

HIGH COURT CIVIL PROCEDURE AND THE RIGHT TO EQUAL ACCESS TO JUSTICE FOR SELF-REPRESENTING LITIGANTS IN ZAMBIA

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Abstract

This article analyses Zambia's High Court civil procedure against identified features of civil procedure that is accessible to all litigants including those that are not legally represented. It concludes that Zambia's High Court civil procedure potentially excludes self-representing litigants from effectively accessing the High Court as a choice of dispute resolution. It recommends reform of the civil procedure law and practice that would improve access to courts by all while at the same time protect the right to fair procedure as a right.

Keywords—access to justice; civil procedure; adversarial system

I. INTRODUCTION

The paper seeks to assess the accessibility of Zambia's High Court civil procedure to self-representing litigants, defined as parties to legal proceedings who are not represented by counsel. Such evaluation is necessary as

many litigants in Zambia represent themselves in civil litigation. The number of people who represent themselves in court proceedings and the factors influencing the choice to represent oneself are varied and cannot be ascertained in the absence of empirical evidence. That notwithstanding, the law regulating right of audience in the High Court permits people to either represent themselves or appear by counsel of their own choosing.¹ As such, many people do represent themselves in civil proceedings in Zambia.

Where parties appear in person, they often face challenges navigating the procedure which results in them constantly seeking assistance from the court and court officials, often at the expense of efficiency.²

The paper focuses on civil procedure in the High Court. The choice of the High

¹ Oder 6 rule 7 and Order 11 rule 1 of the High Court Rules, Chapter 27 of the Laws of Zambia.

² Drew A. Swank, "In Defense of Rules and Roles: The Need to Curb Extreme Forms of Per Se Assistance and Accommodation in Litigation." *American University Law Review* 54, no.5 (2005): 1537-1591.

Court civil procedure is influenced by the fact that the High Court, as the court clothed with original civil jurisdiction, uses formal rules of procedure compared to the Subordinate Courts, other courts with original civil jurisdiction in Zambia, which usually conduct trial without formal pleadings.

The paper argues that Zambia's High Court civil procedure potentially denies self-representing litigant's substantive access to justice in court proceedings. It starts by explaining the concept of substantive access to court as an important element of access to justice. Thereafter, it highlights the importance of civil procedure in the administration of justice. The paper then analyses Zambia's High Court civil procedure law against identified features of accessible rules of procedure.

The paper concludes that Zambia's high court civil procedure potentially denies self-representing litigants' substantial access to justice. It advocates for interventions aimed at levelling the playing field in litigation with the view to provide equal access to civil proceedings for all litigants. It cautions that any interventions aimed at levelling the playing field should be based on evidence based research and a theory of civil procedure that promotes equal access to justice while at the same time guaranteeing the right to due process of the law.

II. ACCESS TO JUSTICE

Access to justice may be defined as the ability of people to seek and obtain remedies for their grievances through formal or informal institutions of justice, in

compliance with human rights standards.³ Access to justice has attained the status of a legal right through provisions of national laws and some of its components found in various human rights instruments. The following components have been used to assess the extent to which the justice system of a given state is accessible⁴:

- a) A conducive legal framework;
- b) A population that has sufficient legal knowledge;
- c) Readily available legal advice and representation;
- d) Fair legal procedures; and
- e) Enforceable solutions.

For purposes of this paper, focus is on fair legal procedures. Article 118(2) (e) of the Constitution of Zambia, as amended by the Constitution of Zambia (Amendment) Act No. 2 of 2016 (The Constitution of Zambia), states that Justice shall be administered without undue regard to procedural technicalities. This principle, among others, is indicative of the aspiration of Zambians to have a legal systems that guarantee the right to access justice and justice institutions without discrimination.

