Sunday of public holiday;

“notice” means a written notice;

“party” means any party to Court proceedings and includes a person representing a party;

“process” means any document or form required to be served or filed in terms of the Act:

“public holiday” has the same meaning as in the Public Holidays Act: Cap. 18:05

“Registrar” means the Registrar of the Court appointed in terms of section 69 (1) and includes any other person authorised to act in the place of the Registrar.

3 – (1) The office of the Registrar shall be open every Monday to Friday, excluding public holidays, from 9.30am to 12.00 noon and from 2.00pm to 4.00pm.

Office hours

(2) Notwithstanding subrule (1), the Court or the Registrar may direct that any document be filed on any day and at any time.

4. The address and other relevant particulars of the Registrar shall be as follows-

Address of the Registrar

(a) physical address-

The Registrar, Industrial Relations Court, Livingstone Avenue, Limbe, Malawi.

(b) postal address-

The Registrar, Industrial Relations Court, P.O. Box 5596, Limbe, Malawi.

5. – (1) The Registrar shall number applications consecutively and the number of each application shall include the year in which it is filed.

Duties of the Registrar

(2) The Registrar may advise and assist a litigant, who in the opinion of the Registrar is indigent, to process any matter.

(3) The Registrar may, if requested to do so by the parties, and shall, if directed to do so by the Court, endeavour to assist the parties in any matter pending in the Court to arrive at a settlement.

(4) The Registrar may preside at any pre-hearing conference if directed to do so by the Court.

(5) In carrying out his functions under subrules (3) and (4), the Registrar may act as a conciliator.

(6) Without prejudice to the general duty of being responsible for the administrative functions of the Court, the Registrar shall-

(a) only accept a form or other document if the form or document is filled as permitted in terms of these Rules;

(b) only accept and list a matter which substantially complies with the requirements for listing provided for in these Rules;

(c) unless otherwise directed by the Court, list any matter on a list appropriate to the nature of the matter and in the order in which the matter became ready for a hearing after the close of pleadings;

(d) only on the direction of the Court, remove any matter from the list or restore any matter to the list;

(e) issue such process or documentation as may be necessary for a party to enforce any decision or order of the Court in terms of section 75;

(f) send any notice to parties which he deems necessary in achieving the objects of and in compliance with the provisions of the Act; and

(g) carry out or see to it that all directions and orders of the Court are carried out promptly.

(7) The registrar shall perform his duties under the supervision of the Chairperson or Deputy Chairperson.

6. – (1) Documents may be filled with the Registrar by-

Filing of documents

- (a) handing the document to the Registrar;
- (b) sending a copy of the document by registered post;
- (c) telegram; or
- (d) faxing the document or using other electronically printed transmission.

(2) A document shall be deemed to have been filed with Registrar-

- (a) on the date on which the document is handed to the Registrar;
- (b) on the date on which the document sent by registered post or telegram is received by the Registrar; or
- (c) on completion of the whole of the transmission of the facsimile or other electronically printed transmission.

(3) The Court shall, in respect of any document filed with the Court, Levy a filing fee at the scale applicable in the High Court.

7. A document that is required to be served on any person may be served in any one of the following ways, namely-

Mode of service of documents

- (a) by handing a copy of the document to the person;
- (b) by leaving a copy of the document at the person's reputed place of residence or business with any other person who is apparently at least 16 years old and in charge of the premises at the time;
- (c) by leaving a copy of the document at the person's reputed place of employment with any person who is apparently at least 16 years old and apparently in authority;
- (d) by faxing a copy of the document to the person, if the person has a facsimile number or using other electronically printed transmission;
- (e) by handing a copy of the document to any representative authorised in writing to accept service on behalf of the person; and
- (f) if the person has chosen an address or facsimile number for service, by leaving a copy of the document at that address or by faxing it to that facsimile number.

