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Appellate Jurisdiction Act

The Court of Appeal Rules, 2010

Legal Notice 152 of 2010

Legislation as at 24 September 2010

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APPELLATE JURISDICTION ACT

THE COURT OF APPEAL RULES, 2010

LEGAL NOTICE 152 OF 2010

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Part I – GENERAL

1. Short title, commencement and application

- (1) These Rules of Court may be cited as the Court of Appeal Rules, 2010 and shall come into force ninety days after publication in the *Gazette*.
- (2) Nothing in these Rules shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

2. Interpretation In these Rules, unless the context otherwise requires—

"advocate" means a person who, under rule 25, has the right of audience before the Court;

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

"appellant" includes an intended appellant;

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

"appropriate registry" has the meaning assigned to it by rule 6;

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

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

"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 rule 59 and, in relation to a civil appeal, means a notice lodged in accordance with rule 75;

"notice of cross-appeal" means a notice lodged in accordance with rule 93;

"notice of grounds for affirming the decision" means a notice lodged in accordance with rule 94;

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

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

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

"respondent", in relation to a civil application, 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;

"Rules" means these Rules and as amended from time to time; and

"Superior court" means a court of unlimited jurisdiction from which an appeal lies to the Court.

3. Computation of time

Any period of time fixed by these Rules or by any decision of the Court for doing any act shall be 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 deemed to be exclusive of the day in which the event happens or that act or thing is done;
- (b) if the last day of the period is a Sunday or a public holiday (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; or
- (e) unless the Court otherwise directs, the period of the Christmas vacation shall not be reckoned in the computation of time.

4. Extension of time

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

5. Suspension of sentence, injunction and stay of execution and stay of further proceedings

- (1) No sentence of death 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 sub-rule (1), the institution of an appeal shall not operate to suspend any sentence or to stay execution, but the Court may—
 - (a) in any criminal proceedings, where notice of appeal has been given in accordance with rule 59, 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;
 - (b) in any civil proceedings, where a notice of appeal has been lodged in accordance with rule 75, order a stay of execution, an injunction or a stay of any further proceedings on such terms as the Court may think just.

6. Registry and sub-registries

- (1) The Registry of the Court shall be situate at Nairobi:

Provided that where the Court is sitting or about to sit in any place other than Nairobi, then for the purpose of any application or appeal to be heard in that place, the Registry shall be deemed to be situate in that place.

- (2) There shall be such sub-registries of the Court in Kenya as the Chief Justice may from time to time order and pending such order there shall be sub-registries at Kisumu, Mombasa, Nyeri, Eldoret and Nakuru.
- (3) Any reference in these Rules to "the appropriate registry" shall be construed—
 - (a) in the case of an appeal from the High Court of Kenya—
 - (i) sitting in the Nyanza Province or the Western Province, as a reference to the sub-registry at Kisumu;
 - (ii) sitting in the Coast Province, as a reference to the sub-registry at Mombasa;
 - (iii) sitting in the Rift Valley Province, as a reference to the sub-registries at Nakuru and Eldoret;
 - (iv) sitting in Meru, Embu and Nyeri as a reference to the sub-registry at Nyeri;
 - (v) sitting elsewhere, as a reference to the Registry situate at Nairobi.

7. Hours for lodging documents

The Chief Justice may from time to time direct the hours during which the Registry or any sub-registry or any registry of a superior court shall be open for the receipt of documents lodged under the provisions of these Rules.

8. Maintenance of registers

- (1) The Registrar shall maintain—
 - (a) a register of criminal applications, 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 civil applications, 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 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 the subsequent proceedings; and
 - (d) a register of civil appeals, in which shall be entered particulars of every memorandum of appeal lodged in any civil matter and of the subsequent proceedings.
- (2) Every deputy registrar in charge of a sub-registry shall maintain—
 - (a) a register of criminal applications, in which shall be entered particulars of every application lodged in his sub-registry relating to a criminal appeal; and
 - (b) a register of civil applications, in which shall be entered particulars of every application lodged in his sub-registry relating to a civil appeal.
- (3) The registers to be maintained under this rule shall show the number of the application or appeal, the number of the proceedings in the superior court, the names of the parties, the dates when the essential steps in the proceedings were taken and the result of the application or appeal:

Provided that the registers kept in sub-registries need not show the results of applications, other than applications heard locally; but shall show the dates when the material documents were sent to the Registrar.
- (4) The registers 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.

9. Numbering of applications and appeals

- (1) Every application to the Court, other than an application made informally in the course of a hearing, shall, whether lodged before or after the institution of an appeal, be given a serial number and for this purpose there shall be maintained in the Registry and in each sub-registry two series of numbers for each calendar year, one for criminal and one for civil applications, and the serial number shall be prefixed by letters indicative of the Registry or sub-registry.
- (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 this 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 this purpose a series of numbers shall be maintained for each calendar year.

