

Uganda

Judicature Act

## Judicature (Court of Appeal Rules) Directions Statutory Instrument 13-10 of 2000

Legislation as at 3 January 2000

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# Uganda

## Judicature Act

### Judicature (Court of Appeal Rules) Directions Statutory Instrument 13-10 of 2000

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**Commenced on 3 January 2000**

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Under section 48(1)(b) of the Act.

#### 1. Citation

These Directions may be cited as the Judicature (Court of Appeal Rules) Directions.

#### 2. Application

The Supreme Court Rules<sup>1</sup> are modified in their application to the Court of Appeal so as to read as set out in the Schedule to these Directions.

## Schedule

### Part I – General

#### 1. Citation

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

#### 2. Application

- (1) The practice and procedure of the court in connection with appeals and intended appeals from the High Court to the court and the practice and procedure of the High Court in connection with appeals to the court shall be as set out in these Rules.
- (2) Nothing in these Rules shall be taken to limit or otherwise affect the inherent power of the court, or the High Court, to make such orders as may be necessary for attaining the ends of justice or to prevent abuse of the process of any such court, and that power shall extend to setting aside judgments which have been proved null and void after they have been passed, and shall be exercised to prevent abuse of the process of any court caused by delay.

#### 3. Interpretation

In these Rules, unless the context otherwise requires—

“**advocate**” means a person who, under rule 26 of these Rules, has the right of audience before the court;

“**appeal**” in relation to appeals to the court includes an intended appeal;

“**appellant**” includes an intended appellant;

<sup>1</sup> The rules referred to are the Court of Appeal for East Africa Rules, S.I. 179/1972, as retitled the Supreme Court Rules by S.I. 19/1991.

“**appellate jurisdiction**” in relation to the High Court includes the original jurisdiction of that court in matters of revision, review, reference, case stated and point of law reserved; and in relation to a second or third appeal includes the original jurisdiction of the court from which the appeal emanates;

“**appropriate registry**” means the registry of the court or a subregistry;

“**Constitution**” means the Constitution of the Republic of Uganda;

“**court**” means the Court of Appeal of Uganda established under article 129 of the Constitution, and includes any division of the court and a single judge exercising any power vested in him or her sitting alone;

“**deputy registrar**” means a deputy registrar of the court and includes a deputy registrar of a subregistry and an officer of the High Court as the Chief Justice may appoint;

“**High Court**” means the High Court of Uganda established under article 129 of the Constitution;

“**judge**” means a judge of the court acting as such;

“**notice of appeal**” in relation to a criminal appeal means a notice lodged in accordance with rules 59, 60 and 61 of these Rules and in relation to a civil appeal, a notice lodged in accordance with rule 76 of these Rules;

“**notice of cross-appeal**” means a notice lodged in accordance with rule 91 of these Rules;

“**notice of ground for affirming the decision**” means a notice lodged in accordance with rule 92 of these Rules;

“**registrar**” means the registrar of the court and includes a deputy and an assistant registrar of the court;

“**registrar of the High Court**” includes a deputy registrar and an assistant registrar of that court;

“**registry**” means the registry of the court;

“**respondent**” in relation to an application in a civil matter includes any person on whom the notice of motion has been served and 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;

“**subregistry**” has the meaning assigned to it in rule 7 of these Rules.

#### 4. Computation of time

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

- (a) a period of days from the happening of an event or the doing of any act or thing shall be taken to be exclusive of the day on 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, which days are 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 vacation shall not be reckoned in the computation of time.

## 5. Extension of time

The court may, for sufficient reason, extend the time limited by these Rules or by any decision of the court or of the High Court for the doing of any act authorised or required by these Rules, whether before or after the expiration of that time and whether before or after the doing of the act; and any reference in these Rules to any such time shall be construed as a reference to the time as extended.

## 6. Suspension of sentence and stay of execution

- (1) No sentence of death or corporal punishment shall be carried out until the time 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) of this rule, 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 notice of appeal has been given in accordance with rule 59 or 60 of these Rules, 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; and
  - (b) in any civil proceedings, where a notice of appeal has been lodged in accordance with rule 76 of these Rules, order a stay of execution, an injunction, or a stay of proceedings on such terms as the court may think just.

## 7. Registry and subregistries

- (1) Subject to subrule (2) of this rule, the registry of the court shall be situated at Kampala.
- (2) Where the court is sitting or about to sit in any place other than Kampala, then, for the purpose of any application or appeal to be heard in that place, the registry shall be taken to be situated in that place.
- (3) There shall be subregistries of the court at such places in Uganda as the Chief Justice may, from time to time, order, and pending any such order, there shall be subregistries at Gulu, Mbale, Jinja, Fort Portal and Mbarara.
- (4) Any reference in these Rules to “the appropriate registry” shall be construed in the case of an appeal from the High Court—
  - (a) sitting in the area comprising the districts of Bundibugyo, Hoima, Kabarole, Kasese, Kibale and Masindi, as a reference to the subregistry at Fort Portal;
  - (b) sitting in the area comprising the districts of Apac, Arua, Gulu, Kitgum, Lira, Moyo and Nebbi, as a reference to the subregistry at Gulu;
  - (c) sitting in the area comprising the districts of Iganga, Jinja and Kamuli as a reference to the subregistry at Jinja;
  - (d) sitting in the area comprising the districts of Kapchorwa, Kumi, Kotido, Mbale, Moroto, Soroti, Pallisa and Tororo, as a reference to the subregistry at Mbale;
  - (e) sitting in the area comprising the districts of Bushenyi, Kabale, Kisoro, Mbarara, Ntungamo and Rukungiri, as a reference to the subregistry at Mbarara; and
  - (f) sitting elsewhere, as a reference to the registry.

## 8. Hours for lodging documents

The Chief Justice may, from time to time, direct during what hours the registry of the court and the registry of the High Court or any subregistry shall be open for the receipt of documents lodged under these Rules.

## 9. Maintenance of registers

- (1) The registrar of the court shall maintain—
  - (a) a register of applications in criminal matters, in which shall be entered particulars of every application lodged in the registry or sent to the registrar by any deputy registrar relating to a criminal appeal;
  - (b) a register of applications in civil matters, in which shall be entered particulars of every application lodged in the appropriate 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 every notice of appeal lodged in any criminal matter and of any subsequent proceedings; and
  - (d) a register of civil appeals, in which shall be entered particulars of every notice of appeal lodged in any civil matter and of any subsequent proceedings.
- (2) Every deputy registrar in charge of a subregistry shall maintain—
  - (a) a register of applications in criminal matters, in which shall be entered particulars of every application lodged in the registry relating to a criminal appeal; and
  - (b) a register of applications in civil matters, in which shall be entered particulars of every application lodged in the subregistry relating to a civil appeal.
- (3) Subject to subrule (4) of this rule, the registers to be maintained under these Rules shall each show the number of the application or the appeal, the number of the proceedings in the High Court, the names of the parties, the date when the essential steps in the proceedings were taken and the result of the application or appeal.
- (4) A register kept in a subregistry need not show the results of applications, other than applications heard where the register is kept, but shall show the dates when the material documents were sent to the registrar.
- (5) A register of criminal and civil appeals shall, in addition, 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.

## 10. Numbering of applications and appeals

- (1) Every application to the court other than an application made informally in the course of the hearing shall, whether lodged before or after the institution of an appeal, be given a serial number; and for that purpose, there shall be maintained in the registry and in each subregistry two series of numbers for each calendar year, one for applications in criminal matters and one for applications in civil matters; and the serial number shall be prefixed by letters indicative of the registry or subregistry.
- (2) Every criminal appeal shall be given a serial number in the registry, which number shall be allotted as soon as the notice of appeal is received; and for that purpose, a series of numbers shall be maintained for each calendar year.
- (3) Every civil appeal shall be given a serial number in the registry, which number shall be allotted as soon as the memorandum of appeal is received; and for that purpose, a series of numbers shall be maintained for each calendar year.

## 11. Endorsement of documents lodged

Whenever any document is lodged in the registry or in a subregistry or in the registry of the High Court under or in accordance with rule 10 of these Rules, the registrar or deputy registrar or registrar of the High

Court, as the case may be, shall immediately cause it to be endorsed showing the date and time when it was lodged.

## **12. Registrar's discretion regarding place of lodging documents**

- (1) Notwithstanding any provision of these Rules appointing a registry as the place where any document is to be lodged, the registrar may, in any particular case, permit the lodging of any document in the registry or in any subregistry.
- (2) An application for permission under this rule may be made informally, but shall be in writing.
- (3) The registrar or a deputy registrar who receives a document lodged under this rule shall immediately send it 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.

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

- (1) The registrar or the registrar of the High 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 with the words "lodged out of time" and inform the person lodging it accordingly.
- (2) When a document is accepted out of time by the registrar of the High Court, he or she shall inform the registrar.