Article 8 of the Constitution of Zambia provides national values and principles which include, equity, social justice, equality and non-discrimination. Judges are mandated to give regard to these

³ Open Society Foundations, *The Donor Landscape for Access to Justice and Health*, June 2014

⁴ American Bar Association, "Access to Justice, Equality under the Law and Women's Rights: Participants Training Packet" ABA Rule of Law Initiative (2014) 9.

constitutional principles and values in the administration of justice.⁵

Some components of the right to access to justice are enshrined in human rights instruments that Zambia is party to. The first reference to these elements is the right to an effective remedy found in article 8 of the Universal Declaration of Human Rights (UDHR), 1948 which states that ‘...Everyone has the right to an effective remedy by the competent national tribunal for acts violating the fundamental rights granted him by the constitution or by law.’

Although not a binding instrument, the UDHR provides the imperative soft law that has been adopted in enforceable instruments.

Article 2(3) of the International Covenant for Civil and Political Rights (ICCPR) provides that:

Each state party to the present covenant undertakes:

- a) To ensure that any person whose rights or freedoms as herein recognised are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
- b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority

provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

- c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 14 of the ICCPR further contains specific aspects of the right to access to a fair trial as it relates to criminal proceedings.

The right to a fair trial is also protected under Article 7 of the African Charter on the Human and Peoples Rights which provides for the right to fair trial within a reasonable time by an impartial court or tribunal, among other related protections. Access to justice also forms part of global development agenda under goal 16 of the Sustainable Development Goals (SDGs) which seeks to promote access to justice for all. Access to courts is an aspect of the right to access justice institutions that are fair, impartial and independent.

The traditional conception of access to justice institutions and fair procedure requirements has been under the civil and political rights rhetoric whereby the rights could be realised through a hands-off approach by the state. The obligation of the state was merely to provide justice institutions and ensure that no one interfered with the enjoyment of the various components of the right as protected by law. The state remained passive with respect to such matters as the ability of a party to recognise the party’s legal rights and effectively defend them through means such as ability to retain legal counsel, capacity to

⁵ Article 118(1)(f) Constitution of Zambia

pay costs of litigation or capacity to understand and make full use of the law and justice institutions.⁶ This conception of access to justice is characterised as access to formal, but not substantive justice. The concept of substantive justice presupposes a system of justice in which the result of a process depends entirely on the relative merits of the parties' position and not the abilities and strengths of one party over the other.⁷

Viewed through the social economic rights lens, access to substantive justice requires the state to play a more active role in promoting and enforcing formal rights by removing substantive and practical barriers to effective enjoyment of rights. Using the substantive rights argument, scholars and development organisations have emphasised the importance of bottom-up approaches to justice sector reforms aimed at taking justice to the poor. Some of the barriers to access to justice identified by proponents of the bottom-up approaches include; complex laws and procedures for enforcing laws, elitist justice institutions, slow legal procedures, financial costs of accessing formal institutions and practical or infrastructural challenges in accessing formal justice institutions.⁸ The following features have been identified as being important to realising the right to effective access to justice for all; accessibility,

appropriateness, equity, efficiency and effectiveness.⁹ Improving access to justice for everyone requires a holistic evaluation of how the legal system and its various institutions influence each other and work together to support or limit people's capacity to address their justice problems.¹⁰

To improve accessibility, states should endeavor to reduce the net complexity of the justice system. Complexities in the justice system range from physical inaccessibility to complex laws and practice rules. Regarding appropriateness, the justice system should strive to create incentives that encourage people to resolve disputes at the most appropriate level.¹¹ Interventions aimed at appropriateness include encouraging the population to use non-contentious methods of resolving their justice problems and improving efficiency and effectiveness of other justice institutions and mechanisms than courts, such as use of alternative dispute resolution (ADR) and provision of relevant legal information to enable people resolve their justice problems at every level.¹² Equity requires the justice system to meet substantive needs of all users. It demands a justice system that is fair and accessible to all, including those that are not legally represented.¹³ Efficiency and

⁶ Mauro Capelleetti, Bryant Garth Nicolás Troker, Access to Justice: Comparative General Report, *The Rebel Journal of Comparative and International Private Law*, 40 Jahrg., H.3/4, DER SCHUTZ DES, (1976) <http://www.jstor.org/stable/> accessed on 29.08.2015

⁷ Mauro Capelleetti, Bryant Garth Nicolás Troker, 1976

⁸ Benjamin van Rooij, Bringing Justice to the Poor, Bottom-up Legal Development Cooperation, *Hague Journal on the Rule of Law*, 2012, Vol. 4, 286-318.

