

**CHAPTER 9**

**THE APPELLATE JURISDICTION ACT**

SUBSIDIARY LEGISLATION

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*List of Subsidiary Legislation*

	<i>Page</i>
1. The Court of Appeal for East Africa Rules, 1972.....	3
2. The Court of Appeal Rules, 2010 ( <b>Revoked</b> ).....	5
3. The Court of Appeal (Election Petition) Rules.....	7
4. The Court of Appeal Rules.....	19

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**THE COURT OF APPEAL FOR EAST AFRICA RULES, 1972**

[Legal Notice 199 of 1972]

**[Revoked by L.N. 152/2010, r. 116.]**

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**THE COURT OF APPEAL RULES, 2010**

[Legal Notice 152 of 2010]

***Revoked by Legal Notice 40 of 2022 on 8th July, 2022***



**THE COURT OF APPEAL (ELECTION PETITION) RULES**

ARRANGEMENT OF RULES

PART I – PRELIMINARY

*Rule*

- 1. Citation
- 2. Interpretation
- 3. Object
- 4. Application
- 5. Non-compliance with Rules

PART II – INITIATION, FILING AND SERVICE OF APPEALS

- 6. Filing of notice of appeal
- 7. Service of notice of appeal
- 8. Contents of record of appeal
- 9. Filing and service of record of appeal
- 10. Notice of cross-appeal or notice of grounds for affirming decision
- 11. Service of notice of cross-appeal or notice of grounds for affirming decision
- 12. Style of cause in appeal

PART III – ADMINISTRATION

- 13. Sittings of the Court
- 14. Hours of lodging documents
- 15. Acceptance of documents lodged out of time
- 16. Maintenance of election appeals register
- 17. Extension or reduction of time
- 18. Stay of execution

PART IV – HEARING OF APPEALS

- 19. Application to strike out notice of appeal or appeal
- 20. Pre-hearing conference
- 21. Entering an appeal for hearing
- 22. Hearing to be on day-to-day basis
- 23. Duration for hearing and determination of election petition appeals
- 24. Recess and leave
- 25. Prohibition of delayed interlocutory applications

PART V – GENERAL PROVISIONS

- 26. Orders of the Court
- 27. Security for costs
- 28. Review of Rules

SCHEDULES

SCHEDULE —

FORMS





**THE COURT OF APPEAL (ELECTION PETITION) RULES**

[Legal Notice 114 of 2017]

**PART I – PRELIMINARY**

**1. Citation**

These Rules may be cited as the Court of Appeal (Election Petition) Rules.

**2. Interpretation**

In these Rules, unless the context otherwise requires—

"advocate" means a person who has the right of audience before the Court under rule 25 of the Court of Appeal Rules (sub. leg);

"appeal" means an appeal from the decision of the High Court;

"Commission" means the Independent Electoral and Boundaries Commission established under Article 88 of the Constitution;

"Court" means the Court of Appeal;

"judge" means a judge of the Court;

"notice of appeal" means notice lodged in accordance with rule 6;

"notice of cross-appeal" means a notice lodged in accordance with rule 10 (4);

"Registrar" means the Registrar of the Court and includes a deputy registrar;

"registry" means the registry of the Court and includes a sub-registry; and

"respondent" includes any person on whom a notice of appeal has been served and any person other than the appellant on whom a notice of cross-appeal has been served.

**3. Object**

The object of these Rules is to facilitate the just, expeditious and impartial determination of election petition appeals in exercise of the Court's appellate jurisdiction under Article 164 (3) of the Constitution.

**4. Application**

(1) These Rules apply to the conduct of appeals from decisions of the High Court in election petitions and matters relating thereto.

(2) Where there is no applicable provision in these Rules, the provisions of the Court of Appeal Rules (sub. leg) relating to civil appeals shall apply to an election petition appeal in so far as they are not inconsistent with these Rules.

(3) Where there is a conflict between these Rules and the Court of Appeal Rules (sub. leg) on matters relating to election petition appeals, the provisions of these Rules shall prevail.

(4) A decision of the Court that a provision of one set of Rules prevails over another provision does not invalidate the latter provision, but the latter provision shall be inoperative to the extent of the inconsistency.

**5. Non-compliance with Rules**

The effect of any failure to comply with these Rules shall be a matter for determination at the Court's discretion subject to the provisions of Article 159 (2)(d) of the Constitution and the need to observe the timelines set by the Constitution or any other electoral law.

[Subsidiary]

## PART II – INITIATION, FILING AND SERVICE OF APPEALS

**6. Filing of notice of appeal**

(1) A person who desires to appeal to the Court shall file a notice of appeal, which shall be lodged in quadruplicate in the registry.

(2) A notice of appeal shall be filed within seven days of the date of the decision appealed against.

(3) A notice of appeal shall be in separate numbered paragraphs and shall—

- (a) specify whether all or part of the judgment is being appealed and, if part, which part;
- (b) provide the address for service of the appellant and state the names and addresses of all persons intended to be served with copies of the notice; and
- (c) contain a request that the appeal be set down for hearing in the appropriate registry.

(4) It shall not be necessary that the decree or order be extracted before lodging a notice of appeal.

(5) A notice of appeal shall be substantially in the Form EPA 1 set out in the Schedule and shall be signed by or on behalf of the appellant.

**7. Service of notice of appeal**

(1) The appellant shall serve the notice of appeal upon all affected parties within five days from the date of filing the notice.

(2) A person served with a notice of appeal shall file and serve upon all the other parties a notice of address for service within five days from the date of service of the notice of appeal.

(3) A notice of appeal shall be served by the appellant on the respondent by—

- (a) direct service; or
- (b) publication in a newspaper of national circulation.

(4) Service on the Commission shall be by—

- (a) delivery at the constituency, county or head office of the Commission;
- (b) delivery at such other office as the Commission may notify; or
- (c) publication in a newspaper of national circulation.

(5) Where a notice of appeal is served by publication in a newspaper as provided under sub-rules (3) (b) and (4) (c), the advertisement shall be sufficient if it is—

- (a) in Form EPA 3 set out in the Schedule;
- (b) of at least font size twelve; and
- (c) captured in dimensions of not less than ten by ten centimetres.

(6) The Court may direct that the notice of appeal be served on any person who is not a party and may make such interim orders as the Court considers just.

**8. Contents of record of appeal**

(1) The record of appeal shall contain copies of the following documents—

- (a) an index of all the documents in the record with the numbers of the pages at which they appear;
- (b) a statement showing the address for service of the appellant and the address for service of the respondent being his last known address and proof of service on the respondent of the notice of appeal;
- (c) the pleadings;
- (d) the trial judge's notes of the hearing;
- (e) the transcript of any shorthand notes taken at the trial;

- (f) the affidavits read and all documents put in evidence at the hearing, or, if such documents are not in the English language, certified translations thereof;
- (g) the judgment;
- (h) certified copy of the decree or order;
- (i) the notice of appeal; and
- (j) such other documents, if any, as may be necessary for the proper determination of the appeal, including any interlocutory proceedings which may be directly relevant:

Provided that the copies referred to in paragraphs (d), (e) and (f) shall exclude copies of any documents or any parts thereof that are not relevant to the matters in controversy on the appeal.

(2) A judge or Registrar may, on the application of any party, direct which documents or parts of documents should be excluded from the record and an application for such direction may be made informally.

(3) The documents mentioned in sub-rule (1) shall be bound in the order in which they are set out in that sub-rule and documents produced in evidence shall be put in order of the dates they bear or, where they are undated, the dates when they are believed to have been made, without regard to the order in which they were produced in evidence:

Provided that an affidavit filed in support of an application shall be bound immediately following the application.

(4) Each copy of the record of appeal shall be certified to be correct by the appellant or by any person entitled to appear on his behalf.

(5) Where the High Court does not avail any of the documents required under sub rule (1), the appellant may proceed to file the record of appeal and a supplementary record of appeal within seven days thereafter.

#### **9. Filing and service of record of appeal**

(1) The record of appeal shall be filed within thirty days from the date of the judgment of the High Court.

(2) The appellant shall serve a copy of the record of appeal on all the parties named in the notice of appeal within five days of filing of the record of appeal.

#### **10. Notice of cross-appeal or notice of grounds for affirming decision**

(1) A respondent who desires to contend at the hearing of an appeal that the decision of the High Court or any part thereof should be varied or reversed, either in any event or in the event of the appeal being allowed in whole or in part, shall give notice to that effect, specifying the grounds of his contention and the nature of the order which he proposes to ask the Court to make, as the case may be.

(2) A respondent who desires to contend on an appeal that the decision of the High Court should be affirmed on grounds other than or additional to those relied upon by that court shall give notice to that effect, specifying the grounds of his contention.

(3) A notice given by a respondent under this rule shall state the names and addresses of any persons intended to be served with copies of the notice and shall be lodged in quadruplicate with the Registrar within seven days after service on the respondent of the record of appeal.

(4) A notice of cross-appeal shall be substantially in the Form EPA 2 set out in the Schedule and shall—

- (a) be signed by or on behalf of the respondent;
- (b) identify the part of the judgment sought to be varied;
- (c) specify the grounds for variation; and
- (d) state precisely the relief sought.

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[Subsidiary]

(5) A notice of grounds for affirming a decision shall be substantially in the Form EPA 2A in the Schedule and shall be signed by or on behalf of the respondent.

### **11. Service of notice of cross-appeal or notice of grounds for affirming decision**

A notice of cross-appeal or notice of grounds for affirming a decision on grounds other than those relied on by the High Court shall be served within five days after being lodged in the registry.

### **12. Style of cause in appeal**

The style of the cause in an appeal shall set out without abbreviation—

- (a) the name of the appellant together with the designation "Appellant"; and
- (b) the name of each party against whose interest the appeal is taken, together with the designation "Respondent".

## PART III – ADMINISTRATION

### **13. Sittings of the Court**

The sittings of the Court and the matters to be disposed of at such sittings shall be determined by the President of the Court in consultation with the Chief Justice and shall be notified to the public in such manner as the Chief Justice may direct but nothing in this Rule shall preclude the Court from disposing of any business that has not been so notified.

### **14. Hours of lodging documents**

The President of the Court may adjust and direct the hours during which the registry shall be open for the receipt of documents concerning election appeals to cater for increased or anticipated increase in the number of cases.

### **15. Acceptance of documents lodged out of time**

The Registrar shall not refuse to accept any document on the ground that it is lodged out of time but shall stamp on the document, the date on which it is presented, mark on it "LODGED OUT OF TIME" and inform the person lodging it.

### **16. Maintenance of election appeals register**

(1) The Registrar shall maintain an Election Appeals Register, in which shall be entered particulars of every election petition appeal to the Court.

(2) The register under sub rule (1) shall show the number of the election petition appeal, the number of the petition in the High Court, the names of the parties and the dates when the essential steps in the proceedings were taken.

(3) The register shall also contain, against the entry relating to each appeal, a reference to every application made in relation to that appeal, whether made before or after the institution of the appeal.

### **17. Extension or reduction of time**

(1) The Court may, for sufficient reason, extend or reduce the timelines prescribed by these Rules upon such terms and conditions it may deem just and expedient, and a reference in these Rules to any time shall be construed as a reference to that time as extended or reduced.

(2) Sub-rule (1) does not apply to timelines set by the Constitution and the Elections Act (Cap. 7).

### **18. Stay of execution**

(1) The filing and service of a notice of appeal stays the execution of any judgment, decree, order or direction from the High Court pending the determination of the appeal.

(2) Sub-rule (1) shall cease to apply if no record of appeal is filed within thirty days from the date of the judgment of the High Court.

#### PART IV – HEARING OF APPEALS

### **19. Application to strike out notice of appeal or appeal**

(1) A person affected by an election petition appeal may, within seven days from the date of service of the notice of appeal or record of appeal, as the case may be, apply to the Court to strike out the notice or the record of appeal on the ground that no appeal lies or that some essential step in the proceedings has not been taken within the time prescribed by these Rules.

(2) Where no application is filed within the period stipulated under sub-rule (1), a person may not raise the issue later.

### **20. Pre-hearing conference**

(1) Within twenty-one days of the filing of the record of appeal, the Court shall schedule a pre-hearing conference.

(2) The purpose of the pre-hearing conference is to give directions to ensure that appeals are heard and determined without undue delay including—

- (a) framing contested and uncontested issues in the appeal;
- (b) considering consolidation of appeals in cases where more than one appeal is filed;
- (c) giving directions specifying the place and time of the hearing of the appeal;
- (d) giving directions on the hearing and determination of interlocutory applications, if any;
- (e) directing the Commission on the handling of all relevant election materials and documents relating to the appeal before commencement of the hearing;
- (f) giving directions on whether the appeal shall be heard by oral or written submissions;
- (g) determining the form and period within which written submissions are to be filed and exchanged;
- (h) determining whether or not the written submissions shall be highlighted orally; and
- (i) making such other orders as may be necessary to ensure a fair determination of the appeal.

### **21. Entering an appeal for hearing**

After the conclusion of the pre-hearing conference and any other preliminary matters, including disposing of interlocutory applications, the Court shall commence the hearing of the appeal.

### **22. Hearing to be on day-to-day basis**

(1) Save in exceptional circumstances as may be determined by the Court, the hearing of a petition once commenced shall proceed uninterrupted on a day-to-day basis until its conclusion

(2) Despite sub-rule (1), the Court may, where circumstances demand, adjourn for not more than five consecutive days.

### **23. Duration for hearing and determination of election petition appeals**

An appeal filed under these Rules shall be heard and determined within six months of the date of judgment of the High Court.

[Subsidiary]

**24. Recess and leave**

The President of the Court shall, in consultation with the Chief Justice, schedule the recess and terms of leave for the judges of the Court in a manner that ensures that no Court recess or leave coincides with the period within which appeals from petitions relating to a general election are expected to be filed.

**25. Prohibition of delayed interlocutory applications**

The Court shall not allow any interlocutory application made after the hearing of the appeal has commenced if the interlocutory application could have, by its nature, been brought before the commencement of the hearing.

PART V – GENERAL PROVISIONS

**26. Orders of the Court**

After the hearing of an election appeal, the Court may make an order—

- (a) dismissing the appeal;
- (b) affirming the decision of the High Court; or
- (c) granting any other appropriate relief as contemplated under section 75(3) of the Elections Act (Cap. 7).

**27. Security for costs**

(1) The appellant shall, upon filing an appeal, deposit a sum of five hundred thousand shillings as security for costs of the appeal.

(2) If no security is given, the Court may, on its own motion or on an application by the respondent, issue an order directing the dismissal of the appeal and for payment of the respondent's costs.

(3) The Court may, at any time if it thinks fit, direct that security be given for the payment of past costs relating to the matters in question in the appeal.

(4) The Registrar may pay costs from the sum deposited as security for costs either by consent of the parties or in conformity with the decision of the Court and having regard to the rights of the parties thereunder.

**28. Review of Rules**

The Rules Committee may review these Rules from time to time.

SCHEDULE

FORMS

(r. 6(5))

**FORM EPA 1**

IN THE COURT OF APPEAL AT .....

ELECTION PETITION APPEAL NO ..... OF

20 .....

IN THE MATTER OF .....

IN THE MATTER OF .....ELECTION PETITION NO ..... OF

20 .....

BETWEEN

.....APPLICANT

AND

.....RESPONDENT

Appellate Jurisdiction

[Subsidiary]

(APPEAL FROM THE .....OF THE HIGH COURT OF .....
AT .....(HON. JUSTICE) .....DATED ....., 20 .....,
IN .....ELECTION PETITION NO ..... OF 20 .....)

NOTICE OF APPEAL

TAKE NOTICE that .....being dissatisfied with the decision of the Honourable
Justice ..... given at ..... on the ..... day of ..... 20 .....
intends to appeal to the Court of Appeal against the whole of the said decision/such part
of the said decision as decides that

.....
.....
.....
.....

The address for service of the appellant is .....

It is intended to serve copies of this notice on .....

The applicant requests that the appeal be set down for hearing in the appropriate registry.

Dated this ..... day of ..... 20 .....