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

- (1) Unless the nature of the document renders it impracticable, every document prepared for use in the court shall be on foolscap or A4 paper of durable quality; and only one side of the paper shall be used, and a margin of not less than 3.8 centimetres shall be left on the left side of the sheet.
- (2) All documents prepared for use in the court shall be clear and easily legible and may be produced by printing, type lithography, stencil duplicating, photography, xerography, typewriting or writing or any combination of them.
- (3) In every criminal appeal, the record of appeal, and, in every civil appeal, the memorandum of appeal, together with the record of appeal, shall be bound in book form with a cover of stout paper and may be in more volumes than one, and the title of the appeal shall appear on the cover.
- (4) The pages of every application and, in criminal cases, of the record of appeal, and, in civil cases, of the memorandum of appeal and the record of appeal, shall be numbered consecutively.
- (5) In all applications and appeals, every tenth line of each page of the record shall be indicated in the margin on the right side of the sheet.

## **15. Power for registrar and registrar of High Court to reject documents**

- (1) The registrar, or the registrar of the High Court, as the case may be, may refuse to accept any document which does not comply with the requirements of rule 14 of these Rules.
- (2) Subject to rules 111 and 113 of these Rules, the registrar, or the registrar of the High 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, without 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) of this rule, the document shall be taken to have been duly lodged; but the person who lodged it shall, as soon as practicable after the error is discovered, pay the required fees or the balance of those fees or lodge the required security.

- (4) Any person who is dissatisfied with a decision of the registrar, or a registrar of the High Court, rejecting any document under this rule, may require the matter to be referred to a judge for his or her decision.
- (5) An application under subrule (4) of this rule may be made informally at the time when the decision is given or in writing within seven days after that date.

## 16. Signature of documents

- (1) Any document may be signed on behalf of the person making it by any person entitled under rule 23 of these Rules to appear on his or her behalf.
- (2) In or in relation to criminal appeals, a document may be signed on behalf of an appellant who is alleged to be of unsound mind by a person entitled under rule 23 of these Rules 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 prison officer.

## 17. Form of amendments

- (1) Where any person obtains leave to amend any document, the document itself may be amended or, if it is more convenient, an amended version of the document may be lodged.
- (2) Where any person lodges an amended version of a document, he or she shall show clearly—
  - (a) any words or figures deleted from the original, by including those 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 similarly be shown in each copy of the record of appeal.

## 18. Service and transmission of documents

- (1) Where any document is required by these Rules to be served on any person, service may be effected in a way directed in each case by the court, which shall normally be a way in which a comparable process of the High Court could be served; and in the absence of any special direction, it shall be made personally on the person to be served or any person entitled under rule 23 of these Rules to appear on his or her behalf.
- (2) Where any 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 the 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 taken to be service on the advocate.
- (4) Proof of service may be given where necessary by affidavit, unless in any case the court requires proof by oral evidence.
- (5) 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.
- (6) Where any document is required to be sent to any person, the document may be sent by hand or by registered post to that person or to any person entitled under rule 23 of these Rules to appear on his or her behalf; and 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 telegram or facsimile transmission (fax).

## 19. Change of address for service

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

## 20. Sittings of the court

The sittings of the court and the matters to be disposed of at those sittings shall be determined by the Deputy Chief Justice and shall be advertised and notified in such manner as the Deputy Chief Justice may direct; but nothing in these Rules shall preclude the court from disposing of any business that has not been advertised or notified.

## 21. Vacations

- (1) Vacations of the court shall be determined by the Chief Justice, but the arrangement of business during a vacation shall be determined by the Deputy Chief Justice; and those arrangements shall be advertised or notified in a manner directed by the Deputy Chief Justice.
- (2) No business will be conducted during a vacation, unless the Chief Justice otherwise directs, except the delivery of judgment and, when the matter is shown to be one of urgency, the hearing of applications and the taxation of bills.

## 22. Places where appeals are to be heard

- (1) Appeals to the court shall, unless the Deputy Chief Justice or the presiding judge otherwise directs, be heard at Kampala.
- (2) Application for an appeal to be heard otherwise than in subrule (1) of this rule shall be made before the date of the hearing in writing.

## 23. Appearances

- (1) Subject to rule 73 of these Rules, a party to any proceedings in the court may appear in person or by advocate.
- (2) A corporation may appear either by advocate or by a director, manager or secretary of the corporation appointed by resolution under the seal of the corporation; and a sealed copy of the resolution shall be lodged with the registrar.
- (3) A person under disability may appear by advocate or by his or her committee, next friend or guardian *ad litem*, as the case may be.
- (4) Where a person has acted as next friend or guardian *ad litem* in the High Court 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 in that capacity, lodge a consent to act and shall then be taken to be duly appointed.
- (5) In any other case, the court may appoint the guardian *ad litem* for the purpose of an appeal.
- (6) The court may, at any time, remove and replace any guardian *ad litem* however appointed.

## 24. Change of advocate, etc.

Where a party to an application or appeal in the court 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, he or she shall, as soon as practicable, lodge with the registrar notice of the change and shall serve a copy of the notice on the other party or on each other party appearing in person or separately represented, as the case may be.

## 25. Assignment of advocate

- (1) In any application in a criminal matter or in a criminal appeal in the court, the Deputy Chief Justice or the presiding judge may, at any time, assign an advocate to represent an applicant or appellant if it appears desirable in the interests of justice.
- (2) In accordance with article 28(3)(e) of the Constitution, the applicant or appellant shall be entitled to be assigned an advocate under subrule (1) of this rule in the case of an offence which carries a sentence of death or imprisonment for life.
- (3) In any civil appeal involving a point of law of public importance, if the Deputy Chief Justice or the presiding judge is satisfied that any appellant or respondent lacks the means to employ an advocate, the Deputy Chief Justice or the presiding judge may, with the consent of the appellant or respondent, as the case may be, assign an advocate to represent him or her, and may require the appellant or respondent, as a condition of having an advocate assigned to him or her, to undertake to refund the fees and expenses of the advocate out of any money or property he or she may recover in or in consequence of the appeal.
- (4) The fees and the expenses of an advocate assigned under subrule (1), (2) or (3) of this rule shall be defrayed out of the funds of the court.
- (5) The registrar may take such action as he or she may think necessary to enforce any undertaking given in accordance with subrule (3) of this rule; and any monies so recovered shall be paid into the Consolidated Fund.

## 26. Right of audience of advocates

- (1) The Attorney General and the Solicitor General shall have the right of audience before the court and shall, in that order, take precedence over all other advocates.
- (2) Other legal officers of the Government shall have the right of audience before the court in all proceedings within the scope of their official duties.
- (3) Every advocate who is for the time being entitled to practise before the High Court shall have the right of audience before the court.
- (4) An advocate who has been struck off the roll of advocates or who is under suspension from practice shall have no right of audience in the court.
- (5) Any other person entitled to appear as an advocate before any court of unlimited jurisdiction, if licensed to do so by the Chief Justice, and, subject to payment of the prescribed fee, shall have the right of audience before the court in respect of any one appeal, including any cross-appeal heard with it, 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 any application or appeal to rely on the judgment in any reported case or to quote from any book shall lodge with the registrar at the place where the application or appeal is to be heard a list containing the titles of those cases with their citations and the names, authors and editions of any such books and shall serve a copy of the list on the other party or on each other party appearing in person or separately represented, as the case may be.
- (2) A supplementary list may, when necessary, be produced at the time of the hearing.
- (3) A supplementary list shall be in four copies, except in the case of an application to be heard by a single judge of the court, when it shall be in duplicate, and shall be lodged at least forty-eight hours before the application or appeal is due to be heard.
- (4) Notwithstanding subrules (1), (2) and (3) of this rule, the registrar may require the advocate to produce certified or photostat copies of the judgment or passage in the book intended to be relied

on; and the advocate shall comply with those requirements before the hearing of the application or appeal.

- (5) An advocate who intends at the hearing of any application or appeal to rely on the judgment in any unreported case shall, at or before the hearing, produce a certified or photostat copy of the judgment and, except in the case of an application to be heard by a single judge of the court, two other copies of it, for the use of the court, and in every case, one copy for the use of the other party, or each party appearing in person or separately represented, as the case may be.

## **28. Order of addresses**

- (1) The court shall, at the hearing of an application or appeal, hear first the applicant or appellant, then the respondent and then the applicant or the appellant in reply.
- (2) At the hearing of an appeal where notice of cross-appeal has been given, the court shall ordinarily 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.
- (3) The court may dismiss but shall not allow any preliminary objection, application, appeal or cross-appeal without calling on the opposing party.
- (4) 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.
- (5) This rule shall apply where notice of grounds for affirming the decision has been given, in the same way in all respects as it applies where notice of cross-appeal has been given.

## **29. Appeals to be heard in court**

- (1) Every appeal shall be heard in 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.
- (2) In exceptional circumstances, the presiding judge may direct that the public be excluded, if he or she is satisfied that national security or the interests of justice so require.

## **30. Power to reappraise evidence and to take additional evidence**

- (1) On any appeal from a decision of the High Court acting in the exercise of its original jurisdiction, the court may—
  - (a) reappraise the evidence and draw inferences of fact; and
  - (b) in its discretion, for sufficient reason, take additional evidence or direct that additional evidence be taken by the trial court or by a commissioner.
- (2) When additional evidence is taken by the court, it may be oral 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 the evidence to the court, with a statement of its opinion on the credibility of the witness or witnesses giving the additional evidence; and when evidence is taken by a commissioner, he or she shall certify the evidence to the court, without any such statement of opinion.
- (4) The parties to the appeal are entitled to be present when the additional evidence is taken, but that evidence shall not be taken in the presence of assessors.