⁹ Mauro Capelleetti, Bryant Garth Nicolás Troker, 1976

¹⁰ Commonwealth of Australia, *A Strategic Framework for Access to Justice in the Federal civil Justice System*, 2009, www.ag.gov.au/a2j accessed on 19.12.2015

¹¹ Commonwealth of Australia, 2009

¹² Marc Galanter, 'Justice in Many Rooms' in M Cappelletti (ed.), *Access to Justice and the Welfare State*, 1981, Sijthoff, Alphen aan den Rijn, 147-81

¹³ Hazel Genn, "What Is Civil Justice For? Reform, ADR, and Access to Justice," *Yale Journal of Law & the Humanities*: Vol. 24: Iss. 1, Article 18. (2012),

effectiveness speak to cost, both in terms of time and effectiveness of remedies and available enforcement mechanisms. Interventions targeted at improving efficiency of justice systems include improving case record and management systems such as through the use of computerised systems.¹⁴ In summary, all features of the justice system should deliver the best possible outcomes for all users, regardless of their status.

III. CIVIL PROCEDURE AND THE ADMINISTRATION OF JUSTICE

Civil procedure is the law that regulates the technical aspects of how a litigant can approach a civil court to enforce legal rights prescribed by substantive law. Substantive law is the law that prescribes legal rights and establishes available remedies. Procedural law is just as important as substantive law and has pronounced effects on substantive law. '[Some] critics emphasise this when they make a case for substantive law manipulation disguised as procedural choice.'¹⁵ The relationship between procedural law and substantive law is optimal when the procedural law produces effective results that are measured by substantive law.

The object of dispute resolution in the administration of justice systems is to balance justice and truth. Typically, the determination of truth must subordinate to the justice object.¹⁶ The deference that courts give to either truth or justice on a given set of facts would determine the theory of procedure to be adopted. Civil procedure plays the important role of a standard measure against which to balance the objectives of truth and justice in civil litigation as the choice of dispute resolution. Procedural law should therefore aim to ensure that substantive rights are enforced in an accurate and efficient manner. Courts have to balance the cost of strictly enforcing procedure to enhance efficiency, against the cost of relaxing procedural law to enhance justice. When it comes to accuracy, procedural law becomes a right that every litigant is entitled to in order to fully enjoy the benefits of substantive law.

One of the indicators of the adversarial system, which Zambia's justice system practices, is the requirement that each party to proceedings be given an opportunity to present the party's cause before a neutral arbiter.¹⁷ This equality stance requires that civil procedure rules are designed in such a manner that they produce similar results for similar causes. Cases should be determined through a system of rules that level the playing field for each litigant. Rules of procedure should therefore be enforced in

<http://digitalcommons.law.yale.edu/vjllh/vol24/iss1/18> accessed on 19.12.2015

¹⁴ Commonwealth of Australia, *A Strategic Framework for Access to Justice in the Federal civil Justice System*, 2009, www.ag.gov.au/a2j accessed on 19.12.2015

¹⁵ Robert G. Bone, *Making Effective Rules: The need for Procedure Theory*, *Oklahoma Law Review*, Vol 61: 319, 2008, <http://adams.law.ou.edu/olr/articles/vol61/204bonearticleblu5.pdf> accessed on 19.12.2015

¹⁶ John Thibaut and Laurens Walker, *A Theory of Procedure*, 66 *Cal. L. Rev.* 541 (1978). <http://scholarship.law.berkeley.edu/californialawreview/vol66/iss3/2>, accessed 19 December 2015

¹⁷ William B. Rubenstein, *The Concept of Equality in Civil Procedure*, University of California, Los Angeles Research paper Series, Research Paper 01-18, (2001), http://papers.ssrn.com/paper.taf?abstract_id=281271 accessed 19 December 2015

order to level the playing field for all litigants and ensure that no party to a suit suffers injustice owing to disregard of procedural rules.