10. Endorsement of documents lodged

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

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

- (1) Notwithstanding any provision in these Rules appointing the appropriate registry as the place where any document is to be lodged, the Registrar shall have power in any particular case to permit the lodging of any document in the Registry or in any sub registry and application for such permission may be made informally but shall be in writing.
- (2) The Registrar or a deputy registrar receiving a document so lodged shall forthwith send the same to the appropriate registry, at the expense of the applicant, except where the document is lodged with the Registrar and is one which, if lodged in the appropriate registry, would have been required by these Rules to be sent to the Registrar.

12. Acceptance of documents lodged out of time

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

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

- (1) Unless the nature of the document renders it impracticable, every document prepared for use in the Court shall be on foolscap paper of durable quality; only one side of the paper shall be used and a margin of not less than one and a half inches 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, writing, other appropriate technology or any combination of these media.
- (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.

Repealed

- (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.

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

- (1) The Registrar or the registrar of a superior court, as the case may be, may refuse to accept any document which does not comply with the requirements of rule 13.
- (2) Subject to rules 113 and 115, the Registrar or the registrar of a superior court, as the case may be, shall refuse to accept any document tendered without the required fee, if any, or, in the case of the memorandum of appeal in a civil appeal, the lodging of security for costs.
- (3) If, as the result of an error, a document is accepted which ought to have been rejected under sub-rule (2), the document shall be deemed to have been duly lodged but the person who lodged it shall, as soon as practicable after the error is discovered, pay the fee or the balance thereof or lodge the required security.
- (4) Any person who is dissatisfied with a decision of the Registrar or of the registrar of a superior court rejecting any document under the powers conferred by this rule may require the matter to be referred to a judge for his decision and an application under this subrule may be made informally at the time when the decision is given or in writing within seven days thereafter.

15. Signature of documents

- (1) Any document may be signed on behalf of the person making it by any person entitled under rule 22 to appear on his 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 22 to appear on his behalf or by any person in whose care he may be for the time being, including a medical officer, police officer or prisons officer.

16. 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, the person 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;
 - (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.

17. Service and transmission of documents

- (1) Where by these Rules any document is required to be served on any person, service may be effected in such way as the Court may in any case direct, and in the absence of any special direction shall be made personally on the person to be served or any person entitled under rule 22 to appear on his behalf or by any other recognized mode of service as provided under Order 5 of the Civil Procedure Rules, 2010.

Repealed

- (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 that document is served on that advocate.
- (3) For the purpose of this rule, service on a partner or a clerk of an advocate at the office of the advocate shall be deemed to be service on the advocate.
- (4) Proof of service may be given where necessary by affidavit, unless in any case the Court shall require proof by oral evidence:

Provided that in the case of a person in prison, a letter purporting to be signed by the officer in charge of the prison certifying that the document was delivered to the prisoner on a specified date may be accepted as sufficient proof of service.
- (5) Where any document is required to be sent to any person, the document may be sent by hand, a licensed courier service provider approved by court or by registered post to that person or to any person entitled under rule 22 to appear on his behalf.
- (6) 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 other electronic means approved by the court.

18. Change of address for service

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

19. Sittings of the Court

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

20. Vacations

- (1) The vacations of the Court and the arrangements for business during vacations shall be determined by the Chief Justice and shall be advertised and notified in such manner as the Chief Justice may direct.
- (2) No business will be conducted during the vacations, unless the Chief Justice otherwise directs, except the delivery of judgments and, when the matter is shown to be of urgency, the hearing of applications and the taxation of bills.

21. Places where appeals are to be heard

- (1) Appeals or formal applications to the Court shall be heard in such places as the Chief Justice may from time to time designate.
- (2) Application for an appeal to be heard otherwise than in accordance with sub-rule (1) may be made informally but shall be in writing.

22. Appearances

- (1) Subject to the provisions of rule 71, a party to any proceedings in the Court may appear in person or by advocate.

Repealed

- (2) A corporation may appear either by advocate or by a director, manager or secretary thereof appointed by resolution under the seal of the company, a sealed copy of which resolution shall be lodged with the Registrar.
- (3) A person under disability may appear by advocate or by his committee, next friend or guardian ad litem as the case may be and where any person has acted as next friend or guardian ad litem in the court below for a person under disability and the person under disability becomes respondent in an appeal to the Court, the next friend or guardian ad litem may, if he desires to act as such in the appeal, lodge a consent to act as such and shall thereupon be deemed to have been duly appointed and in any other case, the Court may appoint a guardian ad litem for the purposes of an appeal and the Court may at any time remove and replace any guardian ad litem, however appointed.

23. Change of advocate

- (1) Where a party to any application or appeal changes his advocate or, having been represented by an advocate, decides to act in person or, having acted in person, engages an advocate, he shall, as soon as practicable, lodge with the Registrar a notice of the change and shall serve a copy of such notice on the other party or on every other party appearing in person or separately represented, as the case may be.
- (2) An advocate who desires to cease acting for any party in a civil appeal or application, may apply by notice of motion before a single Judge for leave to so cease acting, and such advocate shall be deemed to have ceased to act for such party upon service on the party of a certified copy of the order of the judge.

