

KANTOR & IMMERMANN

The Obiter Dicta

NEWSLETTER

Volume 4 | Issue 9

www.kantorimmerman.co.zw

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“We welcome your feedback and comments”

Electronic Court proceedings a welcome development

On 23 June 2017, the Judicial Laws Amendment (Ease of Settling Commercial and Other Disputes) Act 2017 (The Act) was enacted. The Act introduces electronic court processes to the High Court and the Magistrates Court.

The enactment is a welcome development as the Act takes cognizance of the world as a global village where the global citizen may not be able to avail himself at court because of geography and economic circumstances but that should not stop or delay the administration of justice.

Section 3 of the Act, makes provision for the High Court Rules to provide for virtual sittings of both the open court and chamber hearings. An audible electronic device can be utilized in such manner. Such a device should allow all parties at the sitting to actively participate in the proceedings in real time. For a virtual hearing to be conducted, all the parties concerned must consent to the proceedings being conducted by way of virtual sitting. Once the appropriate rules are enacted, parties to civil proceedings who so consent can attend a court sitting by way of a messenger, facetime, skype / WhatsApp (the possibilities are endless) or even a regular telephone call (as the amendment makes specific reference to a "communication by which all the parties to the proceedings at the sitting can hear and be heard at the same time without being physically present together." This will make it easier for litigants who are based outside Zimbabwe to actively participate in proceedings without forking out huge sums of money for travelling expenses.

With litigants being based in different jurisdictions, section 4 goes further to state that the Rules of the High Court may be amended to provide for service of court process such as Summons, Court Applications and/or various pleadings by electronic means. This section takes into account several pronouncement by the Court allowing for service of process via electronic means.

The Magistrates Court is also moving to become a digital court, as section 8 of the Act makes provision for rules of the Magistrates Court to provide for virtual sittings, whilst section 9 makes provision for electronic service of process, authentication of documents by electronic means and digitisation of records lodged with the clerk of court.

While the Act and the concept of electronic justice is a pleasant development in our justice delivery system we still await the Rules of the Court to be amended to provide for this innovation. Once the rules are amended the whole concept of e-justice can be fully tested. Though the enactment is more than welcome in Zimbabwe, its enforcement in the current economic

environment is but just a mirage.

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The need to regulate assisted reproductive Health technologies

One of the often overlooked areas of law is reproductive health. The Zimbabwean society has adopted assisted reproductive technologies such as in vitro-fertilisation (IVF) and artificial insemination. IVF involves the extraction of male and female gametes, manually combining them in a laboratory dish and then transferring the fertilised gametes into the womb of the female so as to develop into a fetus. This method is mainly used where the woman's womb is capable of carrying a pregnancy to full-term. However, where the woman's womb is incapable of carrying a full-term pregnancy, other couples may consider commissioning a third party (a surrogate) to carry and deliver the pregnancy on their behalf. This is normally referred to as gestational surrogacy in which the surrogate is not biologically linked to the child to be born. Her role would be to carry the gametes fertilised through IVF in her womb through the process of artificial insemination. On the other hand, a couple might consider traditional surrogacy in which a surrogate might be inseminated with the male gamete, carry the pregnancy to term, give birth and surrender her parental rights. This method is akin to the common Zimbabwean cultural practice wherein a couple with conception problems might be assisted by a close relative to bear children on their behalf. Though surrogacy is not common in the Zimbabwean society, it would be necessary to consider its legal implications as an assisted reproductive health technology since IVF is already being used to assist childless couples.

Most of the legal issues that arise in surrogacy agreements are with regard to parental rights. In some cases a surrogate will not want to give up a child after its birth especially where she is a traditional surrogate. A good example is the American case of baby M in which a woman who had undergone traditional surrogacy refused to give up her parental rights after the birth of the child on the basis that she was its biological mother. After considering what was in the best interests of the child, the court awarded custody to the father of the child and visitation rights to the surrogate.

In countries such as South Africa where surrogacy agreements are legally recognised, the requirements are clearly set out in its legislation, particularly the Children's Act. On the contrary, Zimbabwe currently does not have specific legal framework for surrogacy agreements. The Children's Act [Chapter 5:06] makes no provision for surrogacy agreements. However, the Constitution of Zimbabwe Amendment (No.20), 2013 provides in

section 81 (3) that a child's best interests are paramount in every matter concerning the child. Based on that constitutional provision it may be said that any surrogacy agreements must be entered into with the child's best interests in mind.

Should there be any amendments or any enactments for the purposes of regulating surrogacy agreements, the law should require that the spouse or the partner of the surrogate to consent to the surrogacy agreement. All the parties should agree on who it is that the child will be biologically related to and how the parental rights will be exercised. Also the surrogate should undertake not to undergo medical procedures without informing the commissioning parents. Furthermore, the commissioning parents should undertake to take full responsibility of the child's welfare once it is born, as well as the compensation to be given to the surrogate. The law should also be flexible enough to allow the parties to incorporate any other clauses which they may consider necessary to their surrogacy agreement.

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JOKE OF THE MONTH

The defendant stood up in the dock and said to the judge, "I don't recognize this court!"
"Why?" asked the Judge.
"Because you've had it decorated since the last time I was here."

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