A. Civil Procedure as a Human Right

Procedural fairness is a recognised human right. The right to procedural justice in civil proceedings in Zambia is guaranteed under article 18(9) of the Constitution which provides:

Any court or other adjudicating authority prescribed by law for determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such determination are instituted by any person before such court or other adjudicating authority, the case shall be given a fair hearing within a reasonable time. (Underlined for emphasis).

The right to procedural fairness is important in an adversarial system where each party is given the liberty to bring any information to the court for the court's consideration. Through civil procedure, the law provides facilities for parties to elicit information from the other party for effective presentation of that party's case to the court.¹⁸ The right to a fair hearing obligates the courts to ensure that civil proceedings are determined accurately, within a shortest possible time and at minimal cost to the litigants. Civil procedure law provides the

¹⁸ A. A.S Zuckerman, *A Reform of Civil Procedure - Rationing Rather than Access to Justice*, 22 Journal of Law and Society, 1995, 155

necessary rules to ensure efficiency and accuracy in civil proceedings. Rules are important because they provide stability, predictability and legitimacy to court proceedings.¹⁹ They ensure that the outcome of a matter is not dependent on the judge assigned but on some uniform system that attempts to assure outcome equality based on an equal process.²⁰ Anything short of that standard would erode the very nature of the adversarial system.

The Constitutional Court of Zambia affirmed the important role that procedure plays when it interpreted article 118(2) (e) of the Constitution of Zambia which obliges courts to administer justice without undue regard to procedural technicality as follows: The intent of the Article is not to disregard or ignore procedures, even in instances where these stretch to technicalities. The sole purpose and that had in the minds of parliament was to apply the provision in an instance that the strict adherence to procedure and its technicalities would result in an injustice of the parties involved. Then and only then can the provision be applied. It is not meant to evade the rules of procedure.²¹

IV. ACCESSIBILITY OF ZAMBIA'S HIGH COURT CIVIL PROCEDURE

Civil procedure, if not premised on a workable theory of justice, may impede equal access to justice for all. Examples of the impediments include monetary costs in

¹⁹ John C. Sheldon, *The False Idolatry of Rules-Based Law*, 56 ME. L. REV. 299, 301 (2004)

²⁰ William B. Rubenstein, 2001.

²¹ *Kapoko v The People* 2016/CC/OO23 (7 November 2016) (unreported)

form of filing fees and time costs in form of delays caused by preliminary applications on procedural matters or failure by litigants to navigate the civil procedure. Zambia's High Court civil procedure law is assessed against two main indicators of accessible civil procedure and practice law, namely, accessibility and simplicity which are further developed below.

A. Accessibility

Accessibility refers to the ease with which litigants are able to effectively use civil procedure to resolve their justice problems. Zambia's High Court civil procedure law is assessed against two main indicators of accessibility, namely, availability and language accessibility.

1) Availability

Section 10 of the High Court Act, as amended by the High Court (Amendment) Act, No. 16 of 2002, provides for the sources of law for practice and procedure in the High Court. It states:

The jurisdiction vested in the Court shall, as regards practice and procedure, be exercised in the manner provided by this Act and the Criminal Procedure Code, or by any other written law, or by such rules, order or directions of the Court as may be made under this Act, or the said Code, or such written law, and in default thereof in substantial conformity with the law and practice for the time being observed in England in the High Court of Justice; provided that the Civil Court Practice 1999 (The Green Book) of England

or any other civil court practice rules issued after 1999 in England shall not apply to Zambia unless they relate to matrimonial causes.