### 31. Power to call for report

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

### 32. General powers of the court

- (1) On any appeal, the court may, so far as its jurisdiction permits, confirm, reverse or vary the decision of the High Court, or remit the proceedings to the High Court with such directions as may be appropriate, or order a new trial, and make any necessary, incidental or consequential orders, including orders as to costs.
- (2) On any second appeal from a decision of the High Court acting in the exercise of its appellate jurisdiction, the court shall have power to appraise the inferences of fact drawn by the trial court, but shall not have discretion to hear additional evidence.
- (3) On any third appeal, the court shall decide the question of law which is put before it.

### 33. Judgment

- (1) This rule shall apply to judgments and orders by the court.
- (2) Judgment or an order may be given at the close of the hearing of an appeal or application or reserved for delivery on some future day which may be appointed at the hearing or subsequently notified to the parties and which shall, in any case, be without delay.
- (3) In criminal appeals, one judgment shall be given as the judgment of the court, but a judge who dissents shall not be required to sign the judgment.
- (4) The presiding judge may, in any particular case, direct that separate judgments be given.
- (5) In civil appeals, separate judgments shall be given by the members of the court unless the decision being unanimous, the presiding judge otherwise directs.
- (6) In applications in criminal and civil matters, the decision shall be delivered and embodied in a ruling and order as follows—
  - (a) in applications to a single judge, the decision shall be delivered by the single judge in chambers if the application was heard in chambers, or in court if heard in court;
  - (b) in an application to the full court in a criminal matter, one order shall be given as the order of the court, but a judge who dissents shall not be required to sign the order; and
  - (c) in applications to the full court in civil matters, separate rulings shall be given by the members of court, unless the decision being unanimous, the presiding judge otherwise directs.
- (7) The presiding judge may, in any particular case, direct that the decision of the court only shall be delivered and not the reasons for the decision; and in any such case, the judgment or judgments shall be deposited in the registry or subregistry in the place where the appeal or application was heard, and copies shall be available to the parties when the decision is delivered.
- (8) Notwithstanding subrule (2) of this rule, the court may, at the close of the hearing of an appeal or application, give its decision but reserve its reasons; and in any such case, the reasons may be delivered in court or deposited in the registry or subregistry in the place where the appeal or application was heard; and where the reasons are so deposited, copies of the reasons shall be available to the parties and they shall be so informed.

- (9) 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 any other member of the court that the presiding judge may direct.
- (10) Where judgment, or the reasons for a decision, has or have been reserved, the judgment of the court, or a judgment of any judge, or the 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, or by the registrar.
- (11) A judgment shall be dated as of the day when it is delivered or, where a direction has been given under subrule (7) of this rule, as of the day when the decision was delivered.

#### **34. Decisions to be embodied in decrees and orders**

- (1) Every decision of the court on appeal other than a decision on an application made informally in the course of a hearing shall be embodied in a decree.
- (2) Every decree referred to in subrule (1) of this rule shall be dated as of the date on which the decision was delivered and shall, in addition, show the date on which the decree was extracted.
- (3) A decree on an appeal shall be substantially in Form I in the First Schedule to these Rules, and an order on an application shall be substantially in Form J in that Schedule.

#### **35. Preparation of orders**

- (1) Where a decision of the court was given in an application in a criminal matter or in a criminal 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 their advocates.
- (2) Where a decision of the court was given in a civil appeal or in an application in a civil matter—
  - (a) the party who has substantially been successful shall, as soon as practicable, prepare a draft of the decree or order and shall submit it for the approval of the other parties;
  - (b) if all parties approve the draft, the decree or order shall, unless the presiding judge otherwise directs, be in accordance with it;
  - (c) if the parties do not agree on the form of the decree or order, or if there is unreasonable delay in the preparation or approval of a draft, the form of the decree or order shall be settled by the presiding judge or by a judge who sat at the hearing as the presiding judge shall direct, after giving all the parties an opportunity of being heard; and
  - (d) if the parties are unable to agree which party was substantially successful, the registrar, on the application of either party, which application may be made informally, and after giving all parties an opportunity of being heard, shall direct by which party the draft is to be prepared, and the direction shall be final.
- (3) The decree or order embodying the decision in a civil appeal or application in a civil matter shall be issued out of the registry or subregistry in the place where the appeal or application was heard.

#### **36. Correction of errors**

- (1) A clerical or arithmetical mistake in any judgment of the court or any error arising in it from an accidental slip or omission may, at any time, whether before or after the judgment has been embodied in a decree, be corrected by the court concerned, either of its own motion or on the application of any interested person so as to give effect to what was the intention of the court when judgment was given.
- (2) An order of the court may at any time be corrected by the court, either of its own motion or on the application of any interested person, if it does not correspond with the judgment or ruling it purports to embody or, where the judgment or order has been corrected under subrule (1) of this rule, with the judgment or order as so corrected.

**37. Notification of decisions**

- (1) The registrar shall send to the registrar of the High Court a sealed copy of the order embodying the decision of the court in any civil or criminal appeal from the High Court.
- (2) Where an appeal emanates from a court presided over by a chief magistrate or a magistrate grade I or a magistrate grade II, the final decision of the court shall be sent by the registrar in the form of a sealed copy of the order embodying the final decision in any civil or criminal appeal to the court of first or second instance.

**38. Signature and sealing of summonses, etc.**

Every summons, warrant, order, notice or other formal document issued by the court shall be signed by the judge or by the registrar, and shall be sealed with the seal of the court.

**Part II – Applications****39. Application for certificate of importance or leave to appeal in criminal matters**

- (1) In criminal matters—
  - (a) where an appeal lies if the High Court certifies that a question or questions of great public or general importance arise, applications to the High Court shall be made informally at the time when the decision of the High Court is given against which the intended appeal is to be taken; failing which a formal application by notice of motion may be lodged in the High Court within fourteen days after the decision, the costs of which shall lie in the discretion of the High Court;
  - (b) if the High Court refuses to grant a certificate under paragraph (a) of this subrule, an application may be lodged by notice of motion in the court within fourteen days after the refusal to grant the certificate by the High Court, for leave to appeal on the ground that the intended appeal raises one or more matters of public and general importance which would be proper for the court to review in order to see that justice is done.
- (2) Where an appeal lies with the leave of the court, an application may be made by notice of motion to the court within a reasonable time after sentence has been passed; and the decision of the court on the question of leave is final.

**40. Application for certificate of importance or leave to appeal in civil matters**

- (1) In civil matters—
  - (a) where an appeal lies if the High Court certifies that a question or questions of great public or general importance arise, application to the High Court shall be made informally at the time when the decision of the High Court is given against which the intended appeal is to be taken; failing which, a formal application by notice of motion may be lodged in the High Court within fourteen days after the decision, the costs of which shall lie in the discretion of the High Court; and
  - (b) if the High Court refuses to grant a certificate under paragraph (a) of this subrule, an application may be lodged by notice of motion in the court within fourteen days after the refusal to grant the certificate by the High Court for leave to appeal to the court on the ground that the intended appeal raises one or more matters of public or general importance which would be proper for the court to review in order to see that justice is done.

- (2) Where formerly an appeal lay from the High Court to the Supreme Court with leave of either the High Court or Supreme Court the same rules shall apply to appeals to the court—
  - (a) where an appeal lies with leave of the High Court, application for the leave shall be made informally at the time when the decision against which it is desired to appeal is given; or failing that application or if the court so orders, by notice of motion within fourteen days of the decision; and
  - (b) if the High Court refuses to grant leave, or where an appeal otherwise lies with leave of the court, application for the leave shall be lodged by notice of motion within fourteen days after the decision of the High Court refusing leave, or as the case may be, within fourteen days after the decision against which it is desired to appeal; and the decision of the court granting or refusing to grant leave is final.

#### **41. Order of application and notice of appeal**

- (1) Where an application for a certificate or for leave is necessary, it may be made before or after notice of appeal is lodged.
- (2) If any criminal appeal involves a certificate or leave and the appellant is in prison and unrepresented by an advocate, the High Court or the court shall, when passing sentence or any other order upon the appellant, call for the appellant to be produced in court to make his or her own application, and ascertain whether or not the appellant shall be granted the certificate or leave, or may adjourn the decision for the appellant to place all necessary facts before the court.

#### **42. Order of hearing applications**

- (1) Whenever an application may be made either in the court or in the High Court, it shall be made first in the High Court.
- (2) Notwithstanding subrule (1) of this rule, in any civil or criminal matter, the court may, on application or of its own motion, give leave to appeal and grant a consequential extension of time for doing any act as the justice of the case requires, or entertain an application under rule 6(2)(b) of these Rules, in order to safeguard the right of appeal, notwithstanding the fact that no application for that purpose has first been made to the High Court.

#### **43. Form of applications to court**

- (1) Subject to subrule (3) of this rule and to any other rule allowing informal application, all applications 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 in the First Schedule to these Rules and shall be signed by or on behalf of the applicant.
- (3) 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.

#### **44. Supporting documents**

- (1) Every formal application to the court shall be supported by one or more affidavits of the applicant or 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.
- (3) Application for leave under subrule (2) of this rule may be made informally.

- (4) Every formal application for leave to appeal shall be accompanied by a copy of the decision against which it is desired to appeal and, where an application has been made to the High Court for leave to appeal and the application has been refused, by a copy of the order of the High Court refusing the application.

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

- (1) Whenever a formal application is made to the court for leave to amend any document, the amendment for which leave is sought shall be set out in writing and if practicable, lodged with the registrar and served on the respondent before the hearing of the application; or if that is not practicable, it shall be handed to the court and to the respondent at the time of the hearing.
- (2) The court may consider an application for leave to amend whether made formally as in subrule (1) of this rule or informally during the course of proceedings and may dispose of the application or direct that an informal application be made formally.
- (3) Where the court gives leave for the amendment of any 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 specified, then within forty-eight hours after the giving of leave; and on failure to comply with the requirements of this subrule, the leave so given shall cease.

#### **46. Applications to be lodged in the registry**

- (1) An application to the court shall be lodged in the registry, except that where the matter is one of urgency, an application may be lodged either in the registry or a subregistry notwithstanding that the subregistry is not the appropriate registry.
- (2) All subsequent documents required to be lodged in relation to an application shall be lodged in the registry.

#### **47. Procedure regarding applications lodged in subregistries**

When an application is lodged in a subregistry, the deputy registrar shall immediately send it to the registrar.

#### **48. Applications during vacations**

An application which the applicant desires to be set down for hearing during a vacation shall, where the applicant is represented by an advocate, be accompanied by a certificate of urgency signed by that advocate.

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

- (1) When an application is to be heard by a single judge, the application and other documents relating to it shall be filed in duplicate, and in all other cases, in four copies.
- (2) When 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 55 of these Rules, 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 to it, including any affidavits filed by any other party prior to the adjournment or the giving of notice as the case may be.
- (3) The registrar may direct in any appeal or application, in any criminal or civil matter, how many additional copies of documents are required by the court in any particular case.

**50. Service of notice of motion**

- (1) The notice of motion and copies of all affidavits shall be served on all necessary parties not less than two clear days before the hearing.
- (2) In case of urgency, an application, other than an application under rule 111 of these Rules, 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 with the proceedings.
- (3) Where any person required to be served with a notice of motion has given an address for service in or in connection with the proceedings in the High Court but has given no subsequent address for service, the notice 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 any subsequent proceedings.

**51. Affidavits in reply**

- (1) Any person served with a notice of motion under rule 50 of these Rules may lodge one or more affidavits in reply and shall, as soon as practicable, serve a copy or copies on the applicant.
- (2) Any person referred to in subrule (1) of this rule may, with the leave of a judge, lodge one or more supplementary affidavits.
- (3) Application for the leave under subrule (2) of this rule may be made informally.

**52. Abatement of applications**

- (1) An application in a criminal matter 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) An application in a civil matter 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.

**53. Hearing of applications**

- (1) Every application, other than an application included in subrule (2) of this rule, shall be heard by a single judge of the court; except that any 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, or for a certificate that a question or questions of great public or general importance arise;
  - (b) an application for a stay of execution, injunction or stay of 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) of this subrule or made informally in the course of the hearing, including an application for leave or to extend time if the proceedings are found to be deficient in the matters in the course of the hearing.

**54. Hearing in court or chambers**

- (1) An application to be heard by a single judge shall be heard in court or in chambers as the judge may direct; except that where an application is made informally by letter with the consent of all parties, the judge may dispense with the appearance of the parties.

- (2) Any other application shall be heard in court, unless the Deputy Chief Justice or the presiding judge otherwise directs.

### 55. Reference from decision of a single judge

- (1) Where under section [12\(2\)](#) of the Act, any person being dissatisfied with the decision of a single judge of the court—
  - (a) in any criminal matter wishes to have his or her application determined by the court; or
  - (b) in any civil matter wishes to have any order, direction or decision of a single judge varied, discharged or reversed by the court,

the applicant may apply for it informally to the judge at the time when the decision is given or by writing to the registrar within seven days after that date.

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

### 56. Procedure on nonappearance

- (1) If on any day fixed for the hearing of an application the applicant does not appear, the application may be dismissed, unless the court sees fit to adjourn the hearing.
- (2) If the applicant appears and the respondent fails to appear, 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 under subrule (1) of this rule or allowed under subrule (2) of this rule, the party in whose absence the application was determined may apply to the court to restore the application for hearing or to rehear it, as the case may be, if the applicant can show that the latter was prevented by any sufficient cause from appearing when the application was called on for hearing.
- (4) An application under subrule (3) of this rule 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.
- (5) Subrule (1) of this rule shall not apply to any application in a criminal matter 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 otherwise orders.

### 57. Rescinding of orders

- (1) An order made on an application heard by a single judge may be varied or rescinded by that judge or any other judge of the court or by three judges of the court on the application of any person affected by the order 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 similarly be varied or rescinded by the court.

### Part III – Criminal appeals

#### 58. Application of Part III

This Part of these Rules shall apply only to appeals from the High Court acting in its original and appellate jurisdiction in criminal matters.

#### 59. Notice of appeal in capital cases

- (1) In the case of an offence punishable by a sentence of death—
  - (a) where the court has passed or confirmed the sentence of death, unless the convict objects, the convict shall be taken to have given notice of appeal to the Supreme Court as from the date that sentence was passed; and the presiding judge of the court shall note on the record that notice has been given, and the registrar shall register the date that the notice of appeal has been given, and the notice shall institute the appeal; and
  - (b) the registrar shall draw up a notice of appeal in conjunction with the advocate who defended the appellant, and the notice shall—
    - (i) state shortly the nature of the conviction, sentence and finding against which it is desired to appeal; and
    - (ii) contain the address at which any documents connected with the appeal may be served on the appellant and shall be in six copies.
- (2) 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.
- (3) Where 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 the certificate or leave before lodging the notice of appeal.
- (4) 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 his or her appeal.
- (5) 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.
- (6) A notice of appeal shall be substantially in Form B in the First Schedule to these Rules and shall be signed by or on behalf of the appellant.

#### 60. Notice of appeal in noncapital cases

- (1) In the case of an offence where the death sentence has not been passed, or which does not attract the death sentence, the accused may give notice informally at the time the decision is given that the accused person desires to appeal against the conviction and sentence, or only the sentence, or by notice in writing which shall be lodged in six copies with the registrar within fourteen days after the date of the decision.
- (2) The notice of appeal shall—
  - (a) state shortly the nature of the conviction and finding against which it is desired to appeal; and

- (b) contain the address at which documents connected with the appeal may be served on the appellant or appellants and shall be in six copies.
- (3) Rule 59(2), (3), (4), (5) and (6) of these Rules shall apply to appeals under this rule.

#### **61. Notice of appeal from acquittals**

- (1) Apart from the third appeal to the court being final, whenever the court acquits or confirms the acquittal of an accused person, the Director of Public Prosecutions, as empowered by the Judicature Act, may give notice of appeal as provided by rule 60(1) and (2) of these Rules.
- (2) Where the Director of Public Prosecutions gives notice of appeal in the event of an accused person being acquitted by the High Court, at the time that the decision is given, the accused person shall give his or her address for a service on him or her of the notice of hearing of the appeal; or, if the Director of Public Prosecutions gives notice of appeal in writing within fourteen days after the decision, the director shall notify the court of the address of the accused person for service of the notice of appeal upon him or her, and the notice of the date of hearing, which notices shall be substantially in the forms prescribed in respect of appeals against conviction.
- (3) The accused shall, as soon as possible, be informed that if he or she does not attend the hearing of the appeal, the appeal will be heard in his or her absence and that he or she may be liable to be arrested if the appeal of the Director of Public Prosecutions is successful.
- (4) Subrules (1), (2) and (3) of this rule shall apply to the case where the court confirms or orders the acquittal of an accused person and the Director of Public Prosecutions gives notice of appeal to the Supreme Court.

#### **62. Consolidation of appeals**

- (1) Where two or more appeals are brought from convictions, acquittals 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 the High Court where their appeals were 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**

On receipt of notice of appeal, the registrar of the High Court shall immediately send a copy of the notice to the registrar and one to the respondent named in it.

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

- (1) As soon as practicable after a notice of appeal has been lodged, the registrar of the High Court shall prepare the record of appeal.
- (2) For the purpose of an appeal from the High Court in its original jurisdiction, the record of appeal shall contain copies of the following documents in the following order—
  - (a) an index of all documents in the record with the numbers of the pages at which they appear, showing also under the reference to the trial judge's notes and under the reference to the 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 all exhibits put in at the trial;
  - (f) all documentary exhibits, photographs and plans put in at the trial and all depositions read in consequence of the absence of intended witnesses; except that the registrar of the High Court may, in his or her discretion, omit copies of documents which are of great length or other exhibits which are difficult to reproduce or may include copies of the relevant parts only of any such documents;
  - (g) the summing-up to the assessors, if there is a record of it, or of the judge's notes on which he or she 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 a point of law of general public importance is involved;
  - (j) the notice of appeal; and
  - (k) any other documents which the trial judge may order to be included, which may include additional grounds or explanation of his or her decisions which he or she considers would be of assistance to the court, or which appear to the registrar of the High Court to be necessary for the proper disposal of the appeal; and those documents may include a report made after sentence on an appellant's health.
- (3) Where any person convicted by a magistrate's court was committed for sentence to the High Court and is appealing to the court against the sentence imposed by the High Court, the record of appeal shall, in addition to the documents set out in subrule (2) of this rule, contain also a certificate by the registrar of the High 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 that notice has expired; or
  - (c) that the appellant has appealed against conviction to the High Court and that the appeal has been determined,
- as the case may be.
- (4) For the purpose of an appeal from the High Court in 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 (2) of this rule and shall contain also copies of the following documents relating to the appeal to the first appellate court—
- (a) the petition of appeal;
  - (b) the record of proceedings;
  - (c) the judgment;
  - (d) the order, if any;
  - (e) the notice of appeal; and
  - (f) in the case of a third appeal to the court, the record shall contain also the corresponding documents in relation to the second appeal and the certificate of the High Court that a point of law of general public importance is involved.

- (5) Notwithstanding subrule (1) of this rule, the registrar of the High Court shall not prepare the record of appeal—
  - (a) where the notice of appeal has been lodged out of time, until he or she has been notified that the time has been extended by order of the High Court or the court or unless the Deputy Chief Justice otherwise directs;
  - (b) where the appeal cannot be heard without leave to appeal or a certificate that a point of law of general public importance is involved, until he or she has been notified that the leave or certificate has been given or unless the Deputy Chief Justice otherwise directs;
  - (c) where the appeal is from the High Court in its appellate jurisdiction, until the prescribed fee, or such part of it if any, as the appellant may be liable to pay under an order made under rule 111 of these Rules, has been paid or a deposit on account of the fees has been made to the satisfaction of the registrar of the High Court.
- (6) The registrar of the High Court shall certify each copy of the record of appeal to be a true copy of the original proceedings; except that where the record is produced by printing, type lithography, stencil duplicating, photography or xerography, it shall suffice if one copy is so certified.
- (7) Every registrar responsible for preparing records of appeal shall do so within six weeks or in such time and manner as the Chief Justice may direct.

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

- (1) As soon as the record of appeal has been prepared, the registrar of the High Court shall cause a copy to be served on the appellant and a copy on the respondent and shall send four copies to the registrar.
- (2) The registrar of the High Court shall at the same time send to the registrar the original record of proceedings in the High Court and the original documentary exhibits in the High Court, other than any of great bulk, but shall not send any exhibits other than documentary ones, unless requested to do so by the registrar.
- (3) The registrar of the High Court shall ensure, so far as practicable, that all other exhibits are available for inspection by the court at the hearing of the appeal.
- (4) When a further appeal lies to the Supreme Court from the court, notice of appeal shall be entered by the court confirming or passing a sentence of death; or in the case of a lesser sentence, notice of appeal shall be given by the appellant or his or her advocate either informally or formally.
- (5) After notice is entered or given under subrule (4) of this rule, the procedure shall be the same as for appeals from the High Court to the court.
- (6) The registrar shall prepare the record for the Supreme Court and shall include in the proceedings prepared by the High Court the proceedings and judgment of the court including any necessary exhibits.
- (7) No record shall be prepared until a certificate, where relevant, that the appeal raises a matter or matters of great public or general importance, has been granted by the court, or if refused, the leave of the Supreme Court has been obtained that the appeal may proceed to the Supreme Court.

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

- (1) In this Part of these Rules, every appellant shall, within fourteen days after service on him or her of the record of appeal, lodge a memorandum of appeal in nine copies with the registrar, or the deputy registrar at the place where the appeal is to be held by the court, if the Chief Justice orders circuits by the court under article 135(3)(b) of the Constitution.
- (2) The memorandum of appeal shall set forth concisely and under distinct heads numbered consecutively, 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 or mixed law and fact and, in the case of a second appeal, the points of law, or mixed law and fact, which are alleged to have been wrongly decided, and in a third appeal the matters of law of great public or general importance 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 to be served on the respondent.
- (4) A memorandum of appeal shall be substantially in Form C in the First Schedule to these Rules, and shall be signed by or on behalf of the appellant.
- (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; except that where an appeal is dismissed under this subrule, the appellant, if he or she can show sufficient cause, may apply to the court to restore it for hearing.

#### **67. Supplementary memorandum**

- (1) The 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 Deputy Chief Justice or the presiding judge to represent an appellant may, within fourteen days after the date when he or she is notified of his or her 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) Any person lodging a supplementary memorandum under this rule shall cause a copy of it to be served on the respondent.

#### **68. Presentation of arguments in writing**

- (1) An appellant or, where the appellant is the State, a respondent who does not intend to appear in person or by advocate at the hearing of the appeal may lodge with the registrar or with the deputy registrar at the place where the appeal is to be heard a statement in writing of his or her arguments in support of or in opposition to the appeal, as the case may be.
- (2) Every statement referred to in subrule (1) of this rule shall be signed by or on behalf of the appellant or respondent, as the case may be, and shall be lodged in nine copies at the time of or within fourteen days after lodging the memorandum of appeal.
- (3) A person who has lodged a statement under this rule shall not, except with the leave of the court, address the court at the hearing of the appeal.
- (4) On receipt of a statement under subrule (1) of this rule, the registrar or deputy registrar shall immediately send one copy of it to the other party.

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

- (1) If the appellant is in prison, he or she shall be taken to have complied with the requirements of rules 59, 60, 66, 67 and 68 of these Rules or any of them if he or she gives to the officer in charge of the prison the notice of appeal, memorandum of appeal or statement provided for in those rules respectively.
- (2) In any case to which subrule (1) of this rule applies, in computing the time limited for lodging the notice, memorandum or statement, 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 High Court or the registrar or deputy registrar, as the case may be.
- (3) An officer in charge of a prison who receives a notice or statement under this rule shall, immediately, endorse it 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 the notice being given, the appeal shall be taken to have been dismissed.
- (2) When an appeal is withdrawn, the registrar shall immediately notify the respondent and the registrar of the High Court.
- (3) An appeal which has been withdrawn 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.

#### **71. Abatement of appeals**

An appeal, other than an appeal against a sentence of a fine or an order for costs, compensation or forfeiture, shall abate on the death of the appellant or, where the appellant is the State, on the death of the respondent.

#### **72. Notice of hearing**

- (1) The registrar shall cause notice to be given to the appellant and to the respondent of the time and place at which an appeal will be heard.
- (2) A notice under subrule (1) of this rule shall be given not less than seven days before the date appointed for the hearing, unless in any particular case the Deputy Chief Justice or the presiding judge otherwise directs.

#### **73. Appearance at hearing and dismissal for nonappearance**

- (1) The appellant and the respondent shall be entitled to be present at the hearing of the appeal.
- (2) An applicant other than an appellant under sentence of death or imprisonment for life, or a respondent, if either is imprisoned and represented by an advocate, shall, unless in any particular case the court otherwise directs, if he or she wishes to be present, be responsible for paying the expenses of his or her transport and that of his or her escort to and from the court.
- (3) Where an appellant is represented by an advocate or has lodged a statement under rule 68 of these Rules or is in prison, then subject to article 28(5) of the Constitution, it shall not be necessary for him or her to attend personally the hearing of his or her appeal, unless the court orders his or her attendance.
- (4) If an appellant is on bail, he or she shall attend the hearing of his or her appeal or, with the leave of the registrar, shall, before the time of hearing, attend the High Court at the place where the bail bond was executed and submit himself or herself to the order of that court pending disposal of the appeal.
- (5) Where an appellant is in prison and has stated that he or she does not intend to appear at the hearing of his or her appeal, the appeal shall be heard in his or her absence, unless the court orders attendance.
- (6) Subject to subrule (5) of this rule, if on the day fixed for the hearing of an appeal, the appellant does not appear in person or by an advocate and has not lodged a statement under rule 68 of these Rules,

or having been in prison has escaped from custody, the appeal may be dismissed or may be heard in his or her absence.

- (7) Where an appeal has been dismissed under subrule (6) of this rule, 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.
- (8) The cost of transport to and from the court of an appellant or respondent who is in prison and that of his or her escort shall be borne out of funds of the court where—
  - (a) the appellant is under sentence of death or imprisonment for life or if the appellant or respondent in prison is not represented by an advocate and desires to attend the hearing of his or her appeal; or
  - (b) the court has issued a direction under subrule (2) of this rule or has ordered his or her attendance under subrule (3) or (5) of this rule.
- (9) If on the day fixed for the hearing of an appeal the respondent does not appear in person or by advocate, the appeal shall proceed, unless the court sees fit to adjourn the hearing.

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

- (1) At the hearing of an appeal—
  - (a) the appellant shall not, without leave of the court, argue any ground of appeal not specified in the memorandum of appeal or in any supplementary memorandum lodged under rule 67 of these Rules; and
  - (b) the arguments contained in any statement lodged under rule 68 of these Rules shall receive the same consideration as if they had been advanced orally at the hearing.

### **Part IV – Civil appeals**

#### **75. Application of Part IV**

This Part of these Rules shall apply to appeals from the High Court acting in its original and appellate jurisdiction in civil cases.

