

Zimbabwe

Courts and Adjudicating Authorities (Publicity Restriction) Act Chapter 7:04

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Courts and Adjudicating Authorities (Publicity Restriction) Act

Chapter 7:04

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includes any amendments published up to 31 December 2017.]*

[Note: This version of the Act was revised and consolidated by the Law Development Commission of Zimbabwe]

AN ACT to regulate and restrict attendance at and publication of proceedings of courts and adjudicating authorities; and to provide for matters connected with or incidental to the foregoing.

WHEREAS subsections (10), (11) and (12) of section 18 of the Constitution provide as follows—

(10) Except in the case of a trial such as is referred to in subsection (14) or with the agreement of all the parties thereto, all proceedings of every court and proceedings for the determination of the existence or extent of any civil right or obligation before any other adjudicating authority, including the announcement of the decision of the court or other authority, shall be held in public.

(11) Nothing in subsection (10) shall prevent—

(a) the court or other adjudicating authority from excluding from the proceedings, except the announcement of its decision, persons other than the parties thereto and their legal representatives to such extent as the court or other authority—

(i) may by law be empowered so to do and may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice, or in interlocutory proceedings, or in the interests of public morality, the welfare of persons under the age of twenty-one years or the protection of the private lives of persons concerned in the proceedings; or

(ii) may by law be empowered or required so to do in the interests of defence, public safety, public order or the economic interests of the State; or

(b) the court from excluding from proceedings preliminary to trial in respect of a criminal offence persons other than the accused person and his legal representative when so required by law, unless the accused person otherwise requests.

(12) Notwithstanding anything contained in subsection (4), (10) or (11), if in any proceedings before such court or other adjudicating authority as is referred to in subsection (2) or (9), including any proceedings by virtue of section 24, a certificate in writing is produced to the court or other authority signed by a Minister that it would not be in the public interest for any matter to be publicly disclosed, the court or other authority shall make arrangements for evidence relating to that matter to be heard *in camera* and shall take such other action as may be necessary or expedient to prevent the disclosure of that matter.

AND WHEREAS it is desirable, in accordance with the aforementioned subsections, to make provision for the exclusion of persons from proceedings of courts and adjudicating authorities and to make further provision in regard to the public disclosure of such proceedings:

NOW, THEREFORE, be it enacted as follows:—

1. Short title

This Act may be cited as the Courts and Adjudicating Authorities (Publicity Restriction) Act [Chapter 7:04].

2. Interpretation

In this Act—

“adjudicating authority” means any tribunal, board, commission, authority or person, other than a court, that exercises any quasi-judicial or administrative function, whether in terms of any enactment or otherwise;

“certificate” means a certificate issued in terms of subsection (12) of section 18 of the Constitution or in terms of subsection (1) of section four;

“court” means any court established by law in Zimbabwe;

“legal representative”, in relation to—

- (a) any person, means a legal practitioner or other person representing or acting for such first-mentioned person in any proceedings;
- (b) a person under a disability, includes a parent, guardian, curator, tutor or other person having charge or control over the person under a legal disability or over his affairs;

“notice” means a notice issued in terms of subsection (2) of section four;

“order” means an order made in terms of section three;

“proceedings” means all proceedings of whatsoever nature conducted by or before a court or adjudicating authority;

“record of the proceedings” includes the judgment or decision of a court or adjudicating authority and any evidence or other matter or thing that forms part of or relates to the record of proceedings before a court or adjudicating authority;

“recording” means any device whereon or wherein information is recorded;

“responsible Minister”—

- (a) in relation to a court or adjudicating authority that is established or constituted in terms of any enactment, means—
 - (i) the Minister to whom the President has for the time being assigned the administration of that enactment; or
 - (ii) a Vice-President, where the President has for the time being assigned the administration of that enactment to the Vice-President;
- (b) in any other case, means the Minister of Justice, Legal and Parliamentary Affairs or any other Minister to whom the President may from time to time assign the administration of this Act.

3. Orders excluding persons from and restricting disclosure of proceedings

- (1) Subject to this section and to any other enactment, if at any stage before or during any proceedings a court or adjudicating authority considers it necessary or expedient to do so, the court or adjudicating authority may make any one or more of the following orders, either mero motu or on the application of a party to the proceedings—

- (a) that all persons or such class of persons as the court or adjudicating authority may specify shall be excluded from the proceedings:

Provided that such an order shall not prevent—

- (i) the parties to the proceedings and their legal representatives from being present at any stage of the proceedings; or

- (ii) any person from being present when the decision of the court or adjudicating authority is announced;
 - (b) that the name, address or other information likely to reveal the identity of any person concerned or mentioned in the proceedings shall not be publicly disclosed;
 - (c) that information revealing or likely to reveal any place or locality concerned or mentioned in the proceedings shall not be publicly disclosed;
 - (d) that the whole or any specified part of the proceedings shall not be publicly disclosed.
- (2) Subject to subsection (3)—
- (a) a court shall not make an order in terms of subsection (1) in any proceedings;
 - (b) an adjudicating authority shall not make an order in terms of paragraph (a) of subsection (1) in any proceedings for the determination of the existence or extent of any civil right or obligation;
- unless the court or adjudicating authority, as the case may be, considers it necessary or expedient to do so—
- (i) in circumstances where publicity would prejudice the interests of justice, in particular where the court or adjudicating authority is satisfied that a witness who is about to give evidence or who has given evidence has reasonable cause to fear that he or any other person is likely to suffer unlawful injury to his person or property as a result of giving such evidence; or
 - (ii) in interlocutory proceedings; or
 - (iii) in the interests of public morality; or
 - (iv) in the interests of the welfare of persons under the age of eighteen years; or
 - (v) to protect the private lives of persons concerned in the proceedings; or
 - (vi) in the case of an order in terms of paragraph (b), (c) or (d) of subsection (1), to protect the safety or private lives of persons related to or connected with any person concerned in the proceedings.
- (3) A court or adjudicating authority shall make an order in terms of subsection (1) whenever the court or adjudicating authority is satisfied that it is necessary or expedient to do so in the interests of defence, public safety, public order or the economic interests of the State.

4. Additional powers of Minister regarding certificates prohibiting publicity

- (1) In addition to his power in terms of subsection (12) of section 18 of the Constitution to issue a certificate preventing the public disclosure of any matter in proceedings before a court or adjudicating authority, the responsible Minister shall have power to issue a certificate, in writing and signed by him, that it would not be in the public interest to disclose publicly—
 - (a) the fact that any proceedings may be or will be instituted by or before any court or adjudicating authority, or any matter connected with such future proceedings;
 - (b) any matter in any proceedings which are not for the determination of the existence or extent of any civil right or obligation.
- (2) Subject to subsection (5), whenever the responsible Minister has issued a certificate, he may—
 - (a) by notice in writing served on—
 - (i) any party to the proceedings or future proceedings concerned: or
 - (ii) any person who is or may be a witness in the proceedings or future proceedings concerned; or

- (iii) any legal representative of a party or person referred to in subparagraph (i) or (ii); or
 - (b) by notice published in the *Gazette*;
- direct that any information, document or recording or class of documents or recordings relating to the proceedings or future proceedings concerned shall not be made available or transmitted by any one such party, person or legal representative to any other such party, person or legal representative, except under such conditions as the responsible Minister may specify in the notice for the purpose of ensuring that any information or matter contained in the document or recording or class of documents or recordings is disclosed to as few people as possible.
- (3) Without derogation from the generality of subsection (2), conditions imposed in terms of that subsection may—
 - (a) prohibit or restrict the making of copies of any document or recording;
 - (b) prohibit or restrict the removal of any document or recording or copy thereof from Zimbabwe;
 - (c) require the return of any document or recording or copy thereof to any person specified in the notice concerned.
- (4) Where the responsible Minister has—
 - (a) issued or published a notice, he may at any time in like manner amend or revoke it;
 - (b) issued a certificate, he may at any time—
 - (i) in like manner amend it; or
 - (ii) by written notice to the court, adjudicating authority or person upon which or whom the certificate was served, revoke it.
- (5) Nothing in this section shall be construed as authorizing the issue or publication of a notice preventing or unduly restricting the communication between a legal practitioner and his client of any information that would enable or assist the legal practitioner to prepare for or institute the proceedings concerned or to bring them to a conclusion.