Respondent ..... Signed ..... Advocate for the
respondent

FORM EPA 2 (r. 10(4))

IN THE COURT OF APPEAL AT .....

ELECTION PETITION APPEAL NO ..... OF
20 .....

IN THE MATTER OF .....

IN THE MATTER OF .....ELECTION PETITION NO ..... OF
20 .....

BETWEEN

.....APPLICANT

AND

.....RESPONDENT

(APPEAL FROM THE .....OF THE HIGH COURT OF ..... AT .....
(HON. JUSTICE) .....DATED ....., 20 ....., IN .....ELECTION
PETITION NO ..... OF 20 .....)

NOTICE OF CROSS-APPEAL

TAKE NOTICE that on the hearing of this appeal the above-named respondent will
contend that the, above-mentioned decision ought to be varied or reversed to the extent and
in the manner and on the grounds hereinafter set out, namely-

- 1. ....
2. ....

It is proposed to ask the Court for an order that.....

It is intended to serve copies of this notice on .....

Dated this ..... day of ..... 20 .....

Respondent ..... Signed ..... Advocate for the
respondent

FORM EPA 2A (r. 10(5))

Appellate Jurisdiction

[Subsidiary]

IN THE COURT OF APPEAL AT .....  
 ELECTION PETITION APPEAL NO ..... OF 20 .....  
 IN THE MATTER OF .....  
 IN THE MATTER OF ..... ELECTION PETITION NO ..... OF  
 20 .....  
 BETWEEN  
 .....APPLICANT  
 AND  
 .....RESPONDENT  
 (APPEAL FROM THE .....OF THE HIGH COURT OF .....  
 AT .....(HON. JUSTICE) .....DATED ....., 20 .....,  
 IN .....ELECTION PETITION NO ..... OF 20 .....)

**NOTICE OF GROUNDS FOR AFFIRMING THE DECISION**

TAKE NOTICE that on the hearing of this appeal ..... the above-named respondent will contend that the above-mentioned decision ought to be affirmed upon grounds other than those relied upon by the High Court, namely–

- 1. ....
- 2. ....

It is intended to serve copies of this notice on .....

Dated this ..... day of ..... 20 .....

Respondent ..... Signed ..... Advocate for the respondent

To:

The Honorable judges of the Court of Appeal Lodged in the Registry/sub registry at ..... on the ..... day of ..... 20 .....

.....

Registrar

**FORM EPA 3 (r. 7(5)(a))**

IN THE COURT OF APPEAL AT .....  
 ELECTION PETITION APPEAL NO ..... OF 20 .....  
 IN THE MATTER OF .....  
 IN THE MATTER OF .....ELECTION PETITION NO ..... OF  
 20 .....  
 BETWEEN  
 .....APPLICANT  
 AND  
 .....RESPONDENT  
 (APPEAL FROM THE .....OF THE HIGH COURT OF .....  
 AT .....(HON. JUSTICE) .....DATED ....., 20 .....,  
 IN .....ELECTION PETITION NO ..... OF 20 .....)

**SERVICE OF NOTICE OF APPEAL BY ADVERTISEMENT**

To: .....of .....



*Appellate Jurisdiction*

[Subsidiary]

TAKE NOTICE that an appeal in regard to ..... the decision of the Honourable Justice ..... in the High Court of ..... has been filed in the ..... Court of Appeal at ..... in EPA No. .... of 20....., in which you are named as Respondent/s.

Service of the summons on you will be by means of this advertisement.

A copy of the summons and the petition may be obtained from the court at .....  
*(insert postal address of registry)*

And further take notice that, unless you enter an appearance within ..... days, the petition will be heard in your absence.

Dated this ..... day of ..... 20 .....

Respondent ..... Signed ..... Advocate for the respondent

\_\_\_\_\_



**THE COURT OF APPEAL RULES**

ARRANGEMENT OF RULES

PART I – PRELIMINARY

*Rule*

1. Citation and coming into operation of the Rules
2. Interpretation
3. Computation of time
4. Extension of time
5. Suspension of sentence, injunction, stay of execution and stay of proceedings
6. Registry and sub-registries
7. Hours for lodging documents
8. Maintenance of registers
9. Numbering of applications and appeals
10. Endorsement of documents
11. Registrar's discretion to allow documents to be lodged otherwise than at appointed place
12. Acceptance of documents lodged out of time
13. Requirements as to size and production of documents, binding of records and numbering of pages and lines
14. Power of Registrar and registrars of superior courts to reject documents
15. Signature of documents
16. Form of amendments
17. Service and transmission of documents
18. Change of address for service
19. Sittings of the Court
20. Court recess
21. Places where appeals are to be heard
22. Appearances
23. Change of advocates
24. Assignment of advocates
25. Case management and pre-trial conference
26. Right of audience
27. List of authorities and copies of judgments to be referred to
28. Order of addresses
29. Expanded Bench
30. Hearing of appeals
31. Power to re- appraise evidence and to take additional evidence
32. Power to call for report
33. General powers of the Court
34. Rulings and judgments
35. Decisions to be embodied in orders
36. Preparation of orders
37. Correction of orders
38. Notification of decisions
39. Signature and sealing of documents

PART II – APPLICATIONS

*Appellate Jurisdiction*

[Subsidiary]

40. Application for certificate of fitness or leave to appeal in criminal matters
41. Application for leave to appeal in civil matters
42. Application for certificate that point of law of general public importance involved
43. Application to superior court
44. Form of applications to Court
45. Supporting documents
46. Applications for leave to amend
47. Applications to be lodged in appropriate registry
48. Procedure regarding applications lodged in sub-registries
49. Urgent applications
50. Number of copies of applications required
51. Service of notice of motion
52. Affidavits in reply
53. Abatement of applications
54. Application for leave to withdraw
55. Hearing of applications
56. Hearing of applications
57. Reference from decision of a single judge
58. Procedure on non- appearance
59. Rescinding of orders

## PART III – CRIMINAL APPEALS AND REVIEW

60. Application of Part III
61. Notice of appeal
62. Consolidation of appeals
63. Transmission of notices of appeal
64. Preparation of record of appeal
65. Service and transmission of record of appeal and exhibits
66. Memorandum of appeal
67. Supplementary memorandum
68. Presentation of written submissions
69. Procedure where appellant is in prison
70. Withdrawal of appeals
71. Abatement of appeals
72. Notice of hearing
73. Appearance at hearing and dismissal for non-appearance
74. Arguments at hearing
75. Review

## PART IV – CIVIL APPEALS

76. Application of Part
77. Notice of appeal
78. Transmission of notice of appeal
79. Service of notice of appeal on persons affected
80. Death of respondent before service of notice
81. Respondent to give address for service
82. Separate notices of appeal from same decision
83. Withdrawal of appeal and notice of cross-appeal
84. Institution of appeals
85. Effect of default in instituting appeal

- 86. Application to strike out notice of appeal or appeal
- 87. Death of party to intended appeal
- 88. Contents of memorandum of appeal
- 89. Contents of record of appeal
- 90. Where documents are omitted from the record of appeal
- 91. Contents of decrees and orders for purposes of appeal
- 92. Service of memorandum and record of appeal
- 93. Notification and transmission of appeals to Registrar
- 94. Preparation and service of supplementary record
- 95. Notice of cross- appeal
- 96. Notice of grounds for affirming, varying or reversing decision
- 97. Service of notice of cross-appeal or notice of grounds for affirming decision
- 98. Withdrawal of appeal
- 99. Settlement of appeals
- 100. Rights of respondent when appeal withdrawn
- 101. Withdrawal of notice of cross appeal or notice of grounds for affirming decision
- 102. Death of party to appeal
- 103. Written submissions
- 104. Notice of hearing
- 105. Appearances at hearing and procedure on non-appearance
- 106. Consolidation of appeals
- 107. Arguments at hearing
- 108. Court-annexed mediation

PART V – FEES AND COSTS

- 109. Fees payable
- 110. Time of payment of fees
- 111. Security for costs in civil appeals
- 112. Court adjournment fees and costs
- 113. Assessment or taxation of costs
- 114. Costs improperly incurred
- 115. Improper agreements for remuneration
- 116. Taxation
- 117. Reference on taxation
- 118. Waiver of fees in criminal appeals
- 119. Refund of fees paid in criminal appeals
- 120. Relief from fees and security in civil appeals

PART VI – USE OF INFORMATION AND COMMUNICATIONS TECHNOLOGY

- 121. Use of information and communications technology

PART VII – REVOCATION AND TRANSITIONAL PROVISIONS

- 122. Revocation
- 123. Transitional provisions

SCHEDULES

FIRST SCHEDULE —  
FEES

FORMS

[Subsidiary]

TAXATION OF COSTS

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**THE COURT OF APPEAL RULES**

[Legal Notice 40 of 2022]

## PART I – PRELIMINARY

**1. Citation and coming into operation of the Rules**

(1) These Rules may be cited as the Court of Appeal Rules and shall come into operation at the expiry of ninety days after publication in the *Gazette*.

(2) These Rules shall not limit or otherwise affect the inherent power of the Court to make any orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

**2. Interpretation**

In these Rules, unless the context otherwise requires—

"advocate" means a person who, under rule 22, has the right of audience before the Court;

"amicus curiae" means a person who is not a party to a matter, but has been allowed by the Court upon application, to appear as a friend of the Court to address it in respect of a matter of law;

"appeal", in relation to appeals to the Court, includes an intended appeal;

"appellant" includes an intended appellant;

"appellate jurisdiction", in relation to a superior court, includes the jurisdiction of the court in matters of revision, review, reference, case stated and point of law reserved;

"appropriate registry" means the Registry or sub-registry contemplated under rule 6;

"Court" means the Court of Appeal and includes a division thereof and a single judge exercising any power vested in the judge when sitting alone;

"deputy registrar" means a deputy registrar of the Court;

"interested party" means a person or entity that has an identifiable stake, legal interest or duty in the proceedings before the Court but is not a party to the proceedings, or may not be directly involved in the litigation but has been allowed by the Court upon application, to appear as an interested party to address it in respect of a matter of law or fact;

"intermediary" means a person allowed by the court to communicate with the court on behalf of a vulnerable party;

"judge" means a judge of the Court acting as such;

"notice of appeal"—

(a) in relation to a criminal appeal, means a notice lodged in accordance with rule 61; and

(b) in relation to a civil appeal, means a notice lodged in accordance with rule 77;

"notice of cross-appeal" means a notice lodged in accordance with rule 95;

"notice of grounds for affirming the decision" means a notice lodged in accordance with rule 96;

"prison" includes any other place of detention to which any person may have been committed by a court;

"President" means the President of the Court of Appeal as provided for in Article 164 (2) of the Constitution;

"Registrar" means the Registrar of the Court and includes a deputy registrar;

[Subsidiary]

"Registry" means the registry of the Court and includes a sub- registry;

"Registrar of a superior court" includes a deputy registrar and an assistant registrar of that court;

"respondent"—

- (a) in relation to a civil application, includes any person on whom the notice of motion has been served; and
- (b) in relation to a civil appeal, includes any person on whom a notice of appeal has been served and any person other than the appellant on whom a notice of cross-appeal has been served; and

"Superior court" means the High Court and courts of equal status.

### **3. Computation of time**

Any period of time fixed by these Rules or by any decision of the Court for doing any act shall be computed in accordance with the following provisions—

- (a) the period of days from the happening of an event or the doing of any act or thing shall be deemed to be exclusive of the day in which the event happens or that act or thing is done;
- (b) if the last day of the period is a Sunday or a public holiday (in this rule referred to as "excluded days"), the period shall include the next following day, not being an excluded day;
- (c) where any act or proceeding is directed or allowed to be done or taken on a certain day, then if that day happens to be an excluded day, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, not being an excluded day;
- (d) where any act or proceeding is directed or allowed to be done or taken within any time not exceeding six days, excluded days shall not be reckoned in the computation of time; and
- (e) unless the Court otherwise directs, the period of the Christmas recess shall not be reckoned in the computation of time.

### **4. Extension of time**

The Court may, on such terms as may be just, by order, extend the time limited by these Rules, or by any decision of the Court or of a superior court, for the doing of any act authorized or required by these Rules, whether before or after the doing of the act, and a reference in these Rules to any such time shall be construed as a reference to that time as extended.

### **5. Suspension of sentence, injunction, stay of execution and stay of proceedings**

(1) No sentence of death shall be carried out until the period for giving notice of appeal has expired or, where notice of appeal has been given, until the appeal has been determined.

(2) Subject to subrule (1), the institution of an appeal shall not operate to suspend any sentence or to stay execution, but the Court may—

- (a) in any criminal proceedings where a notice of appeal has been given in accordance with rule 61, order that the appellant be released on bail or that the execution of any warrant of distress be suspended pending the determination of the appeal; or
- (b) in any civil proceedings where a notice of appeal has been lodged in accordance with rule 77, order a stay of execution, an injunction or a stay of any further proceedings on such terms as the Court may think just.



**6. Registry and sub-registries**

(1) The Registry of the Court shall be in Nairobi and any other place in Kenya as the President, in consultation with the Chief Justice, may determine.

(2) There shall be such sub-registries for each station of the Court outside Nairobi, and at any other place as the President, in consultation with the Chief Justice, may determine.

**7. Hours for lodging documents**

The President, in consultation with the Chief Justice, may direct the hours during which the Registry or any sub-registry or any registry of a superior court shall be open for the receipt of documents lodged under these Rules.

**8. Maintenance of registers**

(1) The Registrar shall maintain—

- (a) a register of criminal applications in which shall be entered particulars of each application lodged in the Registry or sent to the Registrar by any deputy registrar relating to a criminal appeal;
- (b) a register of civil applications in which shall be entered particulars of each application lodged in the Registry or sent to the Registrar by any deputy registrar relating to a civil appeal;
- (c) a register of criminal appeals in which shall be entered particulars of each notice of appeal lodged in any criminal matter and of the subsequent proceedings; and
- (d) a register of civil appeals in which shall be entered particulars of each memorandum of appeal lodged in any civil matter and of the subsequent proceedings.

(2) Each deputy registrar in charge of a sub-registry shall maintain—

- (a) a register of criminal applications in which shall be entered particulars of each application lodged in the sub-registry relating to a criminal appeal; and
- (b) a register of civil applications in which shall be entered particulars of each application lodged in the sub-registry relating to a civil appeal.

(3) Each register maintained under this rule shall show the number of the application or appeal, the number of the proceedings in the superior court, the name of each party, the dates when the essential steps in the proceedings were taken and the result of the application or appeal:

Provided that the register kept in a sub-registry need not show the results of applications, other than applications heard locally, but shall show the dates when the material documents were sent to the Registrar.

(4) Each register of criminal or civil appeal shall, in addition to the contents specified in subrule (3), contain against the entry relating to each appeal a reference to each application made in relation to that appeal, whether made before or after the institution of the appeal.

**9. Numbering of applications and appeals**

(1) Each application to the Court, other than an application made informally during the course of a hearing, shall, whether lodged before or after the institution of an appeal, be given a serial number.

(2) For the purposes of subrule (1), there shall be maintained in the Registry and in each sub-registry two series of numbers for each calendar year, one for criminal and one for civil applications, and the serial numbers shall be prefixed by letters indicative of the Registry or sub-registry.

(3) Each criminal appeal shall be given a serial number in the Registry, which number shall be allotted within fourteen days after receipt of the notice of appeal, and for this purpose a series of numbers shall be maintained for each calendar year.

[Subsidiary]

(4) Each civil appeal shall be given a serial number in the Registry, which number shall be allotted immediately after the memorandum of appeal is received, and for this purpose a series of numbers shall be maintained for each calendar year.

#### **10. Endorsement of documents**

Whenever a document is lodged in the Registry, a sub- registry or the registry of a superior court under or in accordance with these Rules, the Registrar, deputy registrar or registrar of the superior court, as the case may be, shall cause the document to be endorsed showing the date and time when it was lodged.

#### **11. Registrar's discretion to allow documents to be lodged otherwise than at appointed place**

(1) Notwithstanding any provision in these Rules appointing a particular registry as the place where a document is to be lodged, the Registrar shall have power in any particular case to permit the lodging of any document in the Registry or in any sub-registry and an application for such permission may be made informally but shall be in writing.