High Court civil procedure rules are contained in subsidiary legislation appended to the High Court Act known as the High Court Rules. Other Zambian legislation, such as the Rent Act, also prescribe procedure for actions under those statutes. Where the High Court Rules or other local legislation does not provide the relevant procedure, the practice and procedure observed in England in the High Court of Justice up to the year 1999 is used in substantial conformity to Zambian circumstances. The Rules of the Supreme Court of 1999, known as the White Book, is the applicable procedure for Zambia.

Laws of Zambia and subsidiary legislation are published by the Government Printer.²² Laws and regulations published by the Government Printer are accessible to the public at a fee. The National Assembly website also publishes the laws of Zambia and Acts of Parliament in electronic format.²³ The National Assembly website does not however publish Statutory Instruments. Statutory Instruments are published in the Government Gazette published by the Government Printer and distributed at a fee.²⁴

²² Section 9, Acts of Parliament Act, Chapter 3 of the Laws of Zambia and section 48 Interpretation and General Provisions Act, Chapter 2 of the Laws of Zambia.

²³ The National Assembly of Zambia, <http://www.parliament.gov.zm>

²⁴ Section 18 Interpretation and General Provisions Act

The High Court civil procedure rules, up to 1997, annexed to the High Court Act may be accessed using the National Assembly website. However, amendments made after 1997 introduced through Statutory Instruments are only published in the Government Gazette. The effective date of a Statutory Instrument is the date of publication of the Statutory Instrument or upon expiration of a date mentioned in the Statutory Instrument.²⁵ As such, one has to constantly access the Government Gazette to access latest amendments to procedural rules. The same applies to civil procedure rules contained in various local legislation whenever amendments are introduced by way of Statutory Instruments.

Access to the Government Gazette is not guaranteed as it is only accessible to subscribers. Further, access to electronic version of the rules is limited to those that have access to internet services. The White Book is less accessible compared to the local rules. It is usually supplied by various commercial suppliers at commercial prices. The High Court Library Stocks copies of the White Book although access to the Library is restricted on the basis of subscription. On that basis, the rules are not easily available to all persons that wish to access them.

2) *Language accessibility*

Article 258 of the Constitution of Zambia states that the official language of Zambia is English. The article further states that 'a language, other than English, may be used as a medium of instruction in educational institutions or for legislative, administrative or judicial purposes, as prescribed.' The

²⁵ Section 19 Interpretation and General Provisions Act.

article acknowledges that not all people in Zambia are able to read, speak and understand English. English, though favoured as the official language, is a second language for most Zambians. The Constitutional provision therefore recognises other languages for instruction and legislative purposes.

According to the latest statistics by the United Nations Education Scientific and Cultural Organisation (UNESCO) Institute of Statistics in 2015, the average literacy rate among Zambians aged 15 to 24 years was 91.52%, 15 years and older was 85.12% and 65 years and older at 56.41% respectively.²⁶ Literacy rates given by UNESCO statistics are not disaggregated according to language. UNESCO defines literacy as the ability to read and write.²⁷ Trends in language literacy can be predicted from the education policy of the country. Zambia's education policy regarding language of instruction has been inconsistent as evidenced by the number of policy shifts between English and mother tongue languages as the media of instruction.²⁸

Based on the above information, one may conclude that a number of self-representing litigants may be illiterate or, though literate, may not be literate in the English language. With the law and civil procedure rules written in English, such litigants are unlikely

²⁶ UIS UNESCO, <http://uis.unesco.org/country/zm>, accessed 10 March 2016

²⁷ UNESCO, UIS Fact Sheet, September 2016, No. 38, <http://uis.unesco.org/country/zm>, accessed 10 March 2016

²⁸ Shay Linehan, Language Instruction and the Quality of Basic education in Zambia: Background Paper prepared for the Education for All Global Monitoring Report 2005, UNESCO, 2004. efareport@unesco.org accessed 19 December 2016

to effectively use the civil procedure rules to seek their remedies in court.