8. Officers on whom service shall be affected where the person to be served is a company, trade union, partnership, firm, association, municipality, statutory body or Government shall be as follows-

Designation of officers of a company, firm, etc, to accept service

(a) if the person is a company or other body corporate, by serving a copy of the document on a responsible employee of the company or body corporate at its registered office or its principal place of business within the district in which the dispute first arose or, if there is no employee willing to accept service, by affixing a copy of the document to the main door of the office or place of business;

(b) if the person is a trade union or employers' organisation, by serving a copy of the document on a responsible employee who at the time of service is apparently in charge of the reputed main office of the union or employers' organisation, the union's or employers' organisation's office within the district in which the dispute first arose or the reputed office of the union or employers' organisation or, if there is no person willing to accept service, by affixing a copy of the document to the main door of the office.

(c) if the person is a partnership, firm or association, by serving a copy of the document on a person who at the time of service is apparently in charge of the premises and apparently at least 16 years of age at the reputed place of business of such partnership, firm or association or, if such partnership, firm or association has no place of business by serving a copy of the document on a partner, the owner of the firm, the chairperson, secretary or the other controlling body of the partnership, firm or association, as the case may be;

(d) if the person is a municipality, by serving a copy of the document on the town clerk, assistant town clerk or any person acting on behalf of the town clerk or assistant town clerk.

(e) if the person is a statutory body, by serving a copy on the secretary or similar officer, a member of the board or committee of the body or any person acting on behalf of the body; or

(f) if the person is the Government, by serving a copy at the office of the Attorney General or other person authorised to act on behalf of the Government in respect of such proceedings.

9. Notwithstanding rules 7 and 8, a document that is required to be served on any person may be served by any other means authorised by the Court.

Other means of service of documents

10. - (1) Service shall be proved in Court in any one of the following ways-

(a) by an affidavit by the person who effected service;

(b) if service was effected by facsimile or other electronically printed transmission by an affidavit of the person who effected service which must provide proof of the correct facsimile number and confirmation that the whole of the transmission was completed; or

(c) if the person on whom the document has been served is already on record as a party, by a signed acknowledgement or receipt by the party on whom the document was served.

(2) If the Court is not satisfied that service has taken place in accordance with this rule, it may make any order as to service that it deems fit.

11. A document initiating proceedings known as a “statement of claim”, may follow the form set out in IRC Form 1 and shall-

(a) have a heading containing the following information-

- (i) the title of the matter;
- (ii) the case number assigned by the Registrar to the matter;
- (iii) an address of the party delivering the document at which the party will accept notices and service of all documents in the proceedings; and
- (iv) a notice advising the other party if the party intends to oppose the matter, he must deliver a response in terms of rule 12 within 14 days of service of the statement of claim, failing which the matter may be heard in the party’s absence and an order as to costs may be made against the party;

(b) have a substantive part containing the following information-

- (i) the names, description and addresses of the parties;
- (ii) a clear and concise statement of the material facts, in chronological order, on which the party relies, which statement must be sufficiently particular to enable any opposing party to reply to the document;
- (iii) a clear and concise statement of the legal issues that arise from the material facts which statement must be sufficiently particular to enable any opposing party to reply to the document; and
- (iv) the relief sought;

(c) be signed by the party to the proceedings or by his representative;

(d) express all dates, sums and numbers contained in the document in figures; and

(e) be accompanied by a schedule listing the documents that are material and relevant to the claim.

12. - (1) Any party on whom a statement of claim is served may deliver a response to the statement.

Response

(2) The response may follow the form set out in IRC Form 2.

(3) A response is required to be delivered within 14 days of the date on which the statement of claim is delivered.

13. - (1) The parties shall, when requested by the Court to do so, hold an informal conference at a mutually convenient time, date and place prior to the hearing of any matter.