24. Assignment of advocates

- (1) In any criminal application or appeal, the 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 any civil appeal involving a point of law of public importance, if the Chief Justice is satisfied that any appellant, or respondent, lacks the means to employ an advocate, the Chief Justice may, with the consent of such appellant or respondent, as the case may be, assign an advocate to represent him, and may require any such appellant, or respondent, as a condition of having an advocate assigned to him, to undertake to refund the fees and expenses of such advocate out of any money or property he may recover in or in consequence of the appeal.
- (3) The fees and expenses of an advocate assigned under the sub-rule (1) or sub-rule (2) shall be defrayed out of the funds of the Court.
- (4) The Registrar shall have power to take such action as he may think necessary to enforce any undertaking given in accordance with sub-rule (2) and any moneys so recovered shall be paid into the Consolidated Fund.

25. Right of audience of advocates

- (1) The Attorney-General and Solicitor-General shall have the right of audience before the Court and shall take precedence over all other advocates.
- (2) Every advocate who is for the time being entitled to practice before the High Court shall have the right of audience before the Court:

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

- (3) Any other person entitled to appear as counsel or advocate before any court of unlimited jurisdiction, if licensed in that behalf by the Chief Justice and subject to payment of the prescribed

Repealed

fee, shall have the right of audience before the Court in respect of any one appeal, including any cross-appeal heard therewith, or any two or more appeals consolidated for hearing.

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

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

- (2) Such list shall be in quadruplicate, except in the case of an application to be heard by a single judge, when it shall be in duplicate, and shall be lodged at least twenty-four hours before the application or appeal is due to be heard.
- (3) An advocate who intends at the hearing of any application or appeal to rely on the judgment in any unreported case shall, at or before the hearing, produce a certified or a photostat copy of such judgment and, except in the case of an application to be heard by a single judge, two other copies thereof, for the use of the Court, and, in every case, one copy for the use of the other party, or each other party appearing in person or separately represented, as the case may be.

27. Order of addresses Unless the Court otherwise directs—

- (1) The Court will, at the hearing of an application or appeal, hear the first applicant or appellant, then the respondent and then the applicant or appellant in reply.
- (2) At the hearing of an appeal where notice of cross-appeal has been given, the Court will 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) The provisions of this rule shall apply where notice of grounds for affirming the decision has been given, in the same way in all respects as where notice of cross-appeal has been given:

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

28. Appeals to be heard in court

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:

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

29. Power to re-appraise evidence and to take additional evidence

- (1) On any appeal from a decision of a superior court acting in the exercise of its original jurisdiction, the Court shall have power—
 - (a) to re-appraise the evidence and to draw inferences of fact; and

- (b) in its discretion, for sufficient reason, to take additional evidence or to 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 such evidence to the Court, with a statement of its opinion on the credibility of the witness or witnesses giving the additional evidence; when evidence is taken by a commissioner, he shall certify the evidence to the Court, without any such statements of opinion.
- (4) The parties to the appeal shall be entitled to be present when such additional evidence is taken.

30. Power to call for report

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

31. General powers of the Court

On any appeal the Court shall have power, so far as its jurisdiction permits, to confirm, reverse or vary the decision of the superior court, or to remit the proceedings to the superior court with such directions as may be appropriate, or to order a new trial, and to make any necessary incidental or consequential orders, including orders as to costs.

32. Judgment

- (1) Judgment may be given at the close of the hearing of an application or appeal or reserved for delivery within 90 days unless the Court for reasons to be recorded orders otherwise.
- (2) In criminal applications (other than applications heard by a single judge) and criminal appeals, one judgment shall be given as the judgment of the court, and may be given if one judge has died, ceased to hold office, or is unable to perform the functions of his office because of infirmity of mind or body, or refuses to sign the judgment, but the presiding judge may direct that separate judgments be given.
- (3) In civil applications (other than applications heard by a single judge) and civil appeals, separate judgments shall be given by the members of the Court unless, the decision being unanimous, the presiding judge otherwise directs, but where one judge delays, dies, ceases to hold office, or is unable to perform the functions of his office because of infirmity of mind or body, separate concurring judgments may be given by the remaining members of the court.
- (4) The judgment or judgments of the Court on an application shall, where the application was heard in chambers, be delivered in chambers, and the judgment or judgments on an application heard in court and the judgment or judgments on an appeal shall be delivered in court:

Provided that the presiding judge may, in any particular case, direct that the decision of the Court only shall be so delivered and not the reasons therefor, and in such a case the judgment or judgments shall be deposited in the Registry or sub-registry in the place where the application or appeal was heard and copies thereof shall be available to the parties when the decision is delivered.
- (5) Notwithstanding sub-rule (1), the Court may at the close of the hearing of an application or appeal, give its decision but reserve its reasons and in such a case the reasons may be delivered in court or deposited in the Registry or sub-registry in the place where the application or appeal was heard within ninