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The rules of civil procedure in the Magistrates Courts of Zimbabwe: When rules of civil procedure become an enemy of justice to self-actors

By Rodgers Matsikidze[1]

Introduction

This article is largely based on my M. Phil thesis submitted in 2014 and which I intend to publish in full in the near future.[2] The findings from the empirical study show a gloomy picture on access to justice by self-actors. The statistics of self-actors failing to access justice paints a picture of the sun setting as opposed to rays of the sun rising.[3] The self-actors' journey to access justice seems long and arduous and requires many reforms in terms of the civil procedure in the Magistrate Court. A number of scholars have written extensively with regard to the possible solutions to the problem of access to justice through the courts although most of these scholars are Western and North American and they contextualize the access to justice problem within the European context.[4]

In the European and North American context the emphasis is on placing the responsibility of ensuring that everyone accesses justice on the state. These authors look at the problem of access to justice through different filters, hence their solutions are modelled by their perspectives, of which many are resource inclined.[5] A number of scholars believe that the State should provide legal aid to those who cannot afford lawyers but that is unrealistic for Zimbabwean litigants.[6] There are serious problems like lack of adequate water and food that the state needs to prioritize. In other words, the problem is not just the procedure in the courts but poverty is a huge factor, and a decisive one in self-actors accessing justice.

In my thesis it was established that access to justice is broader than the question of legal aid or legal representation.[7] Access to justice examines the issues such as the number of courts; proximity to litigants; and the substantive law, i.e. to what extent does the substantive law protect self-actors' rights.[8]

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[2] Rodgers Matsikidze, the Civil Procedure in the Magistrates Court of Zimbabwe. A denial of justice to self-actors? Unpublished M. Phil thesis, University of Zimbabwe, 2014,140.

[3] Rodgers Matsikidze supra note 2 at 140.

[4] See Lord Woolf 'Report on Civil Procedure reform in UK',1994, Also Sir Ruppert Jackson's Report on UK Civil Procedure, 2013

[5] See Chan Gary K.Y, The Right to Access to Justice, Judicial Discourse in Singapore and Malaysia, *Asian Journal of Comparative Law*, Vol 2, Issue 1, Berkeley, 2007, Singapore Management University.

[6] See Buhai Sande L, Access to Justice for Unrepresented Litigants: A comparative perspective, *Loyola of Los Angeles Law Review*, 42, 2009.

[7] See Rodgers Matsikidze, The Civil Procedure in the Magistrates Court of Zimbabwe. A denial of justice to self-actors? Op cit note 2.

Access to justice further examines the question of procedural access which is the focus of this paper where it is argued that procedural access ought not to be difficult to attain for self-actors. It demystifies the problem to a number of scholars who want to define access to justice in the context of provision of legal representation. This paper argues that it is possible to enhance access by simplifying the rules of the Magistrates Court of Zimbabwe.

The theoretical framework providing guidelines for enhancing procedural access to justice is already well established. In England, for example, a framework of eight "basic principles which should be met by a civil justice system so that it ensures access to justice" was identified by Lord Woolf in his inquiry report on 'Access to Justice in the United Kingdom'.[9] The eight basic principles are as follows:-

> "(1) It should be just in the results it delivers.
>
> (2) It should be fair and seen to be so by ensuring that litigants have an equal opportunity … regardless of their resources, to assert or defend their legal rights; providing every … litigant with an adequate opportunity to state his own case and answer his opponent's, … and treating like cases alike.
>
> (3) Procedures and costs should be proportionate to the nature of the issues involved.
>
> (4) It should deal with cases with reasonable speed.
>
> (5) It should be understandable to those who use it.
>
> (6) It should be responsive to the needs of those who use it.
>
> (7) It should provide as much certainty as the nature of particular cases allow.
>
> (8) It should be effective: adequately resourced and organised so as to give effect to … the above principles." [10]

The above principles anchor the proposed solutions to the reform of the rules of civil procedure in Zimbabwe. In my M. Phil thesis I suggest a number of approaches and solutions to the growing woes of self-actors.