#### **76. Notice of appeal in civil appeals**

- (1) Any person who desires to appeal to the court shall give notice in writing, which shall be lodged in duplicate with the registrar of the High Court.
- (2) Every notice under subrule (1) of this rule shall, subject to rules 83 and 95 of these Rules, be lodged within fourteen days after the date of the decision against which it is desired to appeal.
- (3) Every notice of appeal 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, it shall specify the part complained of, state 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.
- (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 the leave or certificate before lodging the notice of appeal.
- (5) A notice of appeal shall be substantially in Form D in the First Schedule to these Rules and shall be signed by or on behalf of the appellant.

**77. Transmission of notice of appeal**

On receipt of a notice of appeal, the registrar of the High Court shall immediately send one copy of it to the registrar.

**78. Service of notice of appeal on persons affected**

- (1) An intended appellant shall, before or within seven days after lodging notice of appeal, serve copies of it on all persons directly affected by the appeal; but the court may, on application, which may be made *ex parte*, direct that service need not be effected on any person who took no part in the proceedings in the High Court.
- (2) Where any person 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 High Court, and has not subsequently given any other address for service, the copy of the notice of appeal 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 an appeal.

**79. 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.

**80. Respondent to give address for service**

- (1) Every person on whom a notice of appeal is served shall—
  - (a) within fourteen days after service on him or her of the notice of appeal in the appropriate registry, serve on the intended appellant notice of a full and sufficient address for service; and
  - (b) within a further fourteen days, serve a copy of the 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 in the First Schedule to these Rules and shall be 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 a waiver of any irregularity.

**81. 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 taken to be notices of address for service within the meaning of rule 80 of these Rules; and the party or parties giving those notices shall be respondents in the appeal.
- (2) A party whose notice of appeal is taken to be a notice of address for service shall not be required to comply with rule 80 of these Rules if he or she has served copies of his or her 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.

**82. Application to strike out notice of appeal or appeal**

A person on whom a notice of appeal has been served 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 that no appeal lies or that some essential step in the proceedings has not been taken or has not been taken within the prescribed time.

### **83. Institution of appeals**

- (1) Subject to rule 113 of these Rules, an appeal shall be instituted in the court by lodging in the registry, within sixty days after the date when the notice of appeal was lodged—
  - (a) a memorandum of appeal, in six copies, or as the registrar shall direct;
  - (b) the record of appeal, in six copies, or as the registrar shall direct;
  - (c) the prescribed fee; and
  - (d) security for the costs of the appeal.
- (2) Where an application for a copy of the proceedings in the High Court has been made 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 High Court as having been required for the preparation and delivery to the appellant of that copy.
- (3) An appellant shall not be entitled to rely on subrule (2) of this rule, unless his or her application for the copy was in writing and a copy of it was served on the respondent, and the appellant has retained proof of that service.
- (4) The period prescribed by subrules (1) and (2) of this rule for the institution of appeals shall also apply to appeals from the High Court in the exercise of its bankruptcy jurisdiction.

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

If a party who has lodged a notice of appeal fails to institute an appeal within the prescribed time—

- (a) he or she shall be taken to have withdrawn his or her notice of appeal and shall, unless the court otherwise orders, be liable to pay the costs arising from it of any persons on whom the notice of appeal was served; and
- (b) any person on whom the notice of appeal was served shall be entitled to give notice of appeal notwithstanding that the prescribed time has expired, if he or she does so within fourteen days after the date by which the party who lodged the previous notice of appeal should have instituted his or her appeal.

### **85. 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 his or her 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.

### **86. Contents of memorandum of appeal**

- (1) A memorandum of appeal shall set forth concisely and under distinct heads, without argument or narrative, the grounds of objection to the decision appealed against, specifying the points which are alleged to have been wrongfully decided, and 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 in the First Schedule to these Rules and shall be signed by or on behalf of the appellant.

## 87. Contents of record of appeal

- (1) For the purpose of an appeal from the High Court, in its original jurisdiction, the record of appeal shall, subject to subrule (3) of this rule, 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 furnished by the respondent and, as regards any respondent who has not furnished an address for service, then as required by rule 78 of these Rules, his or her 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 or any other notes howsoever recorded at the trial;
  - (f) the affidavits read and all documents put in evidence at the hearing, or if those documents are not in the English language, certified translations of them;
  - (g) the judgment or reasoned order;
  - (h) the order, if any, giving leave to appeal;
  - (i) the notice of appeal; and
  - (j) any other documents necessary for the proper determination of the appeal, including any interlocutory proceedings which may be directly relevant.
- (2) The copies of documents referred to in subrule (1)(d), (e) and (f) of this rule shall exclude copies of any documents or any parts of them that are not relevant to the matters in controversy on the appeal.
- (3) For the purpose of an appeal from the High Court in 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) of this rule and shall contain also the following documents relating the appeal to the first appellate court—
  - (a) the order, if any, giving the leave to appeal;
  - (b) the memorandum of appeal;
  - (c) the record of proceedings;
  - (d) the judgment or order;
  - (e) the notice of appeal; and
  - (f) in the case of a third appeal to the court, the corresponding documents in relation to the second appeal to the High Court, and the certificate of the High Court that a point of law of general public importance is involved.
- (4) A judge or registrar of the High 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 the direction may be made informally.
- (5) The documents mentioned in subrule (1) of this rule shall be bound in the order in which they are set out in that subrule.

- (6) 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.
- (7) 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.
- (8) Each copy of the record of appeal shall be certified to be correct by the appellant or by any person entitled under rule 23 of these Rules to appear on his or her behalf.
- (9) Without prejudice to the number of copies of documents set out in these Rules, the registrar may vary the number of copies as would meet the needs of the court.
- (10) The decree shall only form part of the record of appeal where the date of any decree is disputed, or the terms of the decree are disputed as being at variance with the judgment upon which the decree was drawn, or where the terms of the decree form a ground of appeal, unless the court otherwise directs.
- (11) 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 in the decree or order, and the decree or order shall be taken to be duly drawn up and extracted if, in addition to other matters required to be embodied in it, it sets out the order or orders for costs but not the result of any taxation.
- (12) 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 High 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.

#### **88. 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 registry, serve copies of them on each respondent who has complied with the requirements of rule 80 of these Rules.
- (2) The appellant shall also serve copies of the memorandum of appeal and the record of appeal on any other party to the original proceedings if the court, at any time, on application or of its own motion directs, and within such time as the court may prescribe.

#### **89. Notification and transmission of papers to registrar**

- (1) When an appeal has been instituted in a subregistry—
  - (a) the deputy registrar shall inform the registrar of the names of the appellant and the respondent and the names of the respective advocates and the date when the appeal was instituted;
  - (b) as soon as practicable after that, the deputy registrar shall send to the registrar the original record of the proceedings of the High Court and the exhibits, together with the memorandum of appeal, three copies of them, and four copies of the record of appeal; except 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 sent to the registrar under paragraph (b) of this subrule 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 registrar of the High Court the original record of the proceedings of the High Court and, so far as is practicable, the exhibits.

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

- (1) If a respondent is of opinion that the record of appeal is defective or insufficient for the purposes of his or her 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 on every other respondent who has complied with the requirements of rule 80 of these Rules.
- (3) Where an appellant desires to lodge a supplementary record of appeal in the court, the appellant may, at any time, lodge in the registry four copies of the supplementary record of appeal, and shall as soon as practicable thereafter, serve copies of it on every respondent who has complied with the requirements of rule 80 of these Rules.
- (4) A supplementary record may be lodged to cure defects in the original record of appeal due to want of compliance with rule 87 of these Rules.
- (5) A supplementary record of appeal shall be prepared as nearly as may be in the same manner as a record of appeal.

**91. Notice of cross-appeal**

- (1) A respondent who desires to contend at the hearing of the appeal in the court that the decision of the High Court or any part of it should be varied or reversed, either in any event or on the appeal being allowed in whole or in part, shall give notice to that effect, specifying the grounds of his or her contention and the 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 given by a respondent under this rule shall state the names and the addresses of any persons intended to be served with copies of the notice and shall be lodged in four copies in the registry not more than thirty days after the service on the respondent of the memorandum of the appeal and the record of the appeal.
- (3) A notice of cross-appeal shall be substantially in Form G in the First Schedule to these Rules and shall be signed by or on behalf of the respondent.

**92. Notice of grounds for affirming decision**

- (1) A respondent who desires to contend on an appeal in the court 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 or her contention.
- (2) A notice given by the 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 in the registry of the court not more than thirty days after service on the respondent of the memorandum of appeal and the record of appeal.
- (3) A notice of the grounds for affirming a decision shall be substantially in Form H in the First Schedule to these Rules and shall be 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 High Court should be varied or reversed, and that part of the decision should be affirmed on grounds other than or additional to those relied upon by that court, may include both those contentions in a notice of cross-appeal under rule 91 of these Rules and shall not be required to give notice also under this rule.
- (5) Subrules (1), (2) and (3) of this rule and rule 93 of these Rules shall apply with necessary modifications, to an appellant who desires to contend in opposition to a cross-appeal that the

decision of the High Court should be affirmed on grounds other than or additional to those relied on by that court.

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

- (1) A respondent who intends to cross-appeal or to contend that the decision of the High Court should be affirmed on grounds other than those relied on by that court shall, before 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, serve a copy of it on all other persons directly affected by the cross-appeal or by the appeal, as the case may be.
- (2) The respondent shall also serve copies of the notice of cross-appeal or notice of grounds for affirming the decision, as the case may be, 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.