(2) The Registrar or deputy registrar receiving a document lodged under subrule (1) shall send the document to the appropriate registry, at the expense of the applicant, except where the document is lodged with the Registrar and is one which, if lodged in the appropriate registry, would have been required by these Rules to be sent to the Registrar.

#### **12. Acceptance of documents lodged out of time**

(1) The Registrar or the registrar of a superior court, as the case may be, shall not refuse to accept any document on the ground that it is lodged out of time but shall mark the document "lodged out of time" and inform the person lodging it thereof.

(2) When a document is accepted out of time by the registrar of a superior court, he shall inform the Registrar thereof.

#### **13. Requirements as to size and production of documents, binding of records and numbering of pages and lines**

(1) Each document prepared for use in the Court shall, unless the nature of the document renders it impracticable—

- (a) be on A4 paper of durable quality;
- (b) be used only on one side; and
- (c) have a margin of not less than one and a half inches on the left side of the sheet.

(2) Each document prepared for use in the Court shall be clear and easily legible and may be produced by printing, photography, other appropriate technology or any combination of media but shall not be handwritten except for appellants acting in person in criminal appeals.

(3) In every criminal appeal, the record of appeal, and, in every civil appeal, the memorandum of appeal together with the record of appeal—

- (a) shall be bound in book form with a cover of stout paper fastened with thread;
- (b) may be in more than one volume, and each volume shall not exceed five hundred pages; and
- (c) the title of the appeal shall appear on the cover.

(4) The pages of each application and, the record of appeal in a criminal appeal, and the memorandum of appeal and the record of appeal in a civil appeal, shall be numbered consecutively.

(5) Each party shall comply with the Practice Directions of the Court on the filing of documents.

(6) Each party may file documents in electronic form in accordance with the Practice Directions of the Court.

**14. Power of Registrar and registrars of superior courts to reject documents**

(1) The Registrar or the registrar of a superior court, as the case may be, may refuse to accept any document which does not comply with the requirements of rule 13.

(2) Subject to rules 113 and 116, the Registrar or the registrar of a superior court, as the case may be, shall refuse to accept any document tendered without the required fee, if any, or, in the case of the memorandum of appeal in a civil appeal, the lodging of security for costs.

(3) If, as the result of an error, a document is accepted which ought to have been rejected under subrule (2) on account of the failure to pay the fee or security, the document shall be deemed to have been duly lodged but the person who lodged it shall, as soon as practicable after the error is discovered, pay the fee or the balance thereof or lodge the required security.

(4) A person who is dissatisfied with the decision of the Registrar or of the registrar of a superior court to reject a document under this rule may require the decision to be referred to a judge for his or her decision and an application under this subrule may be made informally at the time when the decision is given or in writing within seven days thereafter.

**15. Signature of documents**

(1) A document may be signed on behalf of the person making it by a person entitled under rule 22 to appear on his or her behalf.

(2) In or in relation to a criminal appeal, a document may be signed on behalf of an appellant who is alleged to be of unsound mind by a person entitled under rule 22 to appear on his or her behalf or by any person in whose care he or she may be for the time being, including a medical officer, police officer or prisons officer.

**16. Form of amendments**

(1) Where a person obtains leave to amend a document, the document itself may be amended or, if it is more convenient, an amended version of the document may be lodged.

(2) Where a person lodges an amended version of a document, that person shall show clearly—

- (a) any words or figures deleted from the original, by including the deleted words or figures and striking them through with red ink, so that what was written remains legible; and
- (b) any words or figures added to the original, by writing them in red ink or underlining them in red ink.

(3) Where any record of appeal includes any amended document, the amendments shall be shown in the manner prescribed under subrule (2) in each copy of the record of appeal.

**17. Service and transmission of documents**

(1) Where a document is required to be served on any person under these Rules, service may be effected in such way as the Court may direct and, in the absence of any such direction, shall be made personally on the person to be served or any person entitled under rule 22 to appear on his or her behalf or by any other recognized mode of service as provided under Order 5 of the Civil Procedure Rules (sub. leg).

(2) Where a document is required to be served on the appellant or on the respondent, and two or more appellants or respondents, as the case may be, are represented by one advocate, it shall be sufficient if one copy of that document is served on that advocate.

(3) For the purpose of this rule, service on a partner or a clerk of an advocate at the office of the advocate shall be deemed to be service on the advocate.

(4) Proof of service may be given where necessary by affidavit, unless in any case the Court shall require proof by oral evidence:

Provided that in the case of a person in prison, a letter purporting to be signed by the officer in charge of the prison certifying that the document was delivered to the prisoner on a specified date may be accepted as sufficient proof of service.

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[Subsidiary]

(5) Where a document is required to be sent to any person, the document may be sent by hand, a licensed courier service provider approved by the court or by registered post to that person or to any person entitled under rule 22 to appear on his or her behalf.

(6) The notice of the date fixed for the hearing of an application or appeal or for the delivery of judgment or the reasons for any decision may be given by telephone or other electronic means approved by the court.

(7) Where a document is required to be served by the Court or a party under these Rules, service may be effected by email using the address provided by the party to be served, or by such other verifiable electronic means as the Court may approve.

### **18. Change of address for service**

(1) A person who has given an address for service may, at any time, change the address by lodging a notice of such change in the appropriate registry and serving copies of the notice on all persons who have been served with the previous address.

(2) The address of service shall include electronic address such as email, telephone number and any other details as the Court may require.

### **19. Sittings of the Court**

(1) The sittings of the Court and the matters to be disposed of at such sittings shall be determined by the President and shall be advertised and notified in such manner as he may direct.

(2) Nothing in this rule shall prevent the Court from disposing of any business that has not been advertised or notified as required under subrule (1).

### **20. Court recess**

(1) The recess of the Court and the arrangements for business during recess shall be determined by the President in accordance with the Court of Appeal (Organisation and Administration) Act (Cap. 9A) and shall be notified in such manner as the Chief Justice may direct.

(2) No business shall be conducted during recess, unless the President, in consultation with the Chief Justice, otherwise directs, except the delivery of judgments and, when the matter is shown to be of urgency, the hearing of applications and the taxation of bills.

### **21. Places where appeals are to be heard**

(1) An appeal or formal application to the Court shall be heard in such place as the President, in consultation with the Chief Justice, may designate.

(2) An application for an appeal to be heard otherwise than in accordance with subrule (1) may be made informally but shall be in writing.

### **22. Appearances**

(1) Subject to rule 73, a party to any proceedings in the Court may appear in person or by advocate.

(2) A corporation that is a party to any proceedings in the Court may appear by advocate or by a director, manager or secretary thereof appointed by resolution under the seal of the company, a sealed copy of which resolution shall be lodged with the Registrar.

(3) A person under disability that is a party to any proceedings in the Court may appear by advocate or by his or her committee, next friend or guardian *ad litem* as the case may be, and where any person has acted as next friend or guardian *ad litem* in the court below for a person under disability and the person under disability becomes respondent in an appeal to the Court, the next friend or guardian *ad litem* may, if he or she desires to act as such in the appeal, lodge a consent to act as such and shall thereupon be deemed to have been duly appointed, and in any other case, the Court may appoint a guardian *ad litem* for the purposes of an appeal and the Court may at any time remove and replace any guardian *ad litem*, however appointed.

**23. Change of advocates**

(1) Where a party to an application or appeal changes his or her advocate or, having been represented by an advocate, decides to act in person or, having acted in person, engages an advocate, that party shall, as soon as practicable, lodge with the Registrar a notice of the change and shall serve a copy of such notice on the other party or on every other party appearing in person or separately represented, as the case may be.

(2) An advocate who desires to cease acting for a party in a civil appeal or application, may apply by notice of motion before a single Judge for leave to so cease acting, and such advocate shall be deemed to have ceased to act for such party upon service on the party of a certified copy of the order of the judge.

**24. Assignment of advocates**

(1) In a criminal application or appeal, the Chief Justice may, at any time, assign an advocate to represent an applicant or appellant if it appears desirable in the interests of justice.

(2) An advocate assigned to represent an applicant or appellant under subrule (1) shall comply with the rules of professional conduct of advocates, and the requirements of the Court in *pro bono* matters.

(3) In a civil appeal involving a point of law of public importance, if the President is satisfied that any appellant or respondent lacks the means to employ an advocate, the President may, with the consent of such appellant or respondent, as the case may be, assign an advocate to represent the appellant or respondent, and may require any such appellant or respondent, as a condition of having an advocate assigned to him or her, to undertake to refund the fees and expenses of such advocate out of any money or property he or she may recover in or in consequence of the appeal.

(4) The court may assign a *pro bono* advocate in a pauper brief in a civil appeal or application.

(5) The fees and expenses of an advocate assigned under the subrule (1) or subrule (3) shall be defrayed out of the funds of the Court.

(6) The Registrar shall have power to take such action as may be necessary to enforce any undertaking given in accordance with subrule (3) and any moneys so recovered shall be paid into the Consolidated Fund.

**25. Case management and pre-trial conference**

(1) A civil appeal shall first be listed for case management conference as soon as practicable before the Registrar for pre-trial directions.

(2) The Registrar shall give pre-trial directions in accordance with the Rules and Practice Directions of the Court and confirm compliance thereof before the appeal is listed for hearing.

(3) Notwithstanding non-compliance with pre-trial directions, a civil appeal may be confirmed and listed for hearing.

**26. Right of audience**

(1) The Attorney-General, Solicitor-General and Director of Public Prosecutions when appearing in person shall have the right of audience before the Court and shall take precedence over all other advocates.

(2) The Court may give priority to Senior Counsel who appear before it.

(3) Every advocate who is, for the time being, entitled to practice before the High Court shall have the right of audience before the Court:

Provided that an advocate who has been struck off the roll of advocates or who is under suspension from practice shall have no right of audience before the Court.

(4) Any other person entitled to appear as counsel or advocate before any court of unlimited jurisdiction, if licensed in that behalf by the Chief Justice and subject to the payment of the prescribed fee, shall have the right of audience before the Court in respect

[Subsidiary]

of any one appeal, including any cross-appeal heard therewith, or any two or more appeals consolidated for hearing.

### **27. List of authorities and copies of judgments to be referred to**

(1) An advocate who intends, at the hearing of an application or appeal, to rely on the judgment in any reported case or to quote from any book shall—

- (a) lodge with the Registrar or with the deputy registrar at the place where the application or appeal is to be heard, a list containing the titles of such cases with their citations and the names, authors and editions of any such books; and
- (b) serve a copy of such list on the other party or on each other party appearing in person or separately represented, as the case may be:

Provided that a supplementary list may, when necessary, be produced at the time of the hearing.

(2) The list lodged under subrule (1) shall be in four copies, except in the case of an application to be heard by a single judge, when it shall be in two copies, and shall be lodged at least twenty-four hours before the application or appeal is due to be heard.

(3) An advocate who intends, at the hearing of an application or appeal, to rely on the judgment in any unreported case shall—

- (a) at or before the hearing, produce a certified or photostat copy of such judgment;
- (b) except in the case of an application to be heard by a single judge, two other copies of the judgment, for the use of the Court; and
- (c) in every case, one copy of the judgment for the use of the other party, or each other party appearing in person or separately represented, as the case may be.

### **28. Order of addresses**

Unless the Court otherwise directs—

- (a) the Court shall, at the hearing of an application or appeal, first hear the applicant or appellant, then the respondent, then an interested party, amicus curiae or intermediary if any, and then the applicant or the appellant in reply;
- (b) at the hearing of an appeal where notice of cross-appeal has been given, the Court will hear the appellant first on the appeal, then the respondent on the appeal and on the cross-appeal, then the appellant in reply on the appeal and on the cross-appeal, and finally the respondent in reply on the cross-appeal;
- (c) the Court may dismiss, but shall not allow any preliminary objection, application, appeal or cross-appeal without calling on the opposing party;
- (d) after hearing the opposing party, the Court may allow, but shall not dismiss any preliminary objection, application, appeal or cross-appeal without giving the objector, applicant, appellant or cross-appellant an opportunity to reply; or
- (e) the provisions of this rule shall apply where notice of grounds for affirming the decision has been given in the same way in all respects as where notice of cross-appeal has been given:

Provided that the Court may at any stage give any directions under this rule.

### **29. Expanded Bench**

(1) A party may apply informally but in writing to the President, with notice to the other parties, for an appeal or application to be heard and determined by an expanded bench consisting of five or more judges of an uneven number.

(2) Where satisfied with an application under subrule (1), the President shall constitute the expanded bench and give directions on the hearing of that appeal or application:

Provided that where there are conflicting decisions of the court, or for any other good reason, the President may, in consultation with the parties, constitute an expanded bench.

### **30. Hearing of appeals**

Every appeal shall be heard in Court or in any other manner as may be directed by the Court, to which all members of the public shall have access so far as the space in the Court permits and so long as they conduct themselves in an orderly manner:

Provided that in exceptional circumstances, the Court may direct that the public be excluded, if the Court is satisfied that national security or the interest of justice so require.

### **31. Power to re-appraise evidence and to take additional evidence**

(1) On an appeal from a decision of a superior court acting in the exercise of its original jurisdiction, the Court shall have power—

- (a) to re-appraise the evidence and to draw inferences of fact;  
and
- (b) in its discretion and for sufficient reason, to take additional evidence or direct that additional evidence be taken by the trial court.

(2) When additional evidence is taken by the Court, the evidence may be taken orally or by affidavit and the Court may allow the cross-examination of any deponent.

(3) When additional evidence is taken by the trial court, it shall certify such evidence to the Court, with a statement of its opinion on the credibility of the witness or witnesses giving the additional evidence.

(4) When additional evidence is taken by a commissioner, the commissioner shall certify the evidence to the Court, without any such statements of opinion.

(5) Each party to the appeal shall be entitled to be present when the additional evidence is taken.

### **32. Power to call for report**

On any appeal from a decision of a superior court in the exercise of its original jurisdiction, the Court shall have power to call for and receive from that superior court a report on any matter connected with the proceedings before that court.

### **33. General powers of the Court**

On any appeal from a decision of a superior court, the Court shall have power, so far as its jurisdiction permits—

- (a) to confirm, reverse or vary the decision of the superior court;
- (b) to remit the proceedings to the superior court with such directions as may be appropriate; or
- (c) to order a new trial, and to make any necessary incidental or consequential orders, including orders as to costs.

### **34. Rulings and judgments**

(1) The Court may give judgments and rulings at the close of the hearing of an appeal or application or reserved for delivery within one hundred and twenty days, unless the Court for reasons to be recorded orders otherwise.

(2) Where the Court defers a judgment or ruling, the Court shall notify the parties of the next date for delivery:

Provided that the Court shall not defer a judgment or ruling for more than one hundred and eighty days.

(3) In a criminal application (other than an application heard by a single judge) and a criminal appeal, one ruling shall be given as the ruling of the court, and may be given if one judge has died, ceased to hold office, or is unable to perform the functions of his or her office

[Subsidiary]

because of infirmity of mind or body, or refuses to sign the ruling, but the presiding judge may direct that each judge shall give a separate ruling.

(4) In a civil application (other than an application heard by a single judge) and a civil appeal, each member of the Court shall give a separate ruling unless, the decision being unanimous, the presiding judge otherwise directs, but where one judge delays, dies, ceases to hold office or is unable to perform the functions of his or her office because of infirmity of mind or body, the remaining members of the court may give separate concurring rulings.

(5) The ruling or rulings of the Court on an application shall—

- (a) where the application was heard in chambers, be delivered in chambers or in any other manner approved by the Court and communicated to the parties; and
- (b) where the application was heard in court, be delivered in court or in any other manner approved by the Court, and communicated to the parties.

(6) The presiding judge may, in any particular case, direct that the decision of the Court only shall be so delivered and not the reasons therefor, and in such a case the judgment or judgments shall be deposited in the Registry or sub-registry in the place where the application or appeal was heard and copies thereof shall be available to the parties when the decision is delivered.