5. Effect of certificates and notices

- (1) Upon a certificate in terms of paragraph (a) of subsection (1) of section four being served on a person who is or may be a party to the future proceedings concerned or a witness therein or a legal representative of such a party or witness, such person shall not disclose or cause or permit to be disclosed to any other person the fact or matter specified in the certificate, save to the extent that it may be necessary to do so for the purpose of preparing for or instituting the proceedings concerned or bringing them to a conclusion.
- (2) Upon a certificate in terms of paragraph (b) of subsection (1) of section four being produced before it, the adjudicating authority concerned shall take such action, including the making of an order referred to in subsection (1) of section three, as may be necessary or expedient to prevent the public disclosure of the matter specified in the certificate.
- (3) Upon a notice being published in the *Gazette* or being served on—
 - (a) any party to the proceedings or future proceedings concerned; or
 - (b) any person who is or may be a witness in the proceedings or future proceedings concerned; or
 - (c) any legal representative of a party or person referred to in paragraph (a) or (b);such party, person or legal representative shall take all reasonable steps needed to ensure compliance with every condition specified in the notice.

6. Protection of record of proceedings

- (1) Subject to subsection (2) and to any notice, where an order has been made or a certificate has been issued, the record of the proceedings in relation to which the order was made or the certificate was issued, as the case may be, shall be accessible only—
 - (a) in the case of criminal proceedings, to the accused, whether as accused, appellant or respondent, and to his legal representative, if any; and
 - (b) in the case of any proceedings other than criminal proceedings, to the parties thereto and to their legal representatives, if any; and
 - (c) to persons who have been allowed access in terms of subsection (2).
- (2) A person may be allowed access to a record or part of a record referred to in subsection (1)—
 - (a) in the case of proceedings of the Supreme Court or the High Court, by the registrar of the Supreme Court or the registrar of the High Court, as the case may be; or
 - (b) in the case of proceedings of a magistrates court, by a magistrate; or
 - (c) in the case of proceedings of any other court or adjudicating authority, by a person presiding over or constituting such court or adjudicating authority;

if such registrar, magistrate or person, as the case may be, is satisfied that the person seeking access has good cause to inspect the record or part of the record and that to allow him access will not defeat or be likely to defeat the purposes for which the order concerned was made or the certificate concerned was issued, as the case may be.
- (3) In deciding whether or not to allow access to any record or part of a record in terms of subsection (2), the registrar, magistrate or other person empowered by that subsection to allow access shall pay due regard to any authority granted in terms of section seven.
- (4) In allowing access to any record or part of a record in terms of subsection (2), the registrar, magistrate or other person concerned may fix such terms and conditions as he thinks fit.

7. Authority to disclose information

Notwithstanding any other provision of this Act—

- (a) a court or adjudicating authority that has made an order; or
- (b) a responsible Minister who has issued or published a certificate or notice;

may, by written authority, authorize the disclosure of the whole or part of any proceedings, information, document or recording to which the order, certificate or notice, as the case may be, relates, and may specify the manner in which and conditions subject to which the disclosure may be made.