Pre-hearing
conference

(2) At the conference referred to in subrule (1), without prejudice to the rights of the parties, consideration may be given to the following matters-

(a) any means whereby the dispute may be settled, inclusive of such previous endeavours, if any, made by parties to settle the dispute by agreement or otherwise;

(b) any agreements as to nature and extent of the unresolved issue;

(c) such facts as are common cause or are admitted by any party;

(d) any steps which may shorten the hearing;

(e) discovery or exchange of document;

(d) the manner in which documentary evidence is to be dealt with;

(f) the manner in which documentary evidence is to be dealt with;

(g) whether evidence on affidavit is to be admitted with or without cross examination of the document;

(h) which party shall begin presenting his case;

(i) the necessity or otherwise for an on-the-spot inspection;

(j) securing the presence at Court of any witness; and

(k) any other matter or means whereby the proceedings may be shortened.

(3) Notwithstanding subrule (1), any party may on reasonable notice require the other party or parties, as the case may be, to attend a conference at a mutually convenient time, date and venue to attempt to agree on such matters referred to in subrule (2) as may be relevant.

(4) Notwithstanding subrules (1) and (3) the parties shall, when directed by the Court to do so, hold a further conference in chambers prior to the hearing of any matter during which the Chairperson, Deputy Chairperson or Registrar may preside.

(5) In exercising his functions under subrule (4), the presiding officer may also act as conciliator.

(6) The parties shall draw up and sign minutes recording the matters agreed to at the conferences referred to in subrules (1) and (3) as well as the matters still in dispute and the party initiating the proceedings shall ensure that a copy thereof is filed with the Registrar at least 3 days prior to the hearing.

(7) The Court may refuse to commence the hearing of the matter on the date set down if the pre-hearing minutes have not yet been filed and the Court may make such order as it deems fit in the circumstances.

14. - (1) A document or tape recording not disclosed may not, except with the leave of the Court granted on whatever terms the Court deems fit, be used for any purpose at the hearing by the person who was obliged to disclose it except that the document or tape recording may be used by a person other than the person who was obliged to disclose it.

Discovery of documents

(2) If the parties can not reach an agreement regarding the discovery of documents and tape recordings, either party may apply to the Court for an appropriate order.

(3) For the purpose of this rule, a tape recording includes a soundtrack, film, magnetic tape, record or any other material on which visual images sound or other information can be recorded.

15.-(1) Any party intending to call an expert witness shall deliver a notice to that effect together with a summary of the evidence of the expert witness to both the Registrar and the other party at least 14 days before the date of the hearing.

Expert witnesses

(2) If a party fails to comply with subrule (1), the Court may-

- (a) decline to admit the evidence of the expert witness; or
- (b) admit the evidence of the expert witness if it is satisfied that the failure was due to a good reason.

16.-(1) An interlocutory application or other application incidental to any proceedings pending before the Court in respect of which no procedure has been provided for by the Act or by these Rules shall be brought by a party on notice of motion which shall, as near as possible, be in the form set out in IRC Form 3.

Interlocutory applications and matters not covered by these Rules

(2) The applications referred to in subrule (1) shall be supported by an affidavit;

Provided that-

(a) applications as to procedural aspects need not be supported by affidavit; and

(b) depending on the nature of the application, the Court may dispense with such notice.

17.-(1) Whenever a matter is settled out of Court or when parties agree to postpone a matter, the party who placed the matter on the list shall forthwith notify the Registrar by delivering a notice of postponement or withdraw, as the case may be.

Postponements and withdraws

(2) Parties shall not, without the leave of Court, postpone or remove a matter from the list within 2 weeks of the hearing date unless such matter has been settled.

18.-(1) Without prejudice to section 71, the Court may permit the parties together with or in lieu of other evidence to-

Evidence

- (a) adduce evidence by way of affidavit;
- (b) argue a matter on a stated case; or
- (c) argue a matter on the record of some other proceedings.

(2) The Court shall decide in its discretion which party shall commence leading evidence.