(7) Notwithstanding subrule (1), the Court may, at the close of the hearing of an application or appeal, give its decision but reserve its reasons and in such a case the reasons may be delivered in court or deposited in the Registry or sub-registry in the place where the application or appeal was heard within ninety days and where the reasons are so deposited, copies thereof shall be available to the parties and they shall be so informed.

(8) Where one judgment is given at the close of the hearing as the judgment of the Court, it shall be delivered by the presiding judge or by such other member of the Court as the presiding judge may direct.

(9) Where judgment, or the reasons for a decision, has been reserved, the judgment of the Court, or a judgment of any judge, or such reasons, as the case may be, being in writing and signed, may be delivered by any judge, whether or not he or she sat at the hearing.

(10) The judgment of the Court shall be dated as of the day when it is delivered or, where a direction has been given under subrule (6), as for the day when the decision was delivered.

(11) Where the date of the judgment or ruling was given in Court, or the parties are duly notified of that date but fail to appear, the Court may deliver the judgement or ruling on the scheduled date in absence of the parties.

(12) The Registrar shall notify the parties in whose absence the Judgement or Ruling was delivered under subrule (11), that the Judgement or Ruling is ready for collection in the Registry.

(13) For the purposes of this rule, "presiding judge" includes the next senior judge, where the original presiding judge has died, ceased to hold office, or is unable to perform the functions of his or her office by reason of infirmity of mind or body.

### **35. Decisions to be embodied in orders**

(1) Each decision of the Court on an application or appeal, other than a decision on an application made informally in the course of a hearing, shall be embodied in an order.

(2) Each order under subrule (1) shall be dated as of the date on which the decision was delivered and show the date on which the order was extracted.

(3) An order—

- (a) on an application shall be substantially in Form I as set out in the First Schedule; and
- (b) on an appeal shall be substantially in Form J as set out in the First Schedule.



**36. Preparation of orders**

(1) Where a decision of the Court is given in a criminal application or appeal, the order shall be drawn up by the Registrar who, in drawing up the order, shall not be required to consult the parties or the parties' advocates.

(2) Where a decision of the Court is given in a civil application or appeal—

- (a) any party may, within fourteen days from date of judgment or ruling, prepare a draft of the order and submit it for the approval of the other parties;
- (b) the party to whom the draft has been submitted shall approve the same within seven days from the date of receipt of the draft order under paragraph (a);
- (c) if all parties approve the draft, the order shall, unless the presiding judge otherwise directs, be in accordance with it;
- (d) if the parties do not agree on the form of the order, or if there is non-compliance with paragraphs (a) and (b), the form of the order shall be determined by the Registrar in accordance with the decision of the Court:

Provided that if the parties are dissatisfied with the decision of the Registrar, the issue shall be settled by a single judge after giving all the parties an opportunity of being heard and the decision of judge shall be final; and

- (e) where an application was certified as urgent under rule 49, any party may, with notice to all the parties, request the Registrar to issue the order arising from a Ruling on the application, on priority basis and the Registrar may, where satisfied, prescribe a shorter period for compliance with the provisions of paragraphs (a) and (b).

(3) The order extracted under rule 36 shall be issued from the Registry or sub-registry in the place where the application or appeal was heard.

**37. Correction of orders**

(1) A clerical or arithmetical mistake in any judgment of the Court or any error arising therein from an accidental slip or omission may, at any time, whether before or after the judgment has been embodied in an order, be corrected by the Court, either of its own motion or on the application of any interested person so as to give effect to the intention of the Court when judgment was given.

(2) An order of the Court may be corrected by the Court at any time, either of its own motion or on the application of any interested person—

- (a) if it does not correspond with the judgment it purports to embody; or
- (b) where the judgment has been corrected under subrule (1), if it does not correspond with the judgment as so corrected.

**38. Notification of decisions**

(1) The Registrar shall, within seven days after the delivery of the decision—

- (a) send to the registrar of the superior court a sealed copy of the order embodying the decision of the Court in any civil or criminal appeal from that court; and
- (b) send a copy of the decision to the National Council for Law Reporting.

(2) The Registrar shall, so far as is practicable, inform any party to any proceeding in the Court who was not present or represented at the hearing, of the result of such proceeding.

(3) Each deputy registrar of a sub-registry shall send to the Registrar a copy of each order issued out of that sub-registry.

**39. Signature and sealing of documents**

Each summons, warrant, order, notice or other formal document issued by the Court shall be signed by a judge or by the Registrar and shall be sealed with the seal of the Court.

[Subsidiary]

## PART II – APPLICATIONS

**40. Application for certificate of fitness or leave to appeal in criminal matters**

(1) In a criminal matter—

- (a) where an appeal lies on certification by the superior court that the case is a fit case of appeal, application for such a certificate may be made informally and *ex parte*; and
- (b) where an appeal lies with the leave of the Court, application for such leave shall be made in the manner laid down in rules 44 and 45.

(2) An application under this rule shall be made without unreasonable delay but need not be made before notice of appeal is lodged.

**41. Application for leave to appeal in civil matters**

(1) In a civil matter—

- (a) where an appeal lies with the leave of the superior court, application for such leave may be made—
  - (i) informally at the time when the decision against which it is desired to appeal is given; or
  - (ii) by motion or chamber summons according to the practice of the superior court, within fourteen days of such decision;
- (b) where an appeal lies with the leave of the Court, application for such leave shall be made—
  - (i) in the manner laid down in rules 44 and 45 within fourteen days after the decision against which it is desired to appeal; or
  - (ii) where application for leave to appeal has been made to the superior court and refused, within fourteen days after such refusal.

(2) An application seeking certification that a matter of general public importance is involved shall be made within thirty days after the delivery of the decision.

(3) Despite subrule (2), an application brought out of time shall be marked as "lodged out of time" under rule 12 with liberty to apply for extension of time.

**42. Application for certificate that point of law of general public importance involved**

Where no appeal lies unless the superior court certifies that a point of law of general public importance is involved, an application for such a certificate may be made—

- (a) informally, at the time when the decision against which it is desired to appeal is given; or
- (b) by motion or chamber summons according to the practice of the superior court, within fourteen days after that decision:

Provided that in any criminal appeal if the appellant is in prison and is not represented by an advocate, he or she shall be deemed to have complied with this rule if he or she gives the notice of motion or chamber to the officer in charge of the prison within that time.

**43. Application to superior court**

The Court may entertain an application for stay of execution, injunction, stay of further proceedings or extension of time for the doing of any act authorized or required by these Rules, notwithstanding the fact that no application has been made in the first instance to the superior court.

**44. Form of applications to Court**

(1) Subject to subrule (3) and to any other rule allowing informal application, an application to the Court shall be by motion, which shall state the grounds of the application.

(2) A notice of motion shall be substantially in Form A as set out in the First Schedule and signed by or on behalf of the applicant.

(3) The provisions of this rule shall not apply—

- (a) to applications made in the course of a hearing, which may be made informally; or
- (b) to applications made by consent of all parties, which may be made informally by letter.

#### **45. Supporting documents**

(1) Each formal application to the Court shall be supported—

- (a) by one or more affidavits of the applicant; or
- (b) by one or more affidavits of some other person or persons having knowledge of the facts.

(2) An applicant may, with the leave of a judge or with the consent of the other party, lodge one or more supplementary affidavits and application for such leave may be made informally but shall be in writing.

(3) An application for leave to appeal shall, where practicable, be accompanied—

- (a) by a copy of the decision, including the reasons therefor (if any) against which leave to appeal is sought; and
- (b) where an application under rule 40 (1) (a) or 41 (1) (a) has been refused, by a copy of the decision, including the reasons therefor (if any), refusing that application.

(4) Where the documents referred to in subrule (3) have not been filed together with the application, the applicant shall file and serve the documents at least twenty-four hours before the application is heard.

#### **46. Applications for leave to amend**

(1) Whenever a formal application is made to the Court for leave to amend a document, the amendment for which leave is sought shall be set out in writing and—

- (a) if practicable, lodged with the Registrar and served on the respondent before the hearing of the application; or
- (b) if it is not practicable to lodge the document with the Registrar, handed to the Court and to the respondent at the time of the hearing.

(2) Where the Court gives leave for the amendment of a document, whether on a formal or an informal application, the amendment shall be made or an amended version of the document be lodged within such time as the Court when giving leave may specify and if no time is so specified, then within forty-eight hours of the giving of leave and on failure to comply with the requirements of this subrule, the leave so given shall determine.

#### **47. Applications to be lodged in appropriate registry**

(1) An application to the Court shall be lodged in the appropriate registry:

Provided that where the matter is one of urgency, an application may be lodged in the Registry, notwithstanding that it is not the appropriate registry.

(2) Each subsequent document that is required to be lodged in relation to an application shall, if the application is to be heard by a single judge, be lodged in the appropriate registry and in any other case, shall be lodged in the Registry.

#### **48. Procedure regarding applications lodged in sub-registries**

(1) When an application to be heard by a single judge is lodged in a sub-registry, the relevant deputy registrar shall list it for hearing before a judge locally resident, or if there is no judge available locally, shall send it to the Registrar.

(2) When any other application is lodged in a sub-registry, the deputy registrar shall send it to the Registrar without delay.

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[Subsidiary]

#### **49. Urgent applications**

(1) An application which the applicant desires to set down for hearing as a matter of urgency shall be accompanied by a certificate of urgency signed by the applicant or the applicant's advocate, supported by affidavit setting forth the matters upon which the applicant relies as showing that his or her application should be heard without delay.

(2) The application under subrule (1), certificate and supporting affidavit shall be placed before a single judge, who shall peruse it, and the application shall not be set down for hearing as a matter of urgency unless the judge certifies that it is urgent.

(3) The Registrar may maintain, in addition to the Court register of applications, a separate register of each application made under sub- rule (1) which shall be numbered consecutively in each year showing the date the application was made, the parties, if any, and the decision of the single judge thereon.

(4) The provisions of this rule shall apply to the hearing of urgent applications during the term and in recess.

(5) The refusal by the judge to certify an application as urgent under this rule shall not be subject to a reference to the Court under rule 55, but the applicant may apply informally for the matter to be placed before a single judge for hearing inter partes.

(6) Where an application is certified urgent by a single judge, the application shall be set down for hearing within sixty days after the certification or such other specified period as the President may direct, depending on the urgency of the matter.

#### **50. Number of copies of applications required**

(1) When an application is to be heard by a single judge, the application and documents relating thereto shall be filed in two copies, and in four copies in all other cases.

(2) Where an application is adjourned by a single judge for the determination of the Court and in any case where an application is referred to the Court under rule 57, the person applying to the Court shall, before the date of the hearing by the Court, file two extra copies of the application and the other documents relating thereto, including any affidavits filed by any other party before the adjournment or the giving of notice, as the case may be.

#### **51. Service of notice of motion**

(1) The notice of motion and copies of all affidavits shall be served on all necessary parties within three days after the filing of the application unless otherwise directed:

Provided that in case of urgency, an application, other than an application under rule 117, may be made ex parte, but in any such case, if the applicant is represented by an advocate, the advocate shall sign a certificate of urgency, which shall be filed together with the proceedings.

(2) Where any person who is required to be served with a notice of motion gave an address for service in or in connection with the proceedings in the superior court and has given no subsequent address for service, the notice may be served on him or her at that address notwithstanding that it may be that of an advocate who has not been retained for the purpose of any subsequent proceedings.

#### **52. Affidavits in reply**

A person who has been served with a notice of motion under rule 51 may—

- (a) lodge one or more affidavits in reply and shall serve a copy or copies thereof on the applicant within fourteen days after receipt of the application, unless otherwise directed; and
- (b) with the leave of a judge or with the consent of the applicant, lodge one or more supplementary affidavits.

#### **53. Abatement of applications**

(1) A criminal application shall abate, where the applicant is the State, on the death of the respondent and, in any other case on the death of the applicant.

(2) A civil application shall not abate on the death of the applicant or the respondent but the Court shall, on the application of any interested person, cause the legal representative of the deceased to be made a party in place of the deceased.

(3) If no application is made under subrule (2) within twelve months by the applicant or the respondent, the application shall abate.

(4) The person claiming to be the legal representative of a deceased party or any interested person to an application may apply for an order to revive the application which has abated under subrule (3) and, if it is proved that he or she was prevented by sufficient cause from continuing with the application, the court shall revive the application upon such terms as to costs or otherwise as it deems fit.

(5) An application under this rule may be made before a single judge or the Court on the date of the hearing.

#### **54. Application for leave to withdraw**

(1) An applicant may, at any time, apply to the Court for leave to withdraw an application and such application to withdraw may be made informally and heard by the Registrar where the issue of costs is not contested.

(2) Where the issue of costs is contested under subrule (1), the application to withdraw shall be heard by a single judge or by the Court if it is raised on the date of the hearing.

(3) Where the withdrawal of an application is sought under this rule, each party shall have the right to be heard.

#### **55. Hearing of applications**

(1) Each application, other than an application specified in subrule (2), shall be heard by a single judge:

Provided that such application may be adjourned by the judge for determination by the Court.

(2) This rule shall not apply to—

- (a) an application for leave to appeal;
- (b) an application for a stay of execution, injunction, or stay of further proceedings;
- (c) an application to strike out a notice of appeal or an appeal; or
- (d) an application made as ancillary to an application under paragraph (a) or (b) or made informally in the course of a hearing.

#### **56. Hearing of applications**

(1) An application to be heard by a single judge may be heard in open court, in chambers or in any other manner as the judge may direct:

Provided that where an application is made informally by letter with the consent of the parties, the judge may dispense with the appearance of the parties.

(2) Any application, other than an application under subrule (1), shall be heard in open court, unless the President or the presiding judge shall otherwise direct.

#### **57. Reference from decision of a single judge**

(1) Where under the proviso to section 5 of the Act, any person, being dissatisfied with the decision of a single judge—

- (a) in a criminal matter, wishes to have his or her application determined by the Court; or
- (b) in a civil matter, wishes to have any order, direction or decision of a single judge varied, discharged or reversed by the Court, that person may apply therefor informally to the judge at the time when the decision is given or by writing to the Registrar within seven days thereafter.

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[Subsidiary]

(2) At the hearing by the court of an application previously decided by a single judge, no additional evidence shall be adduced.

### **58. Procedure on non-appearance**

(1) If, on any day fixed for the hearing of an application, the applicant does not appear or comply with directions, the application may be dismissed, unless the Court sees fit to adjourn the hearing:

Provided that the Court may order that an application may be heard by way of written submissions and where parties have filed written submissions, the court shall consider the submissions.

(2) If the applicant appears or complies and the respondent fails to appear or comply, the application shall proceed in the absence of the respondent, unless the Court sees fit to adjourn the hearing.

(3) Where an application has been dismissed or allowed under subrule (2), the party in whose absence the application was determined may apply to the Court to restore the application for hearing or to re-hear it, as the case may be, if that party can show that he or she was prevented by any sufficient cause from appearing when the application was called on for hearing.

(4) An application made under subrule (3) shall be made within thirty days of the decision of the Court, or in the case of a party who would have been served with notice of the hearing but was not so served, within thirty days after that party's first hearing of that decision.

(5) The provisions of subrule (1) shall not apply to a criminal application if the applicant is in prison and is not represented by an advocate and in any such case, the application shall be heard notwithstanding the absence of the applicant, unless the Court shall otherwise order.

(6) Subject to the provisions of sub-rules (1), (2), (3), (4), and (5), the Court shall have discretion to dismiss an application or an appeal where one or both parties fail to appear or comply after being duly served, or cannot be traced at the parties' last known address.

(7) A party's advocate may effect service under this rule.

### **59. Rescinding of orders**

(1) An order made on an application heard by a single judge may be varied or rescinded by that judge or, in the absence of that judge, by any other judge or by the Court on the application of any person affected thereby, if—

- (a) the order was one extending the time for doing any act, otherwise than to a specific date; or
- (b) the order was one permitting the doing of some act, without specifying the date by which the act was to be done, and the person on whose application the order was made has failed to show reasonable diligence in the matter.

(2) An order made on an application to the Court may be varied or rescinded in terms of subrule (1) by the Court.

## PART III – CRIMINAL APPEALS AND REVIEW

### **60. Application of Part III**

This Part shall apply to appeals from superior courts acting in original and appellate jurisdiction in criminal cases and related matters.

### **61. Notice of appeal**

(1) A person who desires to appeal to the Court shall give notice in writing, which shall be lodged in six copies with the registrar of the superior Court at the place where the decision against which it is desired to appeal was given, within fourteen days after the date of that decision, and the notice of appeal shall institute the appeal.

(2) Each notice of appeal shall—

- (a) briefly state the nature of the acquittal, conviction, sentence or finding against which it is desired to appeal; and
- (b) contain the address at which any documents connected with the appeal may be served on the appellant.

(3) Where two or more persons have been convicted at the same trial and any two or more of them desire to appeal to the Court, they may, at their option, lodge separate notices or a joint notice of appeal and where a joint notice of appeal is lodged, it may include, in addition to the grounds of appeal common to all the appellants, grounds peculiar to one or more of them.

(4) Where an appeal lies only on a certificate that the case is a fit case for appeal, or with leave, or on a certificate that a point of law of general public importance is involved, it shall not be necessary to obtain such certificate or leave before lodging the notice of appeal.

(5) Where a notice of appeal is signed by or on behalf of an appellant who is in prison, it shall include a statement that the appellant intends or does not intend, as the case may be, to appear at the hearing of the appeal.

(6) Where a notice of appeal is signed by an advocate, the advocate shall add after his or her signature the words "Retained only to prepare this notice", "Retained to appear at the hearing of the appeal" or "Assigned to appear at the hearing of the appeal", as the case may be.

(7) Where the Director of Public Prosecutions certifies under section 379 (3) of the Criminal Procedure Code that a sentence passed by the High Court should be revised, the certificate shall be lodged in six copies with the Registrar within one month after the date of the sentence.

(8) A notice of appeal shall be substantially in Form B as set out in the First Schedule and shall be signed by or on behalf of the appellant.

## **62. Consolidation of appeals**

(1) Where two or more appeals are brought from convictions or sentences passed at the same trial, they shall, unless the Court otherwise orders, be consolidated and shall proceed as one appeal.

(2) Where two or more persons convicted by a subordinate court have appealed to a superior Court where their appeals have been consolidated, and any two or more of them give notice of appeal to the Court, their appeals shall, unless the Court otherwise orders, be consolidated and shall proceed as one appeal.

## **63. Transmission of notices of appeal**

(1) On receipt of a notice of appeal, the registrar of the superior court shall, within fourteen days, send one copy thereof—

- (a) to the Registrar of the Court of Appeal;
- (b) to the respondent named therein; and
- (c) to the interested party or intermediary, if any, named therein.

(2) The Deputy Registrar shall, on receipt of a notice of appeal—

- (a) register the appeal and notify the deputy registrar of the superior court; and
- (b) send a copy of the notification under paragraph (a) to the appellant and Director of Public Prosecutions within fourteen days after notifying the registrar of the superior court.

## **64. Preparation of record of appeal**

(1) Within sixty days after a notice of appeal has been lodged, the registrar of the superior court shall prepare the record of appeal:

Provided that where the record of appeal is not prepared within the stipulated period, the deputy registrar of the superior shall prepare a certificate of delay.

*Appellate Jurisdiction*

[Subsidiary]

(2) For the purpose of an appeal from the decision a superior court in exercise of its original jurisdiction, the record of appeal shall contain copies of the following documents and which shall be arranged in the following order—

- (a) an index of the documents in the record of appeal with the numbers of pages at which they appear showing, under the reference to the trial judge's notes and transcript, if any, of shorthand notes, the names of the witnesses and the pages of the record at which their evidence appears;
- (b) the information, indictment or charge;
- (c) the trial judge's notes of the hearing, including the proceedings on and after sentence;
- (d) the transcript of any shorthand notes taken at the trial;
- (e) a list of the exhibits put in at the trial;
- (f) the documentary exhibits, photographs and plans put in at the trial and the depositions read in consequence of the absence of the intended witnesses:

Provided that the registrar of the superior court may omit copies of documents which are of great length or other exhibits which are difficult to reproduce but instead include copies of the relevant parts only of any such documents or exhibits;

- (g) the summing-up to the assessors, if there is a record of it, or of the judge's notes on which the judge based his or her summing up, and the opinions of the assessors;
- (h) the judgment;
- (i) the order, if any, giving leave to appeal or the certificate, if any, that the case is a fit case for appeal;
- (j) the notice of appeal; and
- (k) any other documents which the trial judge may order to be included, including additional grounds or explanation of the judge's decision which he considers would be of assistance to the Court, or which appear to the registrar of the superior court to be necessary for the proper disposal of the appeal, and such documents may include a report made after sentence on an appellant's health.

(3) Where a person convicted by a magistrate's court has been committed for sentence to a superior court and is appealing to the Court against the sentence imposed by the superior court, the record of appeal shall, in addition to the documents set out in subrule (2), contain a certificate by the registrar of the superior court—

- (a) that the appellant was convicted on his or her own plea of guilty;
- (b) that the appellant has lodged no notice of appeal against conviction and that the time for lodging such a notice has expired; or
- (c) that the appellant has appealed against conviction to the superior court and that the appeal has been determined.

(4) For the purposes of an appeal from the decision of a superior court in exercise of its appellate jurisdiction, the record of appeal shall contain documents relating to the proceedings in the trial court corresponding as nearly as may be to the documents specified in sub- rule (2) and copies of the following documents—

- (a) the petition of appeal;
- (b) the record of proceedings;
- (c) the judgment; and
- (d) the order, if any.

(5) Notwithstanding subrule (1), the registrar of the superior court shall not prepare the record of appeal where—



- (a) the notice of appeal has been lodged out of time, until the registrar has been notified that the time has been extended by order of the superior court or of the Court or the President otherwise directs;
  - (b) the appeal cannot be heard without leave to appeal or a certificate that the case is a fit case for appeal or a certificate that a point of law of general public importance is involved, until the registrar has been notified that such leave or certificate has been given or the President otherwise directs;
- or
- (c) the appeal is from a decision of a superior court in exercise of its appellate jurisdiction, until the prescribed fee, or such part thereof, if any, as the appellant may be liable to pay under an order made under rule 115, has been paid or a deposit on account thereof has been made to the satisfaction of the registrar of the superior court.

(6) The registrar of the superior court shall certify each copy of the record of appeal to be a true copy of the original proceedings:

Provided that the record shall have been produced by printing, photography or any other electronic means approved by the court.

### **65. Service and transmission of record of appeal and exhibits**

(1) As soon as the record of appeal has been prepared, the registrar of the superior court shall—

- (a) cause a copy of the record to be served on the appellant;
- (b) cause a copy of the record to be served on the respondent; and
- (c) send four copies of the record to the Registrar.

(2) The registrar of the superior court shall, in addition to the actions under subrule (1), send to the Registrar—

- (a) the original record of proceedings in the superior court;
- (b) the original documentary exhibits in the superior court, other than any exhibits of great bulk; and
- (c) a copy of the record of the preliminary inquiry, if any.

(3) The registrar of the superior court shall not be required to send to the Registrar any exhibits other than documentary ones, unless requested to do so by the Registrar.

(4) The registrar of the superior court shall ensure, so far as practicable, that all other exhibits are available for inspection by the Court at the hearing of the appeal.

### **66. Memorandum of appeal**

(1) The appellant shall, within fourteen days after service on him or her of the record of appeal, lodge a memorandum of appeal, in five copies, with the Registrar or with the deputy registrar at the place where the appeal is to be heard:

Provided that where the memorandum of appeal is lodged with the deputy registrar at the place where the appeal is to be heard, the appellant shall lodge two additional copies with the Registrar within twenty-one days after service on him or her of the record of appeal.

(2) The memorandum of appeal lodged under subrule (1) shall concisely set forth and under consecutively numbered distinct heads, without argument or narrative, the grounds of objection to the decision appealed against, specifying, in the case of a first appeal, the points of law or fact and, in the case of any other appeal, the points of law, which are alleged to have been wrongly decided.

(3) The Registrar or the deputy registrar, as the case may be, shall, as soon as practicable, cause a copy of the memorandum of appeal under subrule (1) to be served on the respondent.

(4) A memorandum of appeal under subrule (1) shall be substantially in Form C as set out in the First Schedule and be signed by or on behalf of the appellant.

[Subsidiary]

(5) If no memorandum of appeal is lodged within the prescribed time, the Court may dismiss the appeal or may direct that it be set down for hearing:

Provided that where an appeal is dismissed, the appellant, if he or she can show sufficient cause, may apply to the Court to restore it for hearing.

### **67. Supplementary memorandum**

(1) An appellant may, at any time with the leave of the Court, lodge a supplementary memorandum of appeal.

(2) An advocate who has been assigned by the President or presiding judge to represent an appellant may, within fourteen days after the date when the advocate is notified of the assignment and without requiring the leave of the Court, lodge a memorandum of appeal on behalf of the appellant as supplementary to or in substitution for any memorandum which the appellant may have lodged.

(3) A person lodging a supplementary memorandum under this rule shall cause a copy thereof to be served on the respondent.

### **68. Presentation of written submissions**

(1) A party to an appeal or application may file written submissions in support of or in opposition to the appeal or application, as the case may be, and serve the submissions on the other parties.

(2) Written submissions filed under subrule (1) shall be signed by or on behalf of the party and shall be lodged in five copies or such other additional copies as may be required, in accordance with the pre-trial directions given by the Registrar during the case management conference.

### **69. Procedure where appellant is in prison**

(1) If the appellant is in prison, he or she shall be deemed to have complied with the requirements of rules 61, 66, 67 and 68 or any of them if he or she gives to the officer in charge of such prison the notice of appeal, memorandum of appeal or statement provided for in those rules respectively.

(2) In computing the time limited for lodging the notice, memorandum or statement under subrule (1), there shall be excluded—

- (a) the time between the appellant's conviction and his or her arrival at the prison to which he or she was committed; and
- (b) the time between the giving of the notice, memorandum or statement to the officer in charge of the prison and its lodging by him or her with the registrar of the superior court or the Registrar or deputy registrar, as the case may be.

(3) The officer in charge of a prison receiving a notice or statement under this rule shall forthwith endorse the notice or statement with the date and time of receipt.

### **70. Withdrawal of appeals**

(1) An appeal may be withdrawn at any time before hearing by notice in writing to the Registrar signed by the appellant and, upon such notice being given, the appeal shall be deemed to have been withdrawn.

(2) When any appeal is withdrawn under subrule (1), the Registrar shall forthwith notify the respondent and the registrar of the superior court.

(3) An appeal which has been withdrawn under subrule (1) may be restored by leave of the Court on the application of the appellant if the Court is satisfied that the notice of withdrawal was induced by fraud or mistake and that the interests of justice require that the appeal be heard.

(4) An appeal may be withdrawn by an informal application in court at any time before the hearing is concluded.

**71. Abatement of appeals**

(1) An appeal shall abate—

- (a) in the case of an appeal, other than an appeal against a sentence of a fine or an order for costs, compensation or forfeiture, on the death of the appellant or, where the appellant is the State, on the death of the respondent; or
- (b) in any case where the fee, part thereof or deposit referred to in rule 64 (5) (c) has not been paid or made within fourteen days after the appellant having been notified of the amount of the fee or deposit payable by him.

(2) For the purpose of subrule (1) (b), the appellant shall be deemed to have received notification four days after it has been dispatched by the registrar of the superior court to the appellant or advocate of the appellant at the address stated in the notice of appeal.

(3) An application under this rule may be made before a single judge.

**72. Notice of hearing**

(1) The Registrar—

- (a) shall cause notice to be given to the appellant and respondent of the time and place at which an appeal will be heard; and
- (b) may, during a case management conference, give notice to the appellant and respondent of the time and place at which an appeal will be heard.

(2) The notice under subrule (1) shall be given at least seven days before the date appointed for the hearing, unless the President or presiding judge otherwise directs.

**73. Appearance at hearing and dismissal for non-appearance**

(1) The appellant and the respondent shall be entitled to be present at the hearing of the appeal:

Provided that an appellant or respondent who is in prison, other than an appellant under sentence of death not represented by an advocate, shall, unless in any particular case the Court otherwise directs, be so entitled only on terms of paying the expenses of the appellant's transport and that of his or her escort to and from the Court.

(2) Where an appellant is represented by advocate or has lodged written submissions under rule 68 or is in prison, it shall not be necessary for the appellant to attend personally the hearing of the appeal, unless the Court shall order his or her attendance:

Provided that if an appellant is on bail, the appellant shall attend the hearing of the appeal or, with the leave of the Registrar, shall, before the time of hearing, attend the superior court at the place where the bail was executed and submit himself or herself to the order of such court pending disposal of the appeal.

(3) Where an appellant is in prison and has stated that he or she does not intend to appear at the hearing of the appeal, the appeal shall be heard in the appellant's absence, unless the Court orders the appellant's attendance.

(4) Subject to subrule (3), if, on the day fixed for the hearing of the appeal the appellant does not appear in person or by advocate and has not lodged a statement under rule 66, the appeal may be dismissed or may be heard in the appellant's absence:

Provided that where an appeal has been dismissed, the Court may restore it for hearing if it is satisfied that the appellant was prevented by any sufficient cause from appearing when the appeal was called for hearing.

(5) The cost of transport to and from the Court of an appellant who is in prison and that of the appellant's escort shall be borne out of the funds of the Court where—

- (a) The appellant is under sentence of death and desires to attend hearing of his or her appeal; or
- (b) the Court has ordered the appellant's attendance under sub- rule (2) or subrule (3).

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[Subsidiary]

(6) If, on the day fixed for the hearing of an appeal, the appellant fails to appear in person or by advocate, and it appears to the court that the appellant is no longer in custody and cannot be traced, or cannot be traced without an amount of delay or expense which, in the circumstances of the case, the Court considers unreasonable, the Court may, if it appears that no injustice will be done thereby, order that the appeal shall abate:

Provided that in such a case the appellant may apply to the court to restore the appeal for hearing and the Court may, if the ends of justice so require, restore the appeal for hearing.

#### **74. Arguments at hearing**

At the hearing of an appeal—

- (a) the appellant shall not, without the leave of the Court, argue any ground of appeal that was not specified in the memorandum of appeal or in any supplementary memorandum lodged under rule 67; and
- (b) the arguments contained in any written submissions lodged under rule 68 shall receive the same consideration as if they had been advanced orally at the hearing.

#### **75. Review**

(1) Where, under the provisions of section 379 (5) of the Criminal Procedure Code, the Director of Public Prosecutions has filed a certificate that the determination of a trial involved a point of law of exceptional public importance and that it is in the public interest that the point should be determined by the Court, the Director of Public Prosecutions shall, within thirty days after the determination, lodge with the Registrar six copies of a record containing the information, the judgment of the superior court and such parts of the proceedings before the superior court as are necessary to enable the Court to review the case, and inform the Court whether or not he or she desires to be heard thereon.

(2) The Registrar shall cause one copy of the certificate and one copy of the record to be served on the person who was acquitted and require him or her to inform the Court, within fourteen days, whether or not he or she desires to be heard in the matter.

(3) Where the Director of Public Prosecutions and the person who was acquitted desire to be heard, the provisions of these Rules relating to the hearing of criminal appeals shall apply so far as they are appropriate, with such modification as may be necessary.

(4) An application for review shall not abate on the death of the person who was acquitted.

### PART IV – CIVIL APPEALS

#### **76. Application of Part**

This Part shall apply to appeals from superior courts in exercise of the courts' original and appellate jurisdiction in civil cases and related matters.

#### **77. Notice of appeal**

(1) A person who desires to appeal to the Court shall give notice in writing, which notice shall be lodged in two copies, with the registrar of the superior court.

(2) Each notice under subrule (1) shall, subject to rules 84 and 97, be lodged within fourteen days after the date of the decision against the decision for which appeal is lodged.

(3) Each notice of appeal under subrule (1) shall state whether it is intended to appeal against the whole or part only of the decision and, where it is intended to appeal against a part only of the decision, shall—

- (a) specify the part complained of;
- (b) the address for service of the appellant; and
- (c) the names and addresses of the persons intended to be served with copies of the notice.

(4) When an appeal lies only with leave or on a certificate that a point of law of general public importance is involved, it shall not be necessary to obtain such leave or certificate before lodging the notice of appeal.

(5) Where it is intended to appeal against a decree or order, it shall not be necessary that the decree or order be extracted before lodging the notice of appeal.

(6) A notice of appeal shall be substantially in Form D as set out in the First Schedule and signed by or on behalf of the appellant.

#### **78. Transmission of notice of appeal**

On receipt of a notice of appeal under rule 77, the registrar of the court shall send one copy of the notice to the appropriate registry.

#### **79. Service of notice of appeal on persons affected**

(1) An intended appellant shall, before or within seven days after lodging notice of appeal under rule 77, serve copies of the notice on all persons directly affected by the appeal:

Provided that the Court may, on application which may be made *ex parte*, within seven days after the lodging of the notice of appeal, direct that service need not be effected on any person who did not take part in the proceedings in the superior court.

(2) Where any person who is required to be served with a copy of a notice of appeal gave any address for service in or in connection with the proceedings in the superior court, and has not subsequently given any other address for service, the copy of the notice of appeal may be served on that person at that address, notwithstanding that it may be that of an advocate who has not been retained for the purpose of an appeal.

#### **80. Death of respondent before service of notice**

A notice of appeal shall not be incompetent by reason only that the person on whom it is required to be served was dead at the time when the notice was lodged but a copy of the notice shall be served as soon as practicable on the legal representative of the deceased person.

#### **81. Respondent to give address for service**

(1) Each person on whom a notice of appeal is served shall—

- (a) within fourteen days after service, lodge in the appropriate registry and serve on the intended appellant a notice of a full and sufficient address for service; and
- (b) within a further fourteen days after service, serve a copy of such notice of address for service on every other person named in the notice of appeal as a person intended to be served.

(2) A notice of address for service shall be substantially in Form E as set out in the First Schedule and signed by or on behalf of the person lodging it.

(3) The lodging and service of an address for service shall not operate or be construed as an admission that the appeal is competent or as a waiver of any irregularity.

#### **82. Separate notices of appeal from same decision**

(1) Where two or more parties have given notice of appeal from the same decision, the second and all subsequent notices to be lodged shall be deemed to be notices of address for service within the meaning of rule 79 and the party or parties giving those notices shall be respondents in the appeal.

(2) A party whose notice of appeal is deemed to be a notice of address for service shall not be required to comply with rule 79 if that party has served copies of that notice of appeal on all persons on whom under that rule he or she would have been required to serve notice of his or her address for service.

[Subsidiary]

### **83. Withdrawal of appeal and notice of cross-appeal**

(1) A party who has lodged a notice of appeal may withdraw the notice of appeal by notice in writing to all the parties who have been served.

(2) The costs of the withdrawal under subrule (1) shall be borne by the party withdrawing the notice of appeal.

(3) Where a notice of withdrawal has been lodged under sub- rule (1), the Registrar shall mark the appeal as withdrawn.

### **84. Institution of appeals**

(1) Subject to rule 118, an appeal shall be instituted by lodging in the appropriate registry, within sixty days after the date when the notice of appeal was lodged—

- (a) a memorandum of appeal, in four copies;
- (b) the record of appeal, in four copies;
- (c) the prescribed fee; and
- (d) security for the costs of the appeal:

Provided that where an application for a copy of the proceedings in the superior court has been made in accordance with subrule (2) within thirty days after the date of the decision against which it is desired to appeal, there shall, in computing the time within which the appeal is to be instituted, be excluded such time as may be certified by the registrar of the superior court as having been required for the preparation and delivery to the appellant of such copy.

(2) An appellant shall not be entitled to rely on the proviso to subrule (1) unless the appellant's application for such copy was in writing and a copy of the application was served upon the respondent.

(3) The period specified in subrule (1) for the institution of appeals shall apply to appeals from superior courts in the exercise of their bankruptcy jurisdiction.

### **85. Effect of default in instituting appeal**

(1) If a party who has lodged a notice of appeal fails to institute an appeal within the appointed time, that party shall be deemed to have withdrawn the notice of appeal and the Court may, on its own motion or on application by any other party, make such order.

(2) The party in default under subrule (1) shall be liable to pay the costs arising therefrom of any persons on whom the notice of appeal was served.

### **86. Application to strike out notice of appeal or appeal**

A person affected by an appeal may, at any time, either before or after the institution of the appeal, apply to the Court to strike out the notice or the appeal, as the case may be, on the ground—

- (a) that no appeal lies; or
- (b) that some essential step in the proceedings has not been taken or has not been taken within the prescribed time:

Provided that an application to strike out a notice of appeal or an appeal shall not be brought after the expiry of thirty days after the date of service of the notice of appeal or record of appeal, as the case may be.

### **87. Death of party to intended appeal**

(1) An appeal shall not be instituted in the name of a person who is dead but may be instituted in the name of the deceased person's legal representative.

(2) An appeal shall not be incompetent by reason only that the respondent was dead at the time when it was instituted but the Court shall, on the application of any interested person, cause the legal representative of the deceased to be made a party in place of the deceased person.

(3) An application for substitution of a deceased party under subrule (2) may be made before a single judge.

### 88. Contents of memorandum of appeal

(1) A memorandum of appeal shall concisely set forth under distinct heads, without argument or narrative, the grounds of objection to the decision appealed against, specifying—

- (a) the points which are alleged to have been wrongly decided; and
- (b) the nature of the order which it is proposed to ask the Court to make.

(2) The grounds of objection shall be numbered consecutively.

(3) A memorandum of appeal shall be substantially in Form F as set out in the First Schedule and signed by or on behalf of the appellant.

### 89. Contents of record of appeal

(1) For the purposes of an appeal from a decision of a superior court in exercise of its original jurisdiction, the record of appeal shall, subject to subrule (3), contain copies of the following documents—

- (a) an index of the documents in the record with the numbers of the pages at which they appear;
- (b) a statement showing the address for service of the appellant and the address for service furnished by the respondent and, as regards any respondent who has not furnished an address for service as required by rule 79, that respondent's last known address and proof of service on him or her of the notice of appeal;
- (c) the pleadings;
- (d) the trial judge's notes of the hearing;
- (e) the transcript of any shorthand notes taken at the trial;
- (f) the affidavits read and documents put in evidence at the hearing or, if such documents are not in the English language, certified translations thereof;
- (g) the judgment or order;
- (h) the certified decree or order;
- (i) the order, if any, giving leave to appeal;
- (j) the notice of appeal; and
- (k) such other documents, if any, as may be necessary for the proper determination of the appeal, including any interlocutory proceedings which may be directly relevant:

Provided that the copies referred to in paragraphs (d), (e) and (f) shall exclude copies of any documents or any parts thereof that are not relevant to the matters in controversy on the appeal.

(2) For the purposes of an appeal from a decision of superior court in exercise of its appellate jurisdiction, the record of appeal shall contain documents relating to the proceedings in the trial court corresponding as nearly as may be to those set out in subrule (1) and the following documents relating to the appeal to the first appellate court—

- (a) the order, if any, giving leave to appeal;
- (b) the memorandum of appeal;
- (c) the record of proceedings; and
- (d) the certified decree or order.

(3) A judge or registrar of the superior court may, on the application of any party, direct which documents or parts of documents should be excluded from the record and an application for such direction may be made informally.

[Subsidiary]

(4) The documents specified in subrule (1) shall be bound in the order in which they are set out and documents produced in evidence shall be put in order of the dates they bear or, where they are undated, the dates when they are believed to have been made, without regard to the order in which they were produced in evidence:

Provided that an affidavit filed in support of a chamber summons or notice of motion shall be bound immediately following the summons or notice, as the case may be.

(5) Each copy of the record of appeal shall be certified to be correct by the appellant or by any person entitled under rule 22 to appear on the appellant's behalf.

### **90. Where documents are omitted from the record of appeal**

Where a document referred to in rule 89 (1) and (2) is omitted from the record of appeal, the appellant may, within fifteen days after lodging the record of appeal, without leave, include the document in a supplementary record of appeal filed under rule 94 (3) and, thereafter, with leave of the deputy registrar on application.

### **91. Contents of decrees and orders for purposes of appeal**

(1) For the purposes of an appeal to the Court against any decree or order, it shall not be necessary for the amount of any costs ordered to be paid to be stated therein, and such decree or order shall be deemed to be duly drawn up and extracted if, in addition to other matters required to be embodied therein, it sets out the order or orders for costs but not the result of any taxation of costs.

(2) Where leave to appeal, or for a certificate that a point of law of general public importance is involved, has been given or refused by the superior court immediately following the delivery of the decision against which it is desired to appeal, a statement that leave or a certificate has been given or refused shall be included in the decree or order.

### **92. Service of memorandum and record of appeal**

(1) The appellant shall, before or within seven days after lodging the memorandum of appeal and the record of appeal in the appropriate registry, serve copies thereof on each respondent who has complied with the requirements of rule 81.

(2) The appellant shall, in addition to the service under subrule (1), serve copies of the memorandum of appeal and the record of appeal on such other parties to the original proceedings as the Court may, at any time on application or of its own motion, direct and within such time as the Court may appoint.

### **93. Notification and transmission of appeals to Registrar**

(1) When an appeal has been instituted in a sub-registry—

- (a) the deputy registrar shall inform the Registrar of the names of the appellant, the respondent and the parties' respective advocates, and the date when the appeal was instituted;
- (b) as soon as practicable thereafter, the deputy registrar shall obtain from the registrar of the superior court the original record of the proceedings of the superior court and exhibits, three copies of the memorandum of appeal, and four copies of the record of appeal, and send them to the Registrar:

Provided that the deputy registrar shall not, unless requested to do so, send to the Registrar any exhibits which, because of their size or nature, cannot conveniently be so sent; and

- (c) the deputy registrar shall ensure so far as practicable that all exhibits not so sent to the Registrar are available for inspection by the Court at the hearing of the appeal.

(2) When an appeal has been instituted in the Registry, the Registrar shall obtain from the register of the superior court the original record of the proceedings of the superior court, and so far as is practicable, the exhibits.



**94. Preparation and service of supplementary record**

(1) If a respondent is of the opinion that the record of appeal is defective or insufficient for the purposes of the respondent's case, he or she may lodge in the appropriate registry four copies of a supplementary record of appeal containing copies of any further documents or any additional parts of documents which are, in his or her opinion, required for the proper determination of the appeal.

(2) The respondent shall, as soon as practicable after lodging a supplementary record of appeal, serve copies of it on the appellant and each other respondent who has complied with the requirements of rule 81.

(3) An appellant may, at any time, lodge in the appropriate registry four copies of a supplementary record of appeal and, as soon as practicable thereafter, serve copies of it on every respondent who has complied with requirements of rule 81.

(4) A supplementary record of appeal shall be prepared as nearly as may be in the same manner as a record of appeal.

**95. Notice of cross- appeal**

(1) A respondent who desires to contend at the hearing of the appeal that the decision of the superior court or any part thereof should be varied or reversed, in any event or in the event of the appeal being allowed in whole or in part, shall give notice to that effect, specifying the grounds of the contention and nature of the order which he or she proposes to ask the Court to make, or to make in that event, as the case may be.

(2) A notice under subrule (1) shall state the names and addresses of the persons intended to be served with copies of the notice and lodged in four copies in the appropriate registry not more than thirty days after service on the respondent of the memorandum of appeal and record of appeal, or not less than thirty days before the hearing of the appeal, whichever is the later.

(3) A notice of cross-appeal shall be substantially in Form G as set out in the First Schedule and signed by or on behalf of the respondent.

**96. Notice of grounds for affirming, varying or reversing decision**

(1) A respondent who desires to contend on an appeal that the decision of the superior court should be affirmed on grounds other than or additional to those relied upon by that court shall give notice to that effect, specifying the grounds of the respondent's contention.

(2) A notice under subrule (1) shall state the names and addresses of the persons intended to be served with copies of the notice and lodged in four copies in the appropriate registry not more than thirty days after service on the respondent of the memorandum of appeal and record of appeal, or not less than thirty days before the hearing of the appeal, whichever is the later.

(3) A notice of grounds for affirming a decision shall be substantially in Form H as set out in the First Schedule and signed by or on behalf of the respondent.

(4) A respondent who desires to contend at the hearing of the appeal that part of the decision of the superior court should be varied or reversed, and that part of that decision should be affirmed on grounds other than or additional to those relied upon by that court, may include both such contentions in a notice of cross-appeal under rule 93 and shall not be required to give notice also under this rule.

(5) The provisions of sub-rules (1), (2) and (3) and rule 97 shall apply mutatis mutandis to an appellant who desires to contend, in opposition to a cross-appeal, that the decision of the superior court should be affirmed on grounds other than or additional to those relied on by that court.

**97. Service of notice of cross-appeal or notice of grounds for affirming decision**

A respondent who intends to cross-appeal, or to contend that the decision of the superior court should be affirmed on grounds other than those relied on by that court, shall, before

[Subsidiary]

or within seven days after lodging his or her notice of cross-appeal or notice of grounds for affirming the decision, as the case may be—

- (a) serve a copy thereof on the appellant;
- (b) serve copies thereof on any other person directly affected by the cross-appeal or by the appeal, as the case may be; and
- (c) serve copies thereof any other party to the original proceedings as the Court may, at any time on application or of its own motion, direct and within such time as the Court may appoint.

### **98. Withdrawal of appeal**

(1) An appellant may, at any time after instituting an appeal and before the appeal is called on for hearing, lodge in the appropriate registry notice in writing of the intention to withdraw the appeal.

(2) The appellant shall within seven days after lodging the notice under subrule (1), serve copies thereof on each respondent who has complied with the requirements of rule 81.

(3) If all the parties to the appeal consent to the withdrawal of the appeal, the appellant shall file, in the appropriate registry, a consent letter signed by the parties or their advocates and thereupon the appeal shall be struck out of the list of pending appeals by the Registrar.

(4) If all the parties to the appeal do not consent to the withdrawal of the appeal, the appellant may, before the conclusion of its hearing, apply for leave to withdraw the appeal before a single judge.

(5) An application for withdrawal of the appeal under subrule (4) may be made informally in court on the date of the hearing.

### **99. Settlement of appeals**

An appeal may, with the approval of the Court, be marked as settled on such terms as the parties may agree, in which event the agreed terms of settlement shall be adopted as an order of the Court, and the appeal shall be marked as settled.

### **100. Rights of respondent when appeal withdrawn**

(1) If an appeal is withdrawn under rule 98 after notice of cross-appeal has been given, the respondent who gave the notice may withdraw it within fourteen days after the service on him or her of the notice of withdrawal, but if it is not so withdrawn, the cross-appeal shall proceed to hearing and these Rules shall apply as if the cross- appellant were an appellant and the appellant a respondent.

(2) If an appeal is withdrawn under rule 98 within fourteen days after the date when the appeal was instituted, a respondent who has not lodged a notice of cross-appeal shall be entitled to give notice of appeal notwithstanding that the time specified under rule 77 has expired, if that respondent does so within fourteen days after the date when the appellant's notice of withdrawal was served on the respondent.

### **101. Withdrawal of notice of cross appeal or notice of grounds for affirming decision**

(1) A respondent who has given notice of cross-appeal or notice of grounds for affirming the decision of the superior court may withdraw the notice at any time before the appeal is called on for hearing by lodging in the appropriate registry notice in writing to that effect, signed by the respondent or on the respondent's behalf.

(2) The respondent shall, before or as soon as practicable after lodging the notice under subrule (1), serve a copy thereof on the appellant and copies thereof on any other respondent who was served with the notice of cross-appeal or notice of grounds for affirming the decision, as the case may be.

**102. Death of party to appeal**

(1) An appeal shall not abate on the death of the appellant or respondent but the Court shall, on the application of any interested person, cause the legal representative of the deceased person to be made a party in place of the deceased.

(2) If no application is made under subrule (1) within twelve months from the date of the death of the appellant or respondent, the appeal shall abate.

(3) The person claiming to be the legal representative of a deceased party or an interested party to an appeal may apply for an order to revive an appeal which has abated and, if it is proved that the legal representative was prevented by sufficient cause from continuing the appeal, the court shall revive the appeal upon such terms as to costs or otherwise as it deems fit.

(4) An application under sub rule (3) may be made before a single judge.

**103. Written submissions**

(1) A party to an appeal may lodge in the appropriate registry written submissions of the arguments in support of or in opposition to the appeal or cross-appeal if any, as the case may be, and shall, before or within seven days after lodging it, serve a copy of it on the other party or on each other party appearing in person or separately represented.

(2) The written submissions shall be lodged by—

- (a) an appellant, within fourteen days of lodging the appellant's memorandum of appeal or as otherwise directed by the Registrar during case management; and
- (b) a respondent and any other party, within thirty days of service on him or her of the memorandum and record of appeal or as otherwise directed by the Registrar during case management.

(3) An appellant who has lodged written submissions under sub- rule (1) may, if served with notice of a cross-appeal or where necessary, lodge supplementary submissions of the arguments in opposition to it within fourteen days of service.

(4) A party who has lodged written submissions under this rule may address the Court at the hearing of the appeal.

**104. Notice of hearing**

(1) The Registrar shall give all parties to an appeal not less than fourteen days' notice of the date fixed for the hearing of an appeal except where a matter has been certified urgent or the Court, for good reason, directs that a matter be served within a shorter period:

Provided that it shall not be necessary to give such notice to any party with whose consent the date for the hearing was fixed.

(2) A hearing notice may be served by the relevant party, save where the Court effects service.

(3) Service may be effected electronically through email or any other electronic means approved by the court.

**105. Appearances at hearing and procedure on non-appearance**

(1) If, on any day fixed for the hearing of an appeal, the appellant does not appear, the appeal may be dismissed and any cross- appeal may proceed, unless the Court deems fit to adjourn the hearing and, in such instance, may order the appellant to pay court adjournment fees and costs to the other parties present:

Provided that where an appeal has been so dismissed or any cross-appeal so heard has been allowed, the appellant may apply to the Court to restore the appeal for hearing or to re-hear the cross-appeal, if he or she can show that he or she was prevented by any sufficient cause from appearing when the appeal was called on for hearing.

(2) If the appellant appears and the respondent fails to appear, the appeal shall proceed in the absence of the respondent and any cross- appeal may be dismissed, unless the Court

[Subsidiary]

deems fit to adjourn the hearing and, in such instance, may order the respondent to pay court adjournment fees in accordance with the Third Schedule and costs to the other parties present:

Provided that where an appeal has been allowed or cross-appeal dismissed in the absence of the respondent, the respondent may apply to the Court to re-hear the appeal or to restore the cross-appeal for hearing, if he or she can show that he or she was prevented by any sufficient cause from appearing when the appeal was called on for hearing.

(3) An application for restoration under the proviso to subrule (1) or the proviso to subrule (2) shall be made within thirty days after the decision of the Court or, in the case of a party who should have been served with notice of the hearing but was not so served, within thirty days after his or her first hearing of that decision.

(4) For the purposes of this rule, a party who has lodged a statement under rule 100 shall be deemed to have appeared.

### **106. Consolidation of appeals**

The Court may, for sufficient reason, order—

- (a) any two or more appeals to be consolidated on such terms as it thinks just;
- (b) any two or more appeals to be heard at the same time or one immediately after the other; or
- (c) any one or more appeals to be stayed until after the determination of any other of them.

### **107. Arguments at hearing**

At the hearing of an appeal—

- (a) no party shall, without the leave of the Court, argue that the decision of the superior court should be reversed or varied except on a ground specified in the memorandum of appeal or a notice of cross-appeal, or support the decision of the superior court on any ground not relied on by that court or specified in a notice given under rule 95 or rule 96;
- (b) a respondent shall not, without the leave of the Court, raise any objection to the competence of the appeal which might have been raised by application under rule 86;
- (c) the Court shall not allow an appeal or cross-appeal on any ground not set forth or implicit in the memorandum of appeal or notice of cross-appeal without affording the respondent or any person who, in relation to that ground, should have been made a respondent, or the appellant, as the case may be, an opportunity of being heard on that ground;  
and
- (d) the arguments contained in any statement lodged under rule 100 shall receive the same consideration as if they had been advanced orally at the hearing.

### **108. Court-annexed mediation**

(1) At any time during a case management conference or before a matter is set down for hearing, the Registrar, in consultation with and approval of the parties, may screen and refer any appeal or application to mediation:

Provided that before conclusion of any matter, the Court may refer parties to mediation.

(2) Where a dispute is referred to mediation, the Registrar shall, in consultation with the parties, select for that purpose an accredited mediator from the mediation register established by the Mediation Accreditation Committee.

(3) Mediation under this Rule shall be conducted in accordance with the Court of Appeal Mediation Rules.

(4) A mediation settlement agreement between the parties as a result of the mediation process shall be recorded in writing and filed with the Court and adopted as an order of the Court.

(5) No appeal shall lie against a mediation settlement agreement adopted as an order of the Court under subrule (4).

#### PART V – FEES AND COSTS

### **109. Fees payable**

Subject to rules 113 and 114, the fees set out in the Second Schedule shall be payable in respect of the matters and services set out therein:

Provided that—

- (a) no fees shall be payable upon any appeal from a superior court in exercise of its original jurisdiction in a criminal case, or on any application in connection with any such appeal, or for the supply of the copy of the record of appeal to any party to any such appeal;
- (b) no fee shall be payable by the Government in respect of any criminal application or appeal; and
- (c) copies of any documents may be issued without fees to such persons as the President may nominate or at such reduced fees as the President may direct.

### **110. Time of payment of fees**

(1) The fee payable on lodging any document shall be payable at the time when the document is lodged.

(2) The Registrar or registrar of a superior court may require the payment in advance of the fee for any other service or, where the amount of the fee cannot conveniently be ascertained when the service is requested, may require a deposit towards it and any fee so paid in advance or deposit made shall be refunded if the request for the service is cancelled before the service has been undertaken.

### **111. Security for costs in civil appeals**

(1) Subject to rule 114, there shall be lodged in Court on the institution of a civil appeal as security for the costs of the appeal the sum of six thousand shillings.

(2) Where an appeal has been withdrawn under rule 96 after notice of cross-appeal has been given, the Court may, on the application of any person who is a respondent to the cross-appeal—

- (a) direct the cross-appellant to lodge in Court as a security for costs the sum of two thousand shillings or any specified sum less than two thousand shillings; or
- (b) direct that the cross-appeal be heard without security for costs being lodged.

(3) The Court may, at any time if it thinks fit, direct that further security for costs be given and that security be given for the payment of past costs relating to the matters in question in the appeal.

(4) Where security for costs has been lodged, the Registrar may pay out the security by consent of the parties or in conformity with the decision of the Court and having regard to the rights of the parties thereunder.

### **112. Court adjournment fees and costs**

(1) Where an application for adjournment is sought, the Court may, for good reason, grant the adjournment and order the party responsible for occasioning the adjournment to pay court adjournment fees or such other fees as the Court may direct.

(2) The party seeking adjournment or at whose instance the adjournment has been granted may be ordered to pay costs to the other party as the Court may deem just.

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[Subsidiary]

**113. Assessment or taxation of costs**

(1) When making any decision as to the payment of costs, the Court may assess the same or direct them to be taxed and any decision as to the payment of costs, not being a decision whereby the amount of the costs is assessed, shall operate as a direction that the costs be taxed.

(2) For the purpose of execution in respect of costs, the decision of the Court directing taxation and the certificate of the taxing officer as to the result of such taxation shall together be deemed to be a decree.

**114. Costs improperly incurred**

If it shall appear to the Court that costs have been incurred improperly or without reasonable cause, or that by reason of any undue delay in proceeding under any judgment or order, or of any misconduct or default of the advocate, any costs properly incurred have nevertheless proved fruitless to the person incurring the same, the Court may call on the advocate by whom such costs have been so incurred to show cause why such costs should not be borne by the advocate personally, and thereupon may make such order as the justice of the case may require.

**115. Improper agreements for remuneration**

Any agreement whereby the remuneration of an advocate or the amount thereof is dependent upon the result of any proceedings in the Court shall be void.

**116. Taxation**

(1) The Registrar shall be a taxing officer with power to tax the costs arising out of any application or appeal to the Court as between party and party.

(2) The costs contemplated under subrule (1) shall be taxed in accordance with the Third Schedule.

(3) The remuneration of an advocate by the advocate's clients in respect of application or appeal shall be governed by the rules of, and scales for, proceedings in the High Court.

**117. Reference on taxation**

(1) A person who is dissatisfied with a decision of the Registrar in his or her capacity as taxing officer may require any matter of law or principle to be referred to a judge for the judge's decision and the judge shall determine the matter as the justice of the case may require.

(2) For the purpose of sub rule (1), any decision extending or refusing to extend time for the lodging of a bill of costs or any exercise by the Registrar of the over-riding discretion given the Registrar by paragraph 12 of the Third Schedule shall be deemed to involve a matter of principle.

(3) A person who contends that a bill of costs as taxed is, in all the circumstances, manifestly excessive or manifestly inadequate, may require the bill to be referred to a judge and the judge shall have power to make such deduction or addition as will render the bill reasonable and except as provided in this subrule, there shall be no reference on a question of quantum only.

(4) An application for a reference may be made to the Registrar informally at the time of taxation or in writing within seven days thereafter.

(5) A reference to a judge may be adjourned for the consideration of the Court.

(6) Any person dissatisfied by the decision of a judge given under subrule (1) or subrule (3) may apply to the Court to vary, discharge or reverse the same and such application, may be made either informally to the judge at the time of the decision or by writing to the Registrar within seven days after the time.

(7) The President may issue practice directions as to the manner in which appeals and references shall be made under this section and the court fees, if any, that shall be paid.

**118. Waiver of fees in criminal appeals**

(1) If, in any appeal from a superior court acting in its appellate jurisdiction in any criminal matter, a judge of the superior court is satisfied on the application of the appellant—

- (a) that the appeal raises one or more questions of law proper for determination by the Court; and
- (b) that the appellant ought not, by reason of poverty, to be required to pay the whole of the fees ordinarily payable, including the fees for preparing the record of appeal, the judge may, by order, direct that the whole or any part of such fees be waived.

(2) An application under subrule (1) may be made informally at any time but not later than seven days after the appellant has been informed of the amount which, in the absence of an order, he or she would be required to pay as fees or to deposit in respect thereof:

Provided that a judge of a superior court may entertain any such application out of time if it appears that there was sufficient cause for the delay in making the application.

(3) No fee shall be payable on the lodging of an application under subrule (1).

(4) A judge of a superior court considering the means of an applicant may rely on a report made to the judge by the Registrar.

(5) A judge of a superior court, making an order under subrule (1) may, at the same time and without formal application, order the extension of the time for giving notice of appeal or for lodging the memorandum of appeal.

(6) An order allowing or dismissing an application under subrule (1) shall be final:

Provided that the decision by the judge of the superior court that an appeal raises or does not raise a question of law proper for determination by the Court shall be conclusive of that question only in relation to the application.

**119. Refund of fees paid in criminal appeals**

Where an appeal is allowed from a superior court in exercise of its appellate criminal jurisdiction, the Court may, for sufficient reason, order the refund to the appellant of the fees paid by him or her under these Rules or any part thereof.

**120. Relief from fees and security in civil appeals**

(1) If, in any appeal from a superior court, in exercise of its original or appellate jurisdiction in any civil case, the Court is satisfied on the application of an appellant that the appellant lacks the means to pay the required fees or to deposit the security for costs and that the appeal is not without reasonable possibility of success, the Court may, by order, direct that the appeal may be lodged—

- (a) without prior payment of fees of Court, or on payment of any specified amount less than the required fees; or
- (b) without security for costs being lodged, or on lodging of any specified sum less than the amount fixed by rule 109, and may order that the record of appeal be prepared by the registrar of the superior court without payment therefor or on payment of any specified sum less than the fee set out in the Second Schedule conditionally on the intended appellant undertaking to pay the fees or the balance of the fees out of any money or property the appellant may recover in or consequence of the appeal.

(2) The Registrar shall be entitled to be heard on any such application.

(3) No fee shall be payable on the lodging of any such application.

(4) The Registrar shall have power to take such action as he or she may think necessary to enforce any undertaking given in accordance with subrule (1).

[Subsidiary]

PART VI – USE OF INFORMATION AND COMMUNICATIONS TECHNOLOGY

**121. Use of information and communications technology**

(1) Notwithstanding any provision in these Rules, where the Court deems it necessary to facilitate the just, expeditious, proportionate and affordable resolution of the appeals and applications, it may order the use of appropriate information and communications technology in its proceedings and operations for—

- (a) electronic filing;
- (b) electronic service;
- (c) electronic exchange of documents;
- (d) electronic cause lists;
- (e) electronic case management;
- (f) electronic empanelling;
- (g) electronic recording of proceedings;
- (h) hearing of appeals and applications via audio visual and any other approved technologies;
- (i) use of approved information and communications technology in court rooms;
- (j) delivery of judgments and rulings through audio visual or other approved technologies; and
- (k) any other administrative and court processes.

(2) The President may issue Practice Directions on the integration of information and communications technology in court processes.

PART VII – REVOCATION AND TRANSITIONAL PROVISIONS

**122. Revocation**

The Court of Appeal Rules, 2010 (L.N. 152/2010) are revoked.

**123. Transitional provisions**

In all proceedings pending, whether in the Court or in a superior court preparatory or incidental to, or consequential upon any proceeding in the Court at the time of the coming into force of these Rules, the provisions of these Rules shall thereafter apply, but without prejudice to the validity of anything previously done:

Provided that—

- (a) if and so far as it is impracticable in any such proceedings to apply the provisions of these Rules, the practice and procedure heretofore obtaining shall be followed; and
- (b) in any case of difficulty or doubt, the judge or the Registrar may informally give directions as to the procedure to be adopted.

FIRST SCHEDULE

FORMS

**Form A**

**(r. 44(2))**

<sup>(1)</sup> Delete inappropriate words

<sup>(2)</sup> Insert conviction, sentence, judgement, decree or order, as the case may be

In the Court of Appeal

at .....





Appellate Jurisdiction

[Subsidiary]

Dated this ..... day of ..... , 20 .....

Signed ..... Applicant Advocate for the applicant

Form C

(r. 66(4))

(1) Insert conviction, sentence, order, or as the case may be

In the Court of Appeal

at.....

Criminal appeal No. .... of 20.....

Between

.....Appellant

and

.....Respondent

(Appeal from a .....(1) of the High Court of ..... at ..... (Justice ..... ) dated the ..... day of ....., 20 ..... in ..... Criminal Case (1) No. .... of 20 ..... Appeal

MEMORANDUM OF APPEAL

....., the above-named appellant appeals to the Court of Appeal against the above-mentioned decision, where the appellant was convicted of ..... and sentenced to ..... on the following grounds, namely—

- 1. ....
2. ....

Signed ..... Appellant ..... Advocate for the applicant

To:

The Honourable Judges of the Court of Appeal lodged in the Registry/Sub-registry at..... on the .....day of ....., 20.....

Registrar

Form D

(r. 77(6))

(Heading as in the proceedings appealed from)

NOTICE OF APPEAL

- (1) Delete as appropriate
(2) Specify part complained of
(3) Copies of the notice should be served on all persons directly affected by the appeal

TAKE NOTICE that ..... being dissatisfied with the decision of the Honourable Justice .....given at ..... on the ..... day of ....., 20....., intends to appeal to the Court of Appeal against the whole of the said decision/such part of the decision (1) as decides that (1) (2)

The address for service

is .....

It is intended to serve copies of this notice on

(3) .....

Appellate Jurisdiction

[Subsidiary]

Dated this.....day of....., 20.....

Signed .....Appellant Advocate for the applicant

To: The Registrar of the High Court of.....at..... lodged in the High Court of .....at this .....day of .....20.....