The solution is home grown initiatives: contextualizing the reform agenda

There is no doubt that the initiatives to improve access to justice in Zimbabwe should be homegrown and they should be linked to the socio-economic context. In other words, they should relate to the self-actors' experiences in the Zimbabwean courts.[11] The majority of self-actors lack knowledge of substantive and procedural law[12] hence any solution should be aimed at ensuring that they fully understand the law of the day and the procedures thereof.

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[8] Goldschmidt Jona, Barry Mahomey, Harvey Solomon and Joan Green, Meeting the Challenge of Pro-se Litigation: A Report and Guidebook for Judges and Court Managers, American Judicature Surly, USA, 1998.

[9] Lord Woolf, Access to Justice, Interim Report, June 1995, and also Access to Justice, July 1996.

[10] Lord Woolf, Access to Justice Final Report, July1996.

[11] See Rodgers Matsikidze, The Civil Procedure in the Magistrates Court of Zimbabwe. A denial of justice to self-actors? op cit note 2 at p105

[12] See Rodgers Matsikidze The Civil Procedure in the Magistrates Court of Zimbabwe. A denial of justice to self-actors? op cit note 2 at,p106.

The majority of self-actors have no money to hire legal practitioners. This is mainly due to the economic meltdown in the past years that has reduced most professionals to pauper levels let alone the middle income and low level income employees. In other words, the means to hire legal practitioners are not there as available resources are put to immediate needs like shelter and food.[13] Self-actors are found not only in the rural areas but also in the urban areas.[14] Although having formal education may often assist, the problem of self-actors is not that they are uneducated but that they are not learned in legal issues.[15]

When in court, self-actors have no one to assist them on procedures that they may not understand.[16] Legal aid cannot be an immediate solution but is needed in the long term. While legal aid plays a fundamental role in enhancing justice in Western countries like USA, Canada and UK, in Zimbabwe it will hardly be a major solution and remains a limited avenue to improve access to justice. Currently in Zimbabwe a few organizations are focusing on providing legal aid and some only focus on specific areas, such as human rights.

Legal aid cannot solve the self-actors' problems due to lack of adequate funding. Moreover, legal aid would not address the problems of those litigants who, even though they have resources, choose to appear in court on their own. Legal aid does not answer the problem of the complexity of court procedures which, if addressed, may increase access to court.

Can the introduction of legal literacy for all be achieved?

In the Canadian province of Saskatchewan, a committee on civil law reform recommended a wide spectrum of educative and literacy initiatives, including tuition on the diverse ability to self-expression in a public forum, amongst unrepresented litigants.[17] This initiative may be a route to go in Zimbabwe. Zimbabwe might need to introduce law as one of the subjects at Ordinary Level and Advanced Level. The impact may not be felt immediately but, in the long run; those with a legal background may have a better understanding of the law. However, to cater for the generality of populace, community libraries may be needed to house legal literature. Road shows in rural and urban areas by the Ministry of Justice to showcase civil procedure might help to clarify some of the key procedural aspects. Although these steps would not bring direct reform to the civil procedure they would increase the legal knowledge of potential litigants. While this approach is a long term solution, it would be a move in the right direction.

Introducing audio and video manuals as instructors to self-actors in court.

In addition, video and audio media in vernacular languages on substantive and procedural law issues may be developed and sold in shops. If the expense is too big, the other route will be to avail such media for free at every court and public hall. These manual tapes could play continuously to allow litigants to listen to or watch them and they would take potential litigants through every step of procedure. However, the use of video and audio media to educate

[13] See also UNICEF ZIMBABWE REPORT, Beyond Income: Gendered Well-Being and Poverty in Zimbabwe, https://www.uncef.org accessed on 12 February 2017 and Poverty and Poverty Datum Line Analysis in Zimbabwe 2011/12, www.zimstat.co.zw

[14] See Rodgers Matsikidze, The Civil Procedure in the Magistrates Court of Zimbabwe. A denial of justice to self-actors? op cit note 2 at p89.

[15] See Rodgers Matsikidze, The Civil Procedure in the Magistrates Court of Zimbabwe. A denial of justice to self-actors? op cit note 2 at p89.

[16] See Galanter M, "Why the Haves" come out ahead: Speculation on the limits of legal challenge, *Law and Society* Vol 9, No 1,1974.