One of the ways through which the law seeks to mitigate the negative impacts of language inaccessibility of court proceedings is by providing translation services at no cost to the litigants. Order 3 rule 6 of the High Court Rules provides that if in any cause or matter, any party or witness is unable to speak or understand English, the court may direct a fit and proper person, who has been duly sworn, to attend and interpret the proceedings so far as is necessary.

That notwithstanding, proceedings are conducted in English and all court documents are prepared in English. For instance, Order 5 rule 20 of the High Court Rules, which provides for swearing of affidavits by a person who is not literate in English, sanctions indirect participation in the proceedings by admitting such affidavits provided it is stated that the affidavit was read over and explained to the deponent in the language that the deponent understands and that the deponent appeared to have understood the contents of the affidavit.

The Zambia Law Development Commission (ZLDC), established under the Zambia Law Development Commission Act, Chapter 32 of the Laws of Zambia, is mandated to, among other functions, translate laws into local languages.²⁹ The agency has however not made any translations either of substantive or procedural law.³⁰

²⁹ Section 4(2), Zambia Law Development Commission Act.

³⁰ Joyce Shezongo-Macmillan, Zambia Justice Sector and the Rule of Law: A Review by AfriMAP and the

Arnold H Leibowitz, as early as 1969, described such legal provisions that made the English language the official language as legally sanctioning discrimination against minorities.³¹ This is because the practical effect of such rules resulted in making English a compulsory condition precedent for full participation in areas of life including litigation.³²

B. Simplicity

Simplicity in this context refers to the ease of reading and user friendliness of the rules. When the procedure for determining disputes is complex, it is unlikely be understood by litigants. Complexity of civil procedure inevitably increases the cost of litigation as litigants would require a lawyer for them to successfully litigate their claims. To a certain extent, complexity in civil litigation is inevitable especially when dealing with complex cases.³³ However, not all cases are so complex as to require parties to use all the procedural facilities provided by law. Good civil procedure law should put in place mechanisms to ensure that the procedure employed is proportionate to the needs of a particular case.³⁴ Failing to strike this right balance is what is frequently frowned upon as paying undue regard to procedural technicalities.

Open Society Initiative for Southern Africa, Open Society Foundation, 2013

³¹Arnold H. Leibowitz, "English Literacy: Legal Sanction for Discrimination," *Notre Dame Lawyer*, 1965, V 45, n1, 7-67

³² Arnold H. Leibowitz, "English Literacy: Legal Sanction for Discrimination," *Notre Dame Lawyer*

³³ A. A.S Zuckerman, *A Reform of Civil Procedure - Rationing Rather than Access to Justice*, 22 *Journal of Law and Society*, 1995, 155

³⁴ A. A.S Zuckerman, *A Reform of Civil Procedure - Rationing Rather than Access to Justice*, 22 *Journal of Law and Society*, 1995, 155

The right balance may be reached in two ways; simplified civil procedure rules and/or manuals, and training litigants on relevant court procedure.

Zambia's High Court civil procedure may be said to be complex in a number of ways. For instance, the law requires a party to show that he or she has an arguable case before the case goes to trial on the merits. For matters commenced using pleadings, one has to comply with the formal requirements of pleadings set out in order 18 of the white Book. Failure to comply with basic rules of pleading may result in a pleading or part of the claim being struck out pursuant to Order 18 rule 19 of the White Book. Most self-representing litigants do not possess the relevant skills to draw proper pleadings. Even where a party is legally represented, courts have often times thrown out claims on grounds that they do not disclose a sufficient cause of action, are frivolous and vexatious or otherwise an abuse of the process of court. The case of *William David Carlise Wise v E.F Hervey Limited*³⁵ is illustrative of this fact. In that case, the Supreme Court allowed the appeal that sought to strike out a counterclaim that did not sufficiently disclose a cause of action against the plaintiff on grounds of being a bad pleading. This case serves as good authority on what a good pleading must contain.