Registrar Form E (r. 81(2)) (Heading as in the proceedings appealed from)

NOTICE OF ADDRESS FOR SERVICE

TAKE NOTICE that the address for service of a respondent served with notice of appeal is

Dated this.....day of....., 20.....

Signed .....Respondent Advocate for the respondent

To: The Registrar/Deputy Registrar of the Court of Appeal at ..... Copies to be served on .....lodged in the registry/sub-registry at ..... of .....20.....

Registrar Form F (r. 95(3)) 1) Insert conviction, sentence or order, as the case may be (2) Delete and amend as necessary (3) Set out order which it is intended to as court to make

In the Court of Appeal at..... Criminal appeal No. .... of 20..... Between

.....Appellant and .....Respondent

(Appeal from a .....(1) of the High Court of .....at .....(Hon. Justice .....) dated the ..... day of .....20 .....in Civil Case (1) Civil Appeal/Bankruptcy Cause/Matrimonial Cause/Miscellaneous Cause (2) No. ....of....., 20.....

MEMORANDUM OF APPEAL

....., the above-named appellant appeals to the Court of Appeal against the whole/part (2) of the above-mentioned decision, on the following grounds, namely—

Appellate Jurisdiction

[Subsidiary]

- 1. ....
- 2. ....
- 3. ....
- 4. ....
- 5. ....

It is proposed to ask the Court for an order that

(<sup>3</sup>) .....

Signed ..... *Appellant*  
*Advocate for the applicant*

To:  
The Honourable Judges of the Court of Appeal copies to be served  
on .....lodged in the Registry/Sub-registry at..... on  
the .....day of ....., 20.....

Registrar

**Form G** (r. 96(3))

(<sup>1</sup>) Set out order which it is intended to  
as court to make

*(Headings as in Form F)*

**NOTICE OF CROSS-APPEAL**

TAKE NOTICE that on the hearing of this appeal, the above-named respondent  
will contend that the above-mentioned decision ought to be varied or reversed to  
the extent and in the manner and on the grounds hereinafter set out, namely—

- 1. ....
- 2. ....

It is proposed to ask the Court for an order that

(<sup>1</sup>) .....

It is intended to serve copies of this notice  
on.....

Signed ..... *Respondent*  
*Advocate for the respondent*

To:  
The Honourable Judges of the Court of Appeal lodged in the Registry/Sub-  
registry at..... on the .....day of ....., 20.....

Registrar

**Form H** (r. 96(3))

*(Headings as in Form F)*

**NOTICE OF GROUNDS AFFIRMING DECISION**

TAKE NOTICE that on the hearing of this appeal, the above-named respondent  
will contend that the above-mentioned decision ought to be affirmed upon the  
grounds other than those relied upon by the High Court, namely—

- 1. ....
- 2. ....

It is intended to serve copies of this notice

on.....  
Dated this.....day of....., 20.....

Signed ..... *Respondent*  
*Advocate for the respondent*

To:

The Honourable Judges of the Court of Appeal lodged in the Registry/Sub-registry at..... on the .....day of ....., 20.....

Registrar

**Form I**

**(r. 35(3)(a))**

<sup>(1)</sup> Delete inappropriate words

*(Headings as in Form A)*

**ORDER**

Before ..... in Chambers/in Court <sup>(1)</sup>

Upon

hearing.....

and upon reading the affidavit

of.....

filed herein on

the .....

IT IS ORDERED

that.....

and that the costs of this application

be .....

Dated this..... day of.....,

20.....

Extracted

on .....

Registrar

<sup>(1)</sup> Delete when not appropriate

*(Headings as in Form F)*

**ORDER**

IN COURT.....

Before .....

This appeal coming on for hearing this.....day of.....in the

presence of.....when the appeal was stood over for judgment

and this appeal coming for judgement this day <sup>(1)</sup>

IT IS ORDERED THAT—

1. ....
2. ....
3. ....
4. ....
5. ....
6. ....etc.

AND IT IS ORDERED ( 1 ) .....

Dated this ..... day of.....20.....

Extracted on .....

Registrar

\_\_\_\_\_

## Appellate Jurisdiction

[Subsidiary]

## SECOND SCHEDULE

[r. 109, 120(1)]

## FEES

**Part 1**

*Fees in connection with applications, other than applications relating to criminal appeals from a superior court in its original jurisdiction and other than applications under rule 112*

<b>S/No.</b>	<b>Item</b>	<b>Fee (Sh.)</b>
1.	Upon lodging a notice of motion	500
2.	Upon lodging a notice of motion under certificate of urgency	750
	For each subsequent day of hearing or part thereof excluding the first day	800
3.	Upon lodging an affidavit, other than an affidavit annexed to a notice of motion	150
4.	Upon giving notice under rule 54 (1)	3,000

**Part 2**

*Fees in connection with criminal appeals*

<b>S/No.</b>	<b>Item</b>	<b>Fee (Sh.)</b>
1.	Upon lodging a notice of appeal from a superior court in its appellate jurisdiction	200
2.	For preparing the record of appeal, for each folio or part thereof—	
	for the first copy	10
	for each additional copy	5

**Part 3**

*Fees in connection with civil appeals*

<b>S/No.</b>	<b>Item</b>	<b>Fee (Sh.)</b>
1.	Upon lodging a notice of appeal	450
2.	Upon lodging a notice of address for service or a notice of change of address	100
3.	Upon lodging a memorandum of appeal against an interlocutory decision or against a final decision	1,500
4.	Where the appeal is against an award or the refusal to make an award, of money, or against a decision as to the ownership of or entitlement to the possession of property, if the amount of money (exclusive of any interest awarded thereon) or the value of property—	
	(a) exceeds sh. 10,000 but does not exceed sh. 210,000	2,000
	(b) exceeds sh. 210,000 but does	sh. 2,000 and sh. 100 for each sh. 2,000 or part

*Appellate Jurisdiction*

[Subsidiary]

		not exceed sh. 210,000	thereof, of the value over sh. 10,000
		(c) exceeds sh. 210,000	sh. 3,000 and sh. 100 for each sh. 2,000 or part thereof, of the value over sh. 210,000 subject to a maximum of sh. 100,000
		(d) in any other case	sh. 1,000 and sh. 800 for a day or part thereof, of the hearing, excluding the first day
5.	Upon lodging a notice of cross-appeal		300
6.	Upon lodging a notice of grounds for affirming a decision		150
7.	Upon lodging a notice withdrawing an appeal, or a notice of cross -appeal or a notice of grounds for affirming a decision		200
8.	Security for costs		6,000
	<b>Part 4</b>		
	<i>Miscellaneous</i>		
<b>S/No.</b>	<b>Item</b>		<b>Fee (Sh.)</b>
1.	For serving a document in connection with a civil application/or appeal, in addition to all necessary expenses of travel—		
	(a) where the person to be served resides or has his place of business within the city town where the registry or sub- registry of the court is situated		400
	(b) in any other case		1,000
2.	For sealing an order in a civil application or appeal		250
3.	For preparing certified copies of a document—		
	(a) for each folio or part thereof		20
	(b) for each subsequent copy		10
4.	For the grant of a license under rule 25 (3)		sh. 10,000 and sh. 5,000 for each day or part thereof of

[Subsidiary]

5.	Upon applying to inspect the proceedings or an application or appeal that has been determined	the hearing, excluding the first day 300
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THIRD SCHEDULE

[r. 105(2), 116(2), 117(2)]

TAXATION OF COSTS

### 1. Interpretation

In this Schedule, a folio means one hundred words, and a single figure or a group of figures up to seven shall count as one word.

### 2. Lodging and service of bill of costs

(1) Where costs are to be taxed, the advocate for the party to whom the costs were awarded shall lodge his bill with the taxing officer and shall before or within seven days after lodging it, serve a copy of it on the advocate for the party liable to pay it.

(2) A bill of costs shall be lodged as soon as practicable after the making of the order for costs and not later than twenty-one days after a request in writing therefor by the party liable, or such further time as the Registrar may allow.

(3) A bill of costs may not be lodged by an advocate who is not on the record.

### 3. Form of bill

(1) A bill of costs shall be instituted and filed in the proceedings and shall be prepared in five columns as follows—

- (a) the first or left-hand column for the dates of the items;
- (b) the second column for the serial numbers of the items;
- (c) the third column for the particulars of the services charged for;
- (d) the fourth column for the professional or scale charges;
- (e) the fifth column for the taxing officer's deductions.

(2) Every bill of costs shall be endorsed with—

- (a) the name and address of the advocate lodging the same;
- (b) the name and address of every party to be served or his advocate;
- (c) a certificate signed by the advocate lodging the bill that the number of folios; in respect of any item in the bill charged for by the folio, is correct. If such certificate is found to be incorrect the item may be disallowed.

(3) Every bill of costs shall be endorsed at the end thereof with a form of certificate for signature by the taxing officer certifying the result of the taxation.

### 4. Disbursements

(1) Disbursements shall be shown separately at the foot of the bill of costs.

(2) Receipts for all disbursements shall be produced to the taxing officer at the time of taxation.

(3) No disbursement shall be allowed which has not been paid at the time of taxation.

### 5. Bills not to be altered after lodging

No alteration or addition to a bill of costs once lodged shall be made except by consent of the parties or by permission of the taxing officer or a judge.



**6. Notice of taxation**

When a bill of costs has been lodged as aforesaid, the taxing officer shall issue a notice to all parties concerned or their advocates giving the date, time and place at which the bill will be taxed.

**7. Time and adjournment**

The taxing officer shall have power to limit or extend the time for proceedings before him, and to adjourn the same from time to time and from place to place.

**8. Failure to attend taxation**

If any party or advocate who has been duly served with a notice of taxation fails to appear at the date and time specified in such notice, the taxing officer may proceed to tax the bill notwithstanding such absence.

**9. Quantum of costs**

(1) The fee to be allowed for instruction to make, support or oppose any application shall be such sum as the taxing officer shall consider reasonable but shall not be less than one thousand shillings.

(2) The fees to be allowed for instructions to appeal or to oppose an appeal shall be such sum as the taxing officer shall consider reasonable, having regard to the amount involved in the appeal, its nature, importance and difficulty, the interest of the parties, the other costs to be allowed, the general conduct of the proceedings, the fund or person to bear the costs and all other relevant circumstances.

(3) The sum allowed under subparagraph (2) shall include all works necessary and properly done in connection with the appeal and not otherwise chargeable, including attendances, correspondence, perusals, and consulting authorities.

(4) Other costs shall, subject to the provisions of paragraphs 10, 11 and 12, be awarded in accordance with the scale set out in the table set out at the end of this schedule or, in respect of any matter for which no provision is made in those scales, in accordance with the scales applicable in the High Court.

**10. Fees for drawing documents**

The fee for drawing a document shall include the preparation of all copies for the use of the party drawing it and for filing and service when only one other party or one advocate for other parties has to be served; where there are additional parties, fees may be charged for making the necessary additional copies.

**11. Taxation of bills**

(1) On taxation the taxing officer shall allow such costs, charges and disbursements as shall appear to him to have been reasonably incurred for the attainment of justice but no costs shall be allowed which appear to the taxing officer to have been incurred through overpayment, extravagance, over caution, negligence or mistake or payment of special charges or expenses to witnesses or other persons or by other unusual expenses.

(2) In taxing the costs of any civil appeal, the taxing officer shall disallow the costs of any matter improperly included in the record of appeal or in any supplementary record of appeal.

**12. Overriding discretion**

If, after a bill of costs has been taxed, the taxing officer considers that, having regard to all the circumstances, the total of the bill before signing the certificate of taxation is excessive, he may make such a deduction from the total as will in his opinion render the sum reasonable.

**13. Excessive claims**

If more than one quarter of the profit costs claimed is disallowed on taxation the costs of drawing, filing and serving the bill and of attending taxation shall be disallowed.

[Subsidiary]

**14. Set-off of costs**

Where a party entitled to receive costs is also liable to pay costs, the taxing officer may tax the costs which that party is liable to pay and adjust them by way of deduction or set-off and direct payment of any balance.

**15. Costs of more than one advocate**

(1) Costs of more than one advocate shall not be allowed unless the Court has so directed:

Provided that if an advocate has instructed another advocate to appear at the hearing of an appeal, the fee paid to the latter, or so much thereof as the taxing officer considers reasonable, may be allowed but so that the total of such fee and the instructions fee allowed to the instructing advocate shall not be greater than it would have been if one advocate only had acted in the matter.

(2) Where the Court has directed that the costs of two advocates be allowed—

- (a) where the senior advocate is not a member of the same firm as the advocate on the record, he shall be allowed the fee paid to him, including fees for attending in court, or so much thereof as the taxing officer shall consider reasonable;
- (b) where the senior advocate is a member of the same firm as the advocate on the record, he shall be allowed such fee as would have been allowed in the case of an advocate not a member of that firm; and
- (c) the advocate on record shall be allowed the usual instruction, hearing and other fees.

(3) The fee paid to another advocate by the advocate on the record shall be shown as a disbursement.

**16. Costs where advocate changed during proceedings**

If there has been a change of advocates the bill of costs of the first advocate may be annexed to that of the current advocate and its total shown as a disbursement and the bill will be taxed in the ordinary way, the current advocate being heard on it, but the taxing officer may require the advocate to attend.

**17. Two or more parties**

Where the same advocate is employed for two or more parties and separate proceedings are taken by or on behalf of any two such parties, the taxing officer shall consider in the taxation of such advocate's bill of costs whether such separate proceedings were necessary and proper, and if he is of opinion that any part of the costs occasioned thereby has been unnecessarily or improperly incurred, the same shall be disallowed.

**18. Costs where trustees defend**

In taxing the costs as between party and party or for payment out of a trust fund of joint executors or trustees who are separately represented, the taxing officer shall, unless otherwise ordered by the Court or a Judge, allow only one set of costs for such parties, such costs to be apportioned among them as the taxing officer shall deem fit.

**19. Expenses of persons attending hearing**

The taxing officer shall allow the reasonable expenses of a party who appeared in person at the hearing of an application or appeal and those of a witness who gave evidence at any such hearing but shall not allow the expenses of any other person who may have attended the hearing, unless the Court has so ordered.

**SCALE OF COSTS**

<b>S/No.</b>	<b>Item</b>	<b>Fee (sh.)</b>
1.	For instructions to file a notice of appeal	1,500

2.	For instructions to act for a respondent —	(a) where an appeal is subsequently instituted 1,500 (b) where no appeal is subsequently instituted, to cover all costs arising out of the notice of appeal, other than disbursements and those of any application to the superior court or the Court 750
3.	For drawing a notice of motion	1,000
4.	For drawing an affidavit, for each folio or part thereof, exclusive of affidavits	100
5.	For drawing a notice of appeal	500
6.	For drawing a notice of address for service	500
7.	For drawing memorandum of appeal	2,000
8.	For drawing a notice of cross-appeal	1,000
9.	For drawing a notice of grounds for affirming a decision	1,000
10.	For drawing an order, for each folio or part thereof	100
11.	For drawing a bill of costs, for each folio or part thereof	100
12.	For drawing any other necessary documents to be filed or used in the court, for each folio or part thereof	100
13.	For making any necessary copies, for each folio or part thereof—	(a) for the first copy 20 (b) for each subsequent copy 20
14.	For attendance at the Registry	200
15.	For attendance on the Registrar—	(a) for the first 15 minutes 300 (b) for each subsequent 15 minutes 100
16.	For attending on a judge in chambers—	(a) for the first 30 minutes 1,000 (b) for each subsequent 30 minutes 500

*Appellate Jurisdiction*

[Subsidiary]

17. For attending in court, where the matter was listed but not reached, for each day 750
18. For attending in court on the hearing of any application or appeal—
- (a) for the first 30 minutes 500
  - (b) for each subsequent 30 minutes 1,000
19. For attending in court to take judgement 1,000
20. The court adjournment fees shall be payable as follows
- (a) For adjourning the hearing of an appeal whether by consent or not 2,000
  - (b) For adjourning the hearing of an application whether by consent or not 1,000
  - (c) For adjourning a 500 mention whether by consent or not
- Provided that the Court may impose additional court adjournment fees or costs.
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