19. The Court may at any time before, during or after a hearing and in any matter call upon the parties to deliver a concise statement of the main points which the parties respectively intend to argue and a list of authorities intended

Heads of arguments

to be referred to and shall specify the date by which those documents shall be delivered and the number of copies required.

20.-(1) The language to be employed in the Court shall be English and the evidence, all processes and all the records of proceedings in the Court shall be English.

Language to be employed in Court

(2) If any of the parties or witnesses in proceedings before the Court does not understand English, then the proceedings shall be interpreted from English into the language understood by the parties or the witnesses concerned, as the case may be, and vice versa.

21.-(1) Before any interpreter may interpret in Court, he shall take an oath or make an affirmation in the following form-

Oath of office

“I,
(Full names)

do hereby swear/solemnly and sincerely affirm and declare that whenever I may be called upon to perform the functions of an interpreter in any proceedings in the Court, I shall truly and correctly and to the best of my ability interpret from the language I am called upon to interpret into English and vice versa”

(2) Any appointed member of the Court shall not perform any function of the Court unless he has taken an oath or made an affirmation in the following form-

“I,
(Full names)

do hereby swear/solemnly and sincerely affirm and declare that I will in my capacity as an appointed member of the Industrial Relations Court administer justice to all persons alike without fear, favour or prejudice”

22.-(1) Costs shall be taxed by the registrar in accordance with the scale employed by the High Court for the time being.

Costs

(2) Costs taxed by the Registrar shall be subject to review by the Chairperson or Deputy Chairperson on application by one or more of the parties on notice to all other parties within 14 days of such taxation.

(3) An application for review under subrule (2) shall identify each dispute item or part of an item together with the grounds of objection to the allowance or disallowance thereof:

(4) Any party may within 14 days of receipt of an application under such rule (2) submit written contentions, including ones not advanced at the taxation, on each item sought to be reviewed and thereafter the Registrar shall frame his report and supply a copy to each party who may within 7 days of receipt thereof submit further contentions.

- (5) The Registrar shall submit the document under subrules (2) and (4) to the Chairperson or Deputy Chairperson who may decide the matter-
- (a) on the documents alone;
 - (b) on the documents and such information as he may require from the Registrar; or
 - (c) if he deems fit, after hearing the parties in chambers.

- 23.-(1) The Court shall keep a record of-
- (a) any judgement or ruling given by the Court
 - (b) any evidence given in Court
 - (c) any objection made to any evidence received or tendered;
 - (d) any on-the-spot inspection and any matter recorded as a result thereof; and
 - (e) the proceedings of the Court generally:

Court records

Provided that the Court may direct that argument need not be recorded.

(2) Records of the Court shall be kept by such means, including hand written notes, shorthand notes or electronic recording as the Court may deem expedient.

(3) Hand-written notes, shorthand notes and electronic recordings shall be filed with the Registrar after they have been certified as correct by the person who made them.

(4) A transcript of the notes or record or a part thereof may be made on request of the Court or any of the parties upon payment of such fees as may be prescribed from time to time.

(5) After the person who made the transcription has certified it as correct, the transcript together with the hand-written notes, shorthand notes or electronic record shall be returned to the Registrar.

(6) The transcript of the hand written notes, shorthand notes or electronic record certified as envisaged in subrule (3) shall be deemed to be correct until the contrary is proved.

24.-(1) A witness who attends the Court by order of the Court shall be paid an allowance towards attendance, travel and subsistence as provided in the Legal Practitioners Remuneration, Taxation of Costs, and Allowances to Witnesses Rules made under the Courts Act.

Witness attendance and related costs

Cap. 3:02

(2) A party who requires a witness to attend Court shall be liable to pay the witness an allowance towards attendance, travel and subsistence as provided for in the Legal Practitioners Remuneration, Taxation of Costs and Allowances to Witnesses Rules made under the Courts Act.