### **94. Withdrawal of appeal**

- (1) An appellant may at any time after instituting his or her own appeal in the court and before the appeal is called on for hearing, lodge in the registry notice in writing that he or she does not intend further to prosecute the appeal.
- (2) The appellant shall, before or within seven days after lodging the notice of withdrawal, serve copies of it on each respondent who has complied with rule 80 of these Rules.
- (3) If all the parties to the appeal consent to the withdrawal of the appeal, the appellant may lodge in the appropriate registry the document or documents signifying the consent of the parties; and the appeal shall then be struck out of the list of pending appeals.
- (4) If all the parties to the appeal do not consent to the withdrawal of the appeal, the appeal shall stand dismissed with costs, except as against any party who has consented, unless the court, on the application of the appellant, otherwise orders.
- (5) An application under subrule (4) of this rule shall be made within fourteen days after the lodging of the notice of withdrawal.

### **95. Rights of respondent when appeal is withdrawn**

- (1) If an appeal is withdrawn under rule 94 of these Rules after notice of cross-appeal has been given, the respondent who gave the notice may withdraw within fourteen days after the service on him or her of the notice of withdrawal.
- (2) If an appeal is not withdrawn under subrule (1) of this rule, 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.
- (3) If an appeal is withdrawn under rule 94 of these Rules within fourteen days after the date when the appeal was instituted, any respondent who has not lodged a notice of cross-appeal is entitled to give notice of appeal notwithstanding that the time prescribed by rule 76 of these Rules has expired, if he or she does so within fourteen days after the date when the appellant's notice of withdrawal was served on him or her.

### **96. 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 High Court may withdraw it at any time before the appeal is called for hearing by lodging in the appropriate registry notice in writing to that effect, signed by him or her or on his or her behalf.

- (2) The respondent shall, before or as soon as practicable after lodging the notice of withdrawal, serve a copy of it on the appellant and on all other respondents who were served with the notice of cross-appeal or notice of grounds for affirming the decision, as the case may be.

#### **97. Death of party to appeal**

An appeal shall not abate on the death of any appellant or respondent; but the court shall, on the application of any interested person, or of the court's own motion, cause the legal representative of the deceased to be made party in place of the deceased.

#### **98. Presentation of arguments in writing**

- (1) Any party to an appeal who does not intend to appear in person or by advocate at the hearing of the appeal may lodge in the registry a statement in writing of his or her arguments in support of or in opposition to the appeal or the 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 party appearing in person or separately represented.
- (2) Every statement under subrule (1) of this rule shall be lodged—
  - (a) by an appellant, within fourteen days after lodging his or her memorandum of appeal;
  - (b) by a respondent, within thirty days after service on him or her of the memorandum and record of appeal.
- (3) An appellant who has lodged a statement under subrule (1) of this rule may, if served with notice of a cross-appeal, lodge a supplementary statement of his or her arguments in opposition to it.
- (4) No party who has lodged a statement under this rule shall, except with leave of the court, address the court at the hearing of the appeal.

#### **99. Notice of hearing**

- (1) The registrar shall give all parties to an appeal not less than fourteen days' notice of the date fixed for hearing of an appeal.
- (2) It shall not be necessary to give the notice under subrule (1) of this rule to any party with whose consent the date for the hearing was fixed.

#### **100. Appearances at hearing and procedure on nonappearance**

- (1) If on any day fixed for the hearing of an appeal in the court the appellant does not appear, the appeal may be dismissed and any cross-appeal may proceed, unless the court sees fit to adjourn the hearing.
- (2) Where an appeal has been dismissed under subrule (1) of this rule or any cross-appeal heard under that subrule has been allowed, the appellant may apply to the court to restore the appeal for hearing or to rehear 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.
- (3) If the appellant appears but the respondent fails to appear, the appeal shall proceed in the absence of the respondent and any cross-appeal by the respondent may be dismissed, unless the court sees fit to adjourn the hearing.
- (4) Where an appeal has been allowed or cross-appeal dismissed in the absence of the respondent, he or she may apply to the court to rehear 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 for hearing.

- (5) An application for restoration under subrule (2) or (4) of this rule 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 hearing of that decision.
- (6) For the purposes of this rule, a party who has lodged a statement under rule 98 of these Rules shall be taken to have appeared.

### **101. Consolidation of appeals**

The court may, for sufficient reason, order any two or more appeals to be consolidated on such terms as it thinks just, or may order them to be heard at the same time or one immediately after the other, or may order any of them to be stayed until after the determination of any other of them.

### **102. Arguments at hearing**

At the hearing of an appeal in the court—

- (a) no party shall, without the leave of the court, argue that the decision of the High Court should be reversed or varied except on a ground specified in the memorandum of appeal or in a notice of cross-appeal, or support the decision of the High Court on any ground not relied on by that court or specified in a notice given under rule 93 of these Rules;
- (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 82 of these Rules;
- (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 98 of these Rules shall receive the same consideration as if they had been advanced orally at the hearing.

## **Part V – Fees and costs**

### **103. Fees payable**

- (1) Subject to rules 111 and 113 of these Rules, the fees set out in the Second Schedule to these Rules shall be payable in respect of the matters and services set out in that Schedule.
- (2) Notwithstanding subrule (1) of this rule—
  - (a) no fees shall be payable upon any appeal from the High Court acting in 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;
  - (b) no fees shall be payable by the Government in respect of any criminal appeal or application; and
  - (c) copies of any document may be issued without fee to such persons as the Chief Justice may nominate or at such reduced fee as the Chief Justice may direct.

### **104. 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 the registrar of the High 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.
- (3) Any fee paid under subrule (2) of this rule in advance or deposit made shall be refunded if the request for the service is cancelled before the service has been undertaken.

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

- (1) Subject to rule 113 of these Rules, there shall be lodged in court on the institution of a civil appeal, as security for costs of the appeal, the sum of two hundred thousand shillings.
- (2) Where an appeal has been withdrawn under rule 94 of these Rules, after notice of appeal has been given, the court may, on the application of any person who is a respondent to the cross-appeal, direct the cross-appellant to lodge in the court as security for costs the sum of two hundred thousand shillings, or any specified sum less than two hundred thousand shillings, or may 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 may direct 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 whole or some part of the security either by consent of the parties or in conformity with the decision of the court and having regard to the rights of the parties under it.

#### **106. Assessment or taxation of costs**

- (1) When making any decision as to the payment of costs, the court may assess or direct them to be taxed, and any decision as to payment of costs, not being a decision by which the amount of 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 the taxation shall, together, be taken to be a decree.

#### **107. Costs improperly incurred**

If it appears 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 them, the court may call on the advocate by whom the costs have been incurred to show cause why the costs should not be borne by the advocate personally, and may make such order as the justice of the case may require.

#### **108. Improper agreement for remuneration**

Any agreement by which the remuneration of an advocate or the amount of it is dependent upon the result of any proceedings in the court shall be void.

#### **109. Taxation**

- (1) The registrar shall be a taxing officer with power to tax the costs as between party and party or arising out of any appeal or application to the court.
- (2) The costs shall be taxed in accordance with the rules and scale set out in the Third Schedule to these Rules.

- (3) The remuneration of an advocate by his or her client in respect of the appeal or application shall be subject to taxation in the High Court and shall be governed by the rules and scales applicable to proceedings in that court.

#### **110. Reference on taxation**

- (1) Any person who is dissatisfied with a decision of the registrar in his or her capacity as a taxing officer may require any matter of law or principle to be referred to a judge for decision; and the judge shall determine the matter as the justice of the case may require.
- (2) For the purpose of subrule (1) of this rule, any decision extending or refusing to extend time for the lodging of a bill of costs or any exercise by the registrar of the overriding discretion given him or her by paragraph 12 of the Third Schedule to these Rules shall be taken to involve a matter of principle.
- (3) Any 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 may make such deduction or addition as will render the bill reasonable.
- (4) Except as provided in subrule (3) of this rule, there shall be no reference on a question of quantum only.
- (5) An application for a reference may be made to the registrar informally at the time of taxation or by writing within seven days after that time.
- (6) A reference to a judge of the court may be adjourned by him or her for the consideration of the court.
- (7) Any person dissatisfied with a decision of a judge given under this rule may apply to the court to vary, discharge or reverse the decision.
- (8) An application made under subrule (7) of this rule may be made either informally to the judge at the time of the decision or by writing to the registrar within seven days after that time.

#### **111. Waiver of fees in criminal appeals**

- (1) If in any appeal from the High Court acting in its appellate jurisdiction in any criminal matter a judge of the High 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; or
  - (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,he or she may, by order, direct that the whole or any part of the fees be waived.
- (2) An application for an order under subrule (1) of this rule 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 of the fees; but a judge of the High Court may entertain the application out of time if it appears to him or her that there was sufficient cause for the delay in making it.
- (3) No fee shall be payable on the lodging of the application.
- (4) A judge of the High Court considering the means of an applicant may rely on a report made to him or her by the registrar of the High Court.
- (5) A judge of the High Court making an order under subrule (1) of this rule 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) of this rule shall be final; except that the decision by a judge of the High 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.