[17] See Law Society of Upper Canada Report of 2008, www.lsuc.on.ca accessed 10 April 2011.

potential litigants would only be effective if the rules of court procedure are simplified, and it also means more resources will be needed to fund this kind of a project.

Alternative dispute resolution services: is it the way to go?

There is a need to establish arbitration and conciliation centres like the current set up used in dealing with labour disputes in Zimbabwe.[18] In conciliation, there are no rules of procedure save for ground rules to govern the conduct of the parties.[19] These *fora* will help by providing a unique environment in which the self-actors can easily express themselves. The conciliators or mediators should be trained lawyers who can advise parties on the position of the law when required. Arbitration, unlike conciliation or mediation, involves a third party who produces a binding decision on all parties. The advantage of arbitration is that parties agree to their own procedure. In other words parties agree to what they understand. These initiatives can be useful but they are limited to specific types of dispute i.e. family law. In complex civil cases, they may not serve the purpose.

Representation by pro bono lawyers or trained paralegals?

There is need to extend pro bono services to civil cases as well although there could be a challenge to this approach from lawyers in commercial practice.[20] This is because of the magnitude of self-actors' cases in Zimbabwe, as it may mean that every lawyer would be handling a pro bono case each month. Morally, it means the lawyers in question would be shouldering the responsibility of the government by bearing the *in forma pauperis* (pro bono) costs.[21] This may create resentment of *in forma pauperis* cases by lawyers and naturally services of a disgruntled legal practitioner may not be the best for the client. The paralegal thrust can be useful although, in essence, use of paralegals creates problems of demarcation of representation *vis a viz* the role of a legal practitioner. More so, there are some cases where paralegals may still not adequately represent the self-actor to the same level of competence of a trained lawyer.

Use of customary fora for dispute resolution: going two steps back?

Customary *fora* may be the way to resolve the challenge of complexity of procedures faced by self-actors. There are a number of *fora* that were used to solve disputes before 1890 when Rhodesia used the Roman-Dutch legal system and imported procedure. The customary *fora* started from the level of the family head, *dare,*[22] village head to the chief/paramount chief or king. A limitation applies here due to the fact that many of the chiefs are not appointed on merit or academic achievement but in terms of inheritance laws of a particular clan. In addition there is a danger of cultural biases' due to the application of cultural practices that are gender insensitive.

[18] See Labour Act 28.01 sections 93 and 98.
[19] See Labour (Settlement of Disputes) Regulations, SI 217 of 2003
[20] Maru Vivek, Between Law and Society - Paralegals and Provision of Primary Justice Services in Sierra Leone, Open Society Justice Initiative, New York, 2006.
[21] See R Matsikidze
[22] *Dare* means family council of elders.

In addition, chiefs and headmen are concentrated in rural areas.[23] This leaves out the urban population who are affected by the general law and the major drawback of using customary *fora* is that the general law (i.e. common law and statutory law) is alien to the customary *fora*. The outcome of research shows that the majority of the cases brought to court are under the auspices of general law.

Expansion of the Zimbabwe Women Lawyers' Association (ZWLA) empowerment programme

The ZWLA empowerment model empowers women through training of women self-actors litigants to draft their court papers properly. The programme caters mainly for family law matters and focuses on women self-actors. The women come for advice and are grouped into various groups depending on the nature of their cases, i.e. like cases are grouped together. If particular groups reach a certain number, they are given a day on which they should come to see a qualified lawyer. On the day in question they will be trained on how to complete maintenance forms or draft claims. They will be taught further on filing of the papers and presentation of their cases in Court.

The current limitation is that the empowerment programme is limited to women litigants with maintenance cases and, in the area of maintenance, procedures are already simplified. Hence, the procedure in any maintenance case is standardized and parties fill in the details only. This initiative needs to be expanded to identify additional areas of civil litigation that may require forms that can be standardized: a good example would be the eviction process. Claim, or defence, forms can be designed and this can also be applied to guardianship and custody applications. The forms should then identify all possible annexures that may be required to support the claim or defence. These forms can be drafted for use up to the execution stage. As ZWLA does, at every court there will be a paralegal or a lawyer who teaches litigants with similar cases on what to do, and how to fill in the forms.