Cap. 3:02

(3) Any party who anticipates any problem or possible problem in securing the attendance of a witness may request the Court to authorise the issue of a

subpoena for the witness to appear before Court on a date and at a time and place specified in the subpoena.

Provided that the party shall satisfy the Court that, in his opinion, the witness may be able to give material information concerning the alleged dispute, or he suspects or believe that the witness has in his possession, custody or under his control any book, document or thing which has any bearing on the alleged dispute.

Provided further that the party shall also satisfy the Court as to the grounds for anticipating any problem in securing the attendance of the witness:

Provided further that the provisions of subrule (2) shall apply in respect of the attendance, travel and subsistence costs of the witness.

25.-(1) Without prejudice to the decision-making power of the Court under section 67, the Court may on application or its own motion at any time-

General powers

(a) before or after the expiry of any period condone any failure to comply with any rule including time periods save for the time within which an appeal may be lodged with the High Court and may abridge any time prescribed by these Rules;

(b) allow the allegation in any form to be amended at any time;

(c) if in any proceedings it appears that a party to the proceedings has been incorrectly or defectively cited, correct the error or defect or order the substitution of the party;

(d) join any other person as a party to the proceedings at any time on any such terms and conditions as it deems fit;

(e) make an order consolidating the disputes pending before it in separate proceedings where it deems such consolidation to be expedient and just;

(f) allow any party at any time to amend his application or his opposition;

(g) grant any order in the absence of a party if it is satisfied that the party had notice of the set hearing date;

(h) rescind on good cause being shown, any order made by it in the absence of a party;

(i) order any person who fails to comply with any notice or directive given in terms of these Rules to do so;

(j) order that any party who fails to comply with any notice or directive shall not be entitled to any relief in such proceedings;

(k) set aside any irregular step which has been taken by another party unless the party complaining of the irregular step has with knowledge of the irregularity taken any further step in the proceedings;

(l) declare in the case of a partnership or firm, that any person was at a certain time or for a certain period a partner of a partnership or the proprietor of a firm;

(m) grant-

(i) urgent interim relief pending a decision by the Court after a hearing; and

(ii) an interdict or any other order in the case of any action that is prohibited by law regarding any trade dispute;

(n) before or during a hearing, grant a rule *nisi* and confirm or discharge a rule *nisi* on return date if appropriate unless the Act otherwise provides; and

(o) preside at any pre-hearing conference.

(2) In any application referred to in subrule (1), the Court may make such orders as it deems fit.

(3) The Chairperson or, in his absence, the Deputy Chairperson shall, in his direction, decide when and for how long the Court shall be in recess during any year.

(4) The Court, in the exercise of its powers and discretion and in the performance of its functions, may act in such manner as it may consider expedient in the circumstances in order to achieve the objectives of the Act and in so doing it shall have regard to substance rather than form, save as is otherwise provided in the Act.

26.-(1) The Registrar shall enter judgement by default against a party if-

(a) the party does not respond to a statement of claim or an application within the prescribed time limit or any extension granted by the Court within which to deliver a response; or

(b) directed to do so by the Court.

Default judgement

(2) Subrule (1) (a) shall not apply if the party initiating the proceedings instructs the Registrar not to enter judgement by default.

(3) Notwithstanding that a default judgement has been entered, the person initiating the proceedings may request the Registrar to have the matter removed from the list if the matter from the list.

27. An appeal in terms of section 65 (2) shall be dealt in terms of Order XXXIII of the Subordinate Courts Rules made under the Courts Act.

Appeals
Cap. 3:02

28. Where an act is required to be done within a specified period of days after or from a specified date, the number of days shall be calculated by excluding the specified date and including the last day of the specified period of days.

Reckoning periods
of time

Provided that where the last day of the specified period of days falls on a Saturday, Sunday or public holiday, the number of days shall be calculated by excluding-

(a) the specified date; and

(b) the Saturday, Sunday or public holiday, as the case may be.

30th April 1999