#### **112. Refund of fees paid in criminal appeals**

Where an appeal is allowed from the High Court in 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 of them.

#### **113. Relief from fees and security in civil appeals**

- (1) If in any appeal from the High Court in its original or appellate jurisdiction in any civil case the court is satisfied, on the application of an appellant, that he or she lacks the means to pay the required fees or to deposit the security for costs and that the appeal has a 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; and
  - (b) without security for costs being lodged, or on lodging of any specified sum less than the amount fixed by rule 103 of these Rules, and may order that the record of appeal be prepared by the registrar of the High Court without any payment of it or on payment of any specified sum less than the fee set out in the Second Schedule to these Rules conditionally on the intended appellant undertaking to pay the fees or the balance of the fees out of any money or property he or she may recover in or in consequence of the appeal.
- (2) The registrar is entitled to be heard on any application under subrule (1) of this rule.
- (3) No fee shall be payable on the lodging of the application.
- (4) The registrar may take such action as he or she may think necessary to enforce any undertaking given in accordance with subrule (1) of this rule.

### **Part VI – Transitional provisions**

#### **114. Transitional provisions**

- (1) In all proceedings pending in the court or in the High Court preparatory or incidental to, or consequential upon, any proceedings in any court at the time of the coming into force of these Rules, the provisions of these Rules shall apply, but without prejudice to the validity of anything previously done.
- (2) Notwithstanding subrule (1) of this rule—
  - (a) if and so far as it is impracticable in any proceedings referred to in that subrule to apply these Rules, the practice and procedure obtaining before the coming into force of these Rules shall be followed; and
  - (b) in any case of difficulty or doubt, a judge or the registrar may informally give directions as to the procedure to be adopted.

### **First Schedule (Rule 43)**

#### **Forms A - J**

*[Editorial note: The forms have not been reproduced.]*

**Second Schedule (Rule 103)****Fees****Part I – Fees in connection with applications**

Item No.		Shs.
1.	Upon lodging a notice of motion	2,500
2.	Upon lodging an affidavit, other than an affidavit annexed to a notice of motion	150
3.	Upon giving notice under rule 55(1) of the Judicature (Court of Appeal) Rules	1,000

**Part II – Fees in connection with first, second or third criminal appeals**

4.	Upon lodging a notice of appeal from the High Court in its second appellate jurisdiction	1,000
5.	For preparing the record of appeal, for each folio or part of it—	
(a)	for the first copy	350
(b)	for each additional copy	100
6.	All fees in items 4 and 5 of this Schedule shall be enhanced by 250 shillings on third appeals to the Court of Appeal.	
7.	All fees in items 4 and 5 of this Schedule shall be enhanced by 250 shillings on third appeals to the Supreme Court.	

**Part III – Fees in connection with civil appeals  
from the High Court in its original jurisdiction**

Item No.		Shs.	
8.	Upon lodging a notice of appeal	1,000	
9.	Upon lodging a notice of address for service or a notice of change of address	1,000	
10.	Upon lodging a memorandum of appeal—		
	(a)	against an interlocutory decision	2,500
	(b)	against a final decision—	
		(i)	where the appeal is against an award of money or the refusal to make such an award 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 on it) or the value of the property—
(A)	does not exceed 100,000 shillings	4,000	

Item No.				Shs.
		(B)	exceeds 100,000 shillings, for the first 20,000 shillings 4,000 shillings and for each subsequent 50,000 shillings or part of it up to 420,000 shillings 2,000 shillings and for each subsequent 50,000 shillings or part of it, 1,000 shillings but so that the fee shall not exceed 40,000 shillings;	
		(ii)	in any other case 4,000 shillings with an additional fee of 4,000 shillings for each day or part of a day of hearing after the first but so that the fee shall not exceed 40,000 shillings.	
11.	Upon lodging a notice of cross-appeal			10,000
12.	Upon lodging a notice of grounds for affirming the decision			2,500
13.	Upon lodging a notice withdrawing an appeal, or a notice of grounds for affirming the decision			2,500

**Part IV – Fees in connection with civil appeals from the High Court in its first and second appeals jurisdiction.**

All fees in items 8,9,10,11,12, and 13 of this Schedule shall be enhanced by 250 shillings except that in item 10 of this Schedule, the fees shall not exceed 50,000 shillings.

Item No.	Shs.
14.	For serving any document in connection with any civil appeal or application, in addition to all necessary expenses of travel—

Item No.		Shs.	
	(a)	where the person to be served resides or has his or her place of business within the city or town where the registry or subregistry of the court is situated	3,000
	(b)	in any other case	5,000
15.	For sealing an order in any civil appeal or application		6,000
16.	For preparing certified copies of any document, for each folio or part of it—		
	(a)	for the first copy	2,000
	(b)	for each subsequent copy	500
17.	For grant of licence under rule 26 of the Judicature (Court of Appeal) Rules and a further 2,000 shillings for each day or part of a day of the hearing after the first		10,000

### Part V – Fees in connection with the taxation of costs

18.	Upon lodging a bill of costs for taxation	2,500
19.	For the certificate of the result of a taxation	2,000
20.	Upon applying for a reference under rule 110 of the Judicature (Court of Appeal) Rules	4,000

### Third Schedule (Rule 109)

#### 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 or her 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 for it 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 entitled 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 bill;
  - (b) the name and address of every party to be served or his or her 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; and if the certificate is found to be incorrect, the item may be disallowed.
- (3) Every bill of costs shall be endorsed, at the end of it 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, 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 may limit or extend the time for any proceedings before him or her, and adjourn the proceedings 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 the notice, the taxing officer may proceed to tax the bill notwithstanding the absence of the party or the advocate.

**9. Quantum of costs**

- (1) The fee to be allowed for instructions to make, support or oppose any application shall be a sum that the taxing officer considers reasonable but shall not be less than one thousand shillings.
- (2) The fee to be allowed for instructions to appeal or to oppose an appeal shall be a sum that the taxing officer considers 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) of this paragraph shall include all the work necessarily and properly done in connection with the appeal and not otherwise chargeable, including attendances, correspondences, perusals and consulting authorities.
- (4) Other costs shall, subject to paragraphs 10, 11 and 12 of this Schedule, be awarded in accordance with the scale set out in the following paragraphs 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; but 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 appear to him or her 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 by 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 or she may make such a deduction from the total as will, in his or her 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.

**14. Setoff 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 setoff 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.
- (2) If an advocate has instructed another advocate to appear at the hearing of an appeal, the fee paid to the latter, or so much of it as the taxing officer considers reasonable, may be allowed but so that the

total of the 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.

- (3) 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 or she shall be allowed the fee paid to him or her, including fees for attending in court, or so much of it as the taxing officer considers reasonable;
  - (b) where the senior advocate is a member of the same firm as the advocate on record, he or she 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 the record shall be allowed the usual instruction, hearing and other fees.
- (4) The fee paid to another advocate by the advocate on the record shall be shown as a disbursement.

#### 16. **Costs where advocate change**

- (1) 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 the total shown as a disbursement.
- (2) The bill shall be taxed in the ordinary way, the current advocate being heard on it, but the taxing officer may require the first 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 of those parties, the taxing officer shall consider in the taxation of that advocate's bill of costs whether the separate proceedings were necessary and proper; and if he or she is of the opinion that any part of the costs occasioned by them has been unnecessarily or improperly incurred, then that part shall be disallowed.

#### 18. **Costs where trustees defend separately**

In taxing the costs 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 those parties, those costs to be apportioned among them as the taxing officer shall think 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 that hearing but shall not allow the expenses of any other persons who may have attended the hearing, unless the court has so ordered.

### **Scale of costs**

Item No.		Shs.
1.	For instructions to file a notice of appeal	6,000
2.	For instructions to act for a respondent—	
	(a) where an appeal is subsequently instituted	6,000

Item No.		Shs.
	(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 High Court
3.	For drawing a notice of motion	
4.	For drawing an affidavit, for each folio or part of it, exclusive of exhibits with a minimum fee of 2,000 shillings	
5.	For drawing a notice of appeal	
6.	For drawing a notice of address for service	
7.	For drawing a memorandum of appeal	
8.	For drawing a notice of cross-appeal	
9.	For drawing a notice of grounds for affirming a decision	
10.	For drawing an order, for each folio or part of it with a minimum fee of 2,000 shillings	
11.	For drawing a bill of costs, for each folio or part of it	
12.	For drawing any other necessary document to be filed or used in the court, for each folio or part of it	
13.	For making any necessary copies, for each folio or part of it—	
	(a)	for the first copy
	(b)	for each subsequent copy
14.	For attendance at the registry	

Item No.		Shs.	
15.	For attending on the registrar—		
	(a)	for the first 15 minutes	1,500
	(b)	for each subsequent 15 minutes	500
16.	For attending on a judge in chambers—		
	(a)	for the first 30 minutes	5,000
	(b)	for each subsequent 30 minutes	1,700
17.	For attending in court, where the matter was listed but not reached, for each day		5,000
18.	For attending in court on the hearing of any appeal or application		
	(a)	for the first 30 minutes	7,500
	(b)	for each subsequent 30 minutes	2,500
19.	For attending in court to hear judgment		7,500