Admittedly, this initiative may not be able to cover all kinds of cases or address the self-actors' challenges in full although it may eliminate a number of procedural problems such as lack of skill in drafting a claim or a defence, or failure to use appropriate forms in terms of the Court rules.

However, an evaluation of ZWLA's empowerment model noted that, though women were taught the stages in the court procedures, they still face procedural hurdles and for that reason it is submitted that the focus should be on making the court procedures more accessible. There is potential to revolutionize the Magistrates Court through this initiative regardless of its limitations. It is more of an equivalent to the self-help scheme in America but at a reduced level. The self-actors with similar cases would come to court at specified days of the week for assistance.

Redefining the role of the magistrate

In Zimbabwe, the role of the Magistrate in a civil case is that of a referee or an umpire. Our judicial system is adversarial in nature and does not allow the Magistrate to descend into the arena. Hence the Magistrate, even if aware that there is certain evidence which the self-actor ought to furnish, will just proceed on the (inadequate) evidence without informing the self-actor

[23] Nyamusi-Musembi Celestine, The Urban poor and problems of access to Human Rights: Traditional justice institutions - can they be more effective? Institute of Development Studies, University of Sussex, September 2002.

and may dismiss the claim or defence on the grounds of inadequate evidence. However, in light of the quest for justice, there is need to give wider powers to a Magistrate to ascertain the real issues and evidence required in any matter.[24] Through court observations and in-depth interviews with some Magistrates it was clear that some cases are lost by self -actors on purely technical issues and failure to provide the evidence that is required.

Magistrates should be allowed even before trial or hearing to call parties in chambers and hear them informally. In those meetings the Magistrate should be allowed to point out the problems/deficiencies associated with the plaintiff's claim or the defendant's defence. In that respect, the case is decided on merits rather than procedural irregularity. Hence there is need to reform the role of the magistrate from being a mere referee to being a more active participant. This inquisitorial approach would help self-actors in accessing justice.

Simplification, orality and domestication of the procedure: the immediate solution to the woes of self-actors

This initiative is the most convincing and all encompassing and promoted by scholars such as Cappelletti.[25] The current civil procedure is legalistic and complicated. The procedure does not have any provisions for informality whereas simplification is cheap and can be efficiently dealt with.

The first step in simplifying the civil procedure in the Magistrates Court would be to completely overhaul the rules of the Court in terms of content and language.

The Rules should be expressed in plain English and vernacular languages. In South Africa, their constitution is in vernacular language, hence there is nothing peculiar in the use of the vernacular languages in courts. In fact, the rules of court are in the vernacular of other nationals i.e. the English. The language barrier has been the epitome of many litigants' problems. If one asks, "What is your cause of action?" in English, it may be difficult for a self-actor to appreciate but if put in a vernacular language, obviously the self-actor would comprehend the meaning. Plain English removes some legalese and Latin words, which have no necessity in the delivery of justice.

Many self-actors support the use of simplified English or local languages. In terms of content, the Rules should − at each and every stage − have simplified content and forms and this entails removal of a number of unnecessary procedures like detailed summons.

The Ministry of Justice and Legal Affairs in conjunction with the Judicial Service Commission should come up with a team of civil procedure law experts to spearhead a programme of procedural law and other reforms that can help self-actors end the woes they currently face.

The following reforms are recommended:

Creating a Clients' Services Office at each Magistrates Court

The Clients' Service Office (CSO) can be a useful tool and office to the self-actor and to the state. Instead of Magistrates being burdened with improper actions, the CSO becomes the first

[24] See Rodgers Matsikidze, The Civil Procedure in the Magistrates Court of Zimbabwe. A denial of justice to self-actors? op cit note 2 pp 152-3.

[25] Cappelletti M & Garth B, 'Access to Justice: The Worldwide Movement to Make Rights Effective, A General Report' in Access to Justice, Vol 1, A World Survey Book 1, edited by Cappelletti and Garth B, 1-124, Alphen and Rijn Sijthoff and Noordhoff, 1978.

screening port of call. This office can be manned by a paralegal, or an experienced clerk or a lawyer. The duties of the officer manning the CSO would be to cater for all self-actors who need general guidance as to what should be done; in particular, the nature of cases that can be brought in the courts. The officer can even peruse the court papers the self-actors would want to file and advise accordingly. The officer would also be the custodian of the court manual book to be created. In fact he or she would be an equivalent of a tour guide. It is also high time our courts provide for a client services department.

Developing a manual tool for self-actors

There should be a manual book for self-actors and would-be users of the civil procedure in the Magistrates Court. This manual book should be like any other practical manual and be translated in all languages. The manual book should cover the following areas: -

i. The Court itself and its officials

The manual should provide an outlines of the structure of the Court and key officers and their functions including clerk's office, interpreters, Magistrate's office, Messengers of Court's office. This will enable the self-actor to have a quick grasp of the various offices they would be dealing with on a number of aspects. The manual would be a one-stop tour guide. This manual should be available in the Clients' Services Office and should also cover the areas listed below.

ii. The jurisdiction of the court

In the manual book for self-actors there ought to be explanations with regard to the jurisdiction of the court. In particular, the meaning of jurisdiction, monetary or otherwise. The manual should give examples of cases that ought to be brought before the Magistrates Court.

iii. The drafting of pleadings/claims and defences

The manual should also have a provision for examples of common claims and how they are put across in court; and examples with regard to possible defenses that can be brought in court. There could also be cartoons to illustrate the same, in graphic terms.

iv. Summary of key procedures

The manual should encompass summaries of key procedures of stages in an action and in an application. These key steps should be explained in simple terms and their rationale explained. This would aid the self-actor to know what ought to be done in the next step of their case. This answers a finding that shows that some of the cases were abandoned by self-actors because they did not know what to do next.

v. Follow up procedures and hints

The manual should also inform the self-actors how they should follow up their cases and it should provide for the frequencies of case follow-ups. In addition, the manual should provide for hints on issues to watch out if one has commenced proceedings in the court. Hints could be on common mistakes often made by self-actors.

vi. The enforcement mechanisms

The manual should also provide information on how a victorious party can enforce a judgment, including the practical stages to be followed and samples of documents to be used. The manual should have the contact and office details of the Messenger of Court.

vii. The appeal and review procedures

The manual ought to provide details on appeal and review procedures. In particular, it should offer information on how appeals and applications for review should be done and to which court. At this juncture it would be advisable to caution the self-actors that they may require the services of legal practitioners to take their cases on appeal or review in the High Court.

Critics of the proposed manual could argue that it would give self-actors an unfair advantage over their represented counterparts who may not receive similar detailed information from their lawyers. However, lawyers (who spent four years studying those Rules) already have an upper hand; therefore the self-actors would not have any advantage over others. In fact, it would be a significant step towards creating a level playing field. Moreover, the self-actors would not be assisted to prosecute their case or draft documents specifically. They will be given general directions on what ought to be done and such assistance would definitely not be equivalent to legal representation.

In real terms it reduces the burden on the courts to deal with defective papers and the costs of running the court are naturally reduced. The costs are reduced even to the self-actors as they would be able to successfully proceed without legal representation.

Abridged and simplified version of action procedure

The simplified version of the procedure ought to have only key and basic stages such as the names of the parties, their addresses, and the claim section where the claim would be filled in, the reasons for the claim. In addition, the summons should be clear on what relief should be granted. This simplified summons is easy to complete because it only provides basic information to be filled in and it should be accompanied by explanatory notes, with examples on expected answers. This is unlike the current summons that provides for a number of things to be completed without guidance. There particulars of claim would be drafted as per the Plaintiff's understanding, as opposed to being guided. In addition, the current summons format is worded in legal language and the complex legal terminology is alien to self-users.[26]

Each and every stage of the procedure should then have those kinds of forms and simplified content. In other words, this initiative does not take away the need for Rules – which should be maintained but subject to the above modifications. Such a reform will not be expensive but may take some time to be fully implemented. In addition, at the courts, the clerk's office should be manned by a lawyer whose role is to vet the completed summons and offer advice strictly on problematic procedural aspects. The procedural stages in the Magistrates court should be trimmed to only the following:-

a) General issues stage

b) Summons stage

c) Defence or acceptance of claim stage;

d) Elaboration of claims and defence stage;

e) Narrowing of issues stage before a Magistrate stage;

f) Trial or hearing stage;

[26] See Order 8 of the Magistrates Court (Civil) Rules,1980

g) Enforcement of judgment stage;

These procedures can be enshrined in only seven main rules of the court.