The other instance of complexity is that the law permits parties to proceedings the opportunity to exhaust available procedural benefits, sometimes to buy time for oneself, to exhaust the other party or to simply gain a tactical advantage over the

proceedings. The rules often give room to litigants to make endless pre-trial applications leading to appeals and counter appeals on preliminary issues of procedure. Such motions often take long to dispose of and at great cost to the parties. A classic example of such complexity is the case of *Bellone Busiku and Others v Glassworld Limited*.³⁶ In that case, the appellant applied for an order to consolidate two appeals from the High Court, both on interlocutory rulings. The appellant entered a conditional memorandum of appearance to the respondent's writ of summons claiming irregularities. At the same time, the respondent filed interlocutory applications for receivership injunction and to render an account, which applications were opposed and had dates fixed for hearing. The court delivered a ruling on the applications and gave leave to appeal upon which the appellants appealed. In the meantime, the respondent entered judgment in default of appearance and attempted to execute the judgment notwithstanding the pending appeal to the Supreme Court.

Such complex procedures often put a burden on the administration of justice. Furthermore, the rules of procedure are often difficult to read and be correctly applied by litigants. Even the most educated litigant is unable to properly construe procedural rules.³⁷ This is because they do not possess the special skills constructing statutory provisions that lawyers possess.

³⁵ (1985) Z.R. 179

³⁶ SCZ/8/37/2013 (unreported)

³⁷ Joseph M. McLaughlin, *An Extension of the Right of Access: The Pro se Litigant's Right to Notification of the Requirements of the Summary Judgment Rule*, 55 *Fordham L. Rev.* 1109 (1987), tmelnick@law.fordham.edu, accessed 19 December 2015

Another aspect of complexity is the different procedures applied to different causes of action. For instance, Order VI and order XXX of the High Court Rules provide for four different methods of commencing actions in court, namely, writ of summons accompanied by a statement of claim, petition, originating Notice of Motion or the method of commencement prescribed by statute. There is also a different procedure under Order 53 of the White Book regarding judicial review proceedings among other special proceedings in the White Book. Further, Order 53 of the High Court Rules prescribes different procedural requirements for matters on the commercial list of the High Court.

There are advantages of applying same rules for all causes of action which include efficiency, transparency and fairness. When it comes to efficiency, applying the same procedure to all causes is progressive as parties only have to master one method and do not need to constantly refer to rules of procedure when commencing each action to determine the appropriate procedure. Secondly, applying the same procedure to all causes enhances transparency by directing the resources of the court to the merits of the case as opposed to identifying what method is applicable, which process may consume considerable resources of the court and of the parties.³⁸ In terms of fairness, same rules promote fairness as all parties would be subjected to the same set of rules that may be mastered even by people who may afford the services of a lawyer.

In Zambia, the complexity of the law is compounded by plurality of sources of law and constant amendments to the procedural rules highlighted above.

V. CONCLUSION

The paper has analysed Zambia's civil procedure rules against two features of accessible procedural law, namely, accessibility and simplicity. The analysis sought to highlight some of the weaknesses in the civil procedure law to justify the claim that the law potentially denies self-representing litigants the right to equal access to justice. There is therefore need to take measures aimed at improving access to justice for all, including making the civil procedure more accessible for self-representing litigants. The effective intervention would depend on adopting a theory of procedure that advances the right to equal access to justice while at the same time promoting efficiency and procedural justice. Any interventions sought should however be informed by evidence based research so that the solution is targeted at the real justice challenges of Zambians.

³⁸ Willian B. Rubenstein, 2001.

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