

Statutory Instrument 109 of 1991

High Court of Zimbabwe (Bail) Rules, 1991

SIs 109/1991, 32/1996.

IT is hereby notified that the Minister of Justice, Legal and Parliamentary Affairs, in terms of subsection (4) of section 56 of the High Court of Zimbabwe Act, 1981, has approved the following rules of court made by the Chief Justice and the Judge President in terms of subsection (1) of that section:—

ARRANGEMENT OF RULES

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1. Title and date of commencement

- (1) These rules may be cited as the High Court of Zimbabwe (Bail) Rules, 1991.
- (2) These rules shall apply to applications and appeals in terms of section 106, 111, 111A or 112 of the Criminal Procedure and Evidence Act [*Chapter 9:07*], which are made or noted on or after the 1st May, 1991.

2. Interpretation

In these rules—

“Judge” means a judge of the High Court, sitting otherwise than in open court;

“registrar” means the registrar of the High Court or any deputy or assistant registrar of the High Court.

3. Reckoning of time

Where anything is required by these rules to be done within a particular number of days or hours, a Saturday, Sunday or public holiday shall not be reckoned as part of such period:

Provided that, in relation to the seven-day period prescribed in subrule (1) of rule 7, Saturdays, Sundays and public holidays shall be included unless they fall at the end of the period, in which event the period shall extend to the first following day that is not a Saturday, Sunday or public holiday.

4. Departures from rules and directions as to procedure

The High Court or a judge may, in relation to any particular case before it or him, as the case may be—

- (a) direct, authorize or condone a departure from any provision of these rules, including an extension of any period specified therein, where it or he, as the case may be, is satisfied that the departure is required in the interests of justice;
- (b) give such directions as to procedure in respect of any matter not expressly provided for in these rules as appear to it or him, as the case may be, to be just and expedient.

5. Bail applications

(1) An application to a judge for bail in terms of section 106 or 112 of the Criminal Procedure and Evidence Act [*Chapter 9:07*] shall be filed with the registrar and shall consist of a written statement setting out —

- (a) the name of the applicant; and
- (b) the applicant’s residential address; and
- (c) if the applicant is employed, his employer’s name and address and the nature of his employment; and
- (d) where the application is made before the applicant has been convicted —
 - (i) the offence with which the applicant is charged; and
 - (ii) the court by which and the date on which the applicant was last remanded; and
 - (iii) the court criminal record book number, if that number is known to the applicant; and
 - (iv) the police criminal record number of the case, the name of the police officer in charge of investigating the case and the police station at which he is stationed, if those particulars are known to the applicant;
- and
- (e) where the application is made after the applicant has been convicted and sentenced—
 - (i) the offence of which the applicant was convicted and the sentence that was imposed; and
 - (ii) the court or courts which convicted the applicant and imposed sentence upon him; and

- (iii) the court criminal record book number, if that number is known to the applicant; and
 - (iv) the date or dates on which the applicant was convicted and sentenced;
- and
- (f) whether or not bail has previously been refused by a magistrate and, if it has been refused—
 - (i) the grounds on which it was refused, if the grounds are known to the applicant; and
 - (ii) the date on which it was refused; and
 - (g) the grounds on which the applicant seeks release on bail; and
 - (h) the amount of bail which the applicant is prepared to give and the names of any persons who are prepared to stand as sureties for his attendance and appearance.
- (2) The registrar shall set down an application for bail for hearing by a judge within forty-eight hours after the application was filed in terms of subrule (1), and shall ensure that—
- (a) a copy of the written statement referred to in subrule (1) is served on the Attorney-General as soon as possible after it was filed; and
 - (b) the Attorney-General and the applicant and his legal representative are notified as soon as possible of the date and time of the hearing:

Provided that—

 - (i) if the applicant is legally represented, the registrar may require the applicant's legal representative to serve a copy of the written statement on the Attorney-General, and the legal practitioner shall forthwith comply with such request;
 - (ii) the forty-eight hour period may be extended—
 - A. by written agreement between the applicant and the Attorney-General if a copy of their agreement is filed with the registrar; or
 - B. if a judge so orders in terms of rule 4.
- [Subrule substituted by s.i 32 of 1996]
- (3)
- [Subrule repealed by s.i 32 of 1996]
- (4) At least three hours before the hearing of an application for bail, the Attorney-General shall cause the following documents to be filed with the registrar—
- (a) his written response to the application; and
 - (b) a copy of any comments which he has been able to elicit from the magistrate who is presiding or who presided over the applicant's trial, where the trial has commenced or been completed;
- and, where practicable, shall cause a copy of his response to be served on the applicant or the applicant's legal practitioner.

6. Appeals against refusal of bail or conditions of recognizance

- (1) An appeal in terms of section 111 of the Criminal Procedure and Evidence Act [*Chapter 9:07*] by a person aggrieved by the decision of a magistrate on an application relating to bail or the entering by him into recognizances, shall be noted by filing with the registrar a written statement setting out—
- (a) the name of the appellant; and
 - (b) the appellant's residential address; and
 - (c) if the appellant is employed, his employer's name and address and the nature of his employment; and
 - (d) where the appeal is brought against the decision of a magistrate before the appellant has been convicted—
 - (i) the offence with which the appellant is charged; and
 - (ii) the court by which and the date on which the appellant was last remanded; and
 - (iii) the court criminal record book number, if that number is known to the applicant; and
 - (iv) the police criminal record number of the case, the name of the police officer in charge of investigating the case and the police station at which he is stationed, if those particulars are known to the applicant;
- and
- (e) where the appeal is brought against the decision of a magistrate after the appellant has been convicted and sentenced—
 - (i) the offence of which the appellant was convicted and the sentence that was imposed; and
 - (ii) the court or courts which convicted the appellant and imposed sentence upon him; and
 - (iii) the court criminal record book number, if the number is known to the applicant; and
 - (iv) the date or dates on which the applicant was convicted and sentenced;
 - (f) where the appeal is brought against a refusal by a magistrate to grant bail —
 - (i) the grounds on which it was refused, if the grounds are known to the appellant; and
 - (ii) the date on which it was refused; and
 - (g) where the appeal is brought in relation to any recognizance or condition thereof—
 - (i) the terms of the recognizance or condition concerned; and

- (ii) the date on which the magistrate required the recognizance to be entered into or imposed the condition, as the case may be;
 - and
 - (h) the grounds on which the applicant seeks release on bail or the revocation or alteration of the recognizance or condition, as the case may be.
- (2) The registrar shall set down an appeal referred to in subrule (1) within ninety-six hours after it was filed, and shall ensure that—
- (a) a copy of the written statement referred to in subrule (1) is served on the Attorney-General as soon as possible after it was filed; and
 - (b) the Attorney-General and the appellant and his legal representative are notified as soon as possible of the date and time of the hearing:
 - Provided that—
 - (i) if the appellant is legally represented, the registrar may require the appellant's legal representative to serve a copy of the written statement on the Attorney-General, and the legal practitioner shall forthwith comply with such request;
 - (ii) the ninety-six hour period may be extended —
 - A. by written agreement between the appellant and the Attorney-General if a copy of their agreement is filed with the registrar; or
 - B. if a judge so orders in terms of rule 4.
- [Subrule substituted by s.i 32 of 1996]
- (3)
- [Subrule substituted by s.i 32 of 1996]
- (4) At least three hours before the hearing of an appeal referred to in subrule (1), the Attorney-General shall cause the following documents to be filed with the registrar -
- (a) his written response to the appeal; and
 - (b) a copy of any comments which he has been able to elicit from the magistrate whose decision is the subject of the appeal;
- and, where practicable, shall cause a copy of his response to be served on the appellant or his legal practitioner.

7. Appeals by Attorney-General against grant of bail

- (1) An appeal by the Attorney-General in terms of paragraph (b) of subsection (1) of section 111A of the Criminal Procedure and Evidence Act [*Chapter 9:07*] shall be noted, within seven days after the magistrate granted bail, by filing with the registrar a written statement setting out—
- (a) the name of the person who was granted bail; and
 - (b) where the appeal is brought against the decision of a magistrate granting bail to a person before that person has been convicted —
 - (i) the offence with which the person is charged; and
 - (ii) the court by which and the date on which the person was granted bail;
 - and
 - (c) where the appeal is brought against the decision of a magistrate granting bail to a person after that person has been convicted and sentenced—
 - (i) the offence of which the person was convicted and the sentence that was imposed; and
 - (ii) the court or courts which convicted the person and imposed sentence upon him; and
 - (iii) the date or dates on which the person was convicted and sentenced;
 - and
 - (d) the amount of bail granted and any conditions of the recognizance; and
 - (e) the grounds on which the Attorney-General seeks the revocation or alteration of bail.
- (2) As soon as possible after an appeal referred to in subrule (1) has been filed—
- (a) the appellant's legal practitioner, where the appellant is legally represented; or
 - (b) the registrar where the appellant is not legally represented;
- shall cause a copy of the written statement referred to in subrule (1) to be served on the Attorney-General or his representative.
- (3) Where practicable, a magistrate on whom a statement has been served in terms of subrule (2) shall file with the registrar his written comments on the appeal at least three hours before the hearing of the appeal.
- (4) The registrar shall set down an appeal referred to in subrule (1) for hearing by a judge within forty-eight hours after it was filed, and shall ensure that —
- (a) the Attorney-General; and
 - (b) the person whose bail is the subject of the appeal, or any legal practitioner representing that person, as the case may be; and
 - (c) the magistrate whose decision is the subject of the appeal;

are notified as soon as possible of the date and time of the hearing:

Provided that the forty-eight hour period may be extended—

- (a) by written agreement between the Attorney-General and the person whose bail is the subject of the appeal, if a copy of their agreement is filed with the registrar; or
- (b) if a judge so orders in terms of rule 4.

[Subrule substituted by s.i 32 of 1996]

(5) Where the person whose bail is the subject of an appeal referred to in subrule (1) is legally represented, his legal practitioner shall cause his written response to the appeal to be filed with the registrar within three hours before the hearing of the appeal and, where practicable, shall cause a copy of his response to be served on the Attorney-General or his representative.

8. Urgency of bail applications and appeals

(1) The registrar shall ensure that every application or appeal referred to in these rules is set down for hearing with the utmost urgency.

(2) Whenever it comes to the attention of a prison officer in charge of a prison that a prisoner lodged therein wishes to apply for bail or appeal against the refusal of bail in terms of these rules, the prison officer shall ensure that—

- (a) the prisoner is provided with appropriate forms and adequate facilities with which to make the application or appeal; and
- (b) any forms completed by the prisoner are forwarded to the registrar without any delay for filing in terms of these rules.