The Appearance to Defend

I believe the current title for this stage, 'Notice of Appearance to Defend' is rather misleading. It should simply be termed '*Notice of Intention to Defend*'.

This simplified version is quite clear and should be sold in stationers or shops or at Clients' Services Office at cost recovery price. The self-actor who is a defendant would only be required to enter few details on dotted lines. This would be unlike the current Notice of Appearance to Defend which contains legalese and sometimes is assumed to an end in itself by some self-actors.[27]

Introduction of stage called Plaintiff's request for defence

After the appearance to defend there should be a stage called *Plaintiff's request for Defence*. This would be different from the current stage were after an appearance to defend, a request for further particulars may be made or for default judgment.[28]. Again the new version would remove the overloaded legalese.

This kind of a reply is straight forward and helps to remove the discovery stage[29]. If the defendant wishes to further request for facts and documents, he should then request for such under a simpler document titled *Request for supporting documents and facts.* This stage removes a number of complicated stages like request for further particulars and motion to strike out.[30]Once this has been done, the plaintiff is obliged to furnish all documents and other exhibits to be relied upon to the defendant. All essential facts should be furnished as well. Hence, no need for the discovery stage. The summons should have all documents sought to be relied upon attached to it.[31] After this has been done the parties should be given ten days to file any additional documents of facts they think are essential to their case as *Additional Essential***.**

After this stage, the Clerk then informs the parties to attend the Pre-Trial Meeting with the Magistrate. It should be the responsibility of the Clerk of Court to call parties for pre-trial meetings. Once they are called, the parties should appear before the Magistrate for the pre-trial meeting. This removes the obligation of the parties to apply for a pre-trial conference and serve time and costs of the proceedings − unlike in the current form where there are many stages in the civil procedure rules.[32]

Pre-Trial Meeting

The pre-trial meeting should allow the Magistrate to conciliate or arbitrate where possible and advise the parties of possible solutions. The Magistrate should be allowed to record a settlement, in the event of agreement, that is binding on all parties and capable of enforcement. In the event that parties do not settle, the presiding Magistrate should − in consultation with parties − draft a document called *Trial Summary*.

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[27] Order 10 of the Magistrates Court (Civil) Rules,1980
[28] Order 11 and 12 of the Magistrates Court (Civil) Rules,1980
[29] See Order 18 of the Magistrates Court (Civil) Rules,1980
[30] See Order 12, 14, and 16 of the Magistrates Court (Civil) Rules,1980
[31] See Order 18 of the Magistrates Court (Civil) Rules,1980
[32] See Order 19 of the Magistrates Court (Civil) Rules,1980

Trial Stage

During the trial stage, the procedures should also be simplified. Parties should be allowed to ask questions in vernacular and the Magistrate's role should not be limited to umpire-ship but the magistrate should have an active role of trying to ascertain the truth. Indulgencies, postponements and introduction of new evidence and material should be allowable if there is a genuine reason. At the trial the Magistrate should first explain to the parties what they are expected to do and the burden of proof on issues, and constantly guide them during trial.

Enforcement stage

The enforcement stage should be made easier. The Messenger of Court should be allowed to interview successful parties and inform them of the forms to be completed. Furthermore, the fees for enforcement should be reasonable or self-actors should be allowed to pay in installments for their judgments to be enforced.

The simple procedure suggested above would help greatly in making the system cheaper and friendly to self-actors. Even for lawyers, life would be easier as they would use the same procedures that are simplified. Other ancillary issues like default judgment, consent to judgment, and summary judgment can be addressed similarly.

Application Procedure

The application procedure should be simplified. There should be prescribed forms and affidavits as in the maintenance court. The forms should be capable of being used by lay-people.