8. Offences and penalties

- (1) Any person who, without lawful excuse, the proof whereof lies on him—
 - (a) attends any proceedings in contravention of an order; or
 - (b) either inside or outside Zimbabwe, discloses or causes or permits the disclosure of any information, fact, matter, document, recording, record or part thereof which he is prohibited by this Act or by any order or certificate from so disclosing or permitting to be disclosed: or
 - (c) being a party, person or legal representative who is required by subsection (3) of section five to comply with a notice, fails, either inside or outside Zimbabwe, to take all reasonable steps needed to ensure compliance with any condition specified in the notice; or

- (d) being a person who has custody or control of a record referred to in subsection (1) of section six, fails, either inside or outside Zimbabwe, to take all reasonable steps needed to prevent unlawful access to such record or any part thereof; or
- (e) either inside or outside Zimbabwe, allows or permits a person who is not entitled thereto access to a record or part of a record referred to in subsection (1) of section six; or
- (f) not being entitled thereto, either inside or outside Zimbabwe, obtains access to any record or part of a record referred to in subsection (1) of section six; or
- (g) having been allowed access to any record or part of a record in terms of section six, fails, either inside or outside Zimbabwe, to take all reasonable steps needed to ensure compliance with any term or condition fixed in terms of subsection (4) of that section by the person allowing him access; or
- (h) having been authorized in terms of section seven to disclose or obtain any information or other thing, fails, either inside or outside Zimbabwe, to take all reasonable steps needed to ensure compliance with any term or condition of such authority;

shall be guilty of an offence and liable to a fine not exceeding level ten or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[subsection as amended by section 4 of Act 22 of 2001]

- (2) In any prosecution for an offence in terms of subsection (1) it shall be a defence for the accused to show—
 - (a) where he is charged with disclosing any information, fact, matter, document, recording, record or part of a record, that he did not know and could not reasonably have known that such disclosure was prohibited;
 - (b) where he is charged with causing or permitting the disclosure of any information, fact, matter, document, recording, record or part of a record, that he took all reasonable steps to prevent such disclosure;
 - (c) where he is charged with allowing or permitting a person access to a record or part of a record, that he did not know and could not reasonably have known that the person whom he allowed or permitted access was not entitled thereto;
 - (d) where he is charged with obtaining access to any record or part of a record, that he did not know and could not reasonably have known that such access was prohibited.

9. Authority of Attorney-General for prosecutions

Where a person is brought before a magistrates court charged with—

- (a) an offence in terms of section eight; or
- (b) an attempt, conspiracy or incitement to commit an offence in terms of section eight; or
- (c) being an accessory after the fact to an offence in terms of section eight;

no further proceedings in respect thereof shall be taken against him without the authority of the Attorney-General, except such as the court may think necessary by remand to secure the due appearance of the person charged.

10. Evidence and presumptions

- (1) In any proceedings of a court or adjudicating authority, including a prosecution for an offence in terms of section eight, a document purporting to be a certificate or notice shall—
 - (a) be received by the court or adjudicating authority on its production by any person; and

- (b) be presumed, unless the contrary is proved, to have been duly made or issued by the responsible Minister who purports to have made or issued it.
- (2) In any proceedings of a court or adjudicating authority, including a prosecution for an offence in terms of section eight, a document purporting to set out the terms and conditions of any order or of any authority in terms of section seven shall, if it purports to be certified as correct by the person who issued it or by a person who has custody of the records of the proceedings concerned—
 - (a) be received by the court or adjudicating authority on its production by any person, as *prima facie* evidence that the order or authority was duly made or given; and
 - (b) be presumed, unless contrary is proved, to reflect accurately the terms and conditions of the order or authority concerned.

11. Right of audience of State employees

Notwithstanding any other law, any person in the full-time employment of the State shall have the right to appear at any time in any proceedings before any court or adjudicating authority for the purpose of producing a certificate issued in relation to those proceedings.

12. Effect of this Act on other laws

This Act shall be construed as being additional to, and not as derogating from, any other law which—

- (a) restricts the right of persons to attend the proceedings of any court or adjudicating authority; or
- (b) regulates, restricts or prohibits the publication of the proceedings of courts or adjudicating authorities or any matter relating to such proceedings; or
- (c) relates to state privilege.