A simpler version of a court application should be as in Appendix 11 and 11(b) as supporting affidavit. The current court application requires to be accompanied by an affidavit that sets out the cause of action, parties' particulars and also the relief they seek. There is no form of what the affidavit entails.[33] The court should then have discretion after filing of the opposition to the application by the respondent to refer the matter to trial or decide it on the papers filed.

These forms should be in prescribed form and if litigants wish to write more than one affidavit they may retype the documents to create more space or add more affidavits or special blank affidavits. The notice of opposition should be more simplified than the one in the Rules and should provide for guidance on the key issues to be included in the defence through opposition.[34]

Conclusion

It is my view that there is need to start reform in this area immediately. All key stakeholders should be involved. The Ministry of Justice and Legal Affairs may do consultative meetings with self-actors to validate the findings of this research and then proceed to engage a team of lawyers with interest and expertise in access to justice to start redrafting simplified rules with all key sets of forms. This initiative will not require great resources.

The resources needed would be to cover the consultative meetings, funding for the experts, drafting meetings, printing of copies of the Rules and the manual book. Once the first draft is finalized, it would be prudent to start a pilot project with one or two courts and work with the new

[33] Order 22 of the Magistrates Court (Civil) Rules,1980
[34] Order 22 Rule2 Magistrates Court (Civil) Rules,1980

court procedures for a year. If the results are acceptable then the new civil court procedure would be rolled out to all courts.

It has been argued that there is need for reform as proposed in this study if justice is to be a reality for those who cannot afford lawyers. In addition, it should be realized that the civil procedure in our courts should not be an end itself but an avenue to enhance justice. It should not make justice costly and inaccessible but should balance its role to maintain orderliness and at the same time avail access to self-actors. The right of access to court is a right that unlocks other rights and should be enhanced forthwith.

Bibliography

Articles and books

Rodgers Matsikidze, The Civil Procedure in the Magistrates Court of Zimbabwe. A denial of justice to self-actors? Unpublished M. Phil thesis, University of Zimbabwe, 2014

Lord Woolf, 'Report on Civil Procedure reform in UK', 1995

Lord Woolf, 'Access to Justice Final Report', July, 1996.

Sir Ruppert Jackson's Report on UK Civil Procedure, 2013

Chan Gary K.Y, 'The Right to Access to Justice, Judicial Discourse in Singapore and Malaysia' (2007) Vol 2, Issue 1 *Asian Journal of Comparative Law*, Berkeley, Singapore Management University.

Buhai Sande L, 'Access to Justice for Unrepresented Litigants: A comparative perspective' (2009) *Loyola of Los Angeles Law Review*, 42.

Goldschmidt Jona, Barry Mahomey, Harvey Solomon and Joan Green, *Meeting the Challenge of Pro-se Litigation: A Report and Guidebook for Judges and Court Managers*, (1998) American Judicature Surly, USA.

UNICEF ZIMBABWE REPORT, Beyond Income: Gendered Well-Being and Poverty in Zimbabwe, https://www.uncef.org accessed on 12 February 2017 and Poverty and Poverty Datum Line Analysis in Zimbabwe 2011/12, www.zimstat.co.zw

Galanter M, '"Why the Haves" come out ahead: Speculation on the limits of legal challenge' (1974) Vol 9, No 1, *Law and Society*

Law Society of Upper Canada report of 2008, www.lsuc.on.ca accessed 10 April 2011.

Maru Vivek, *Between Law and Society − Paralegals and Provision of Primary Justice Services in Sierra Leone*, Open Society Justice Initiative, New York, 2006.

Nyamusi-Musembi Celestine, *The Urban Poor, Problems of Access to Human Rights: Traditional justice institutions-Can they be more effective*? Institute of Development Studies, University of Sussex, September 2002.

Cappelletti M & Garth B, 'Access to Justice: The Worldwide Movement to Make Rights Effective, A General Report' in *Access to Justice, Vol 1, A World Survey Book 1*, edited by Cappelletti and Garth B, 1-124, Alphen and Rijn Sijthoff and Noordhoff,1978.

Statutes

Constitution of Zimbabwe, 2013

Magistrates Court (Civil) Rules, 1980

Labour Act [*28.01*]

Labour (Settlements of Disputes) Regulations, SI 217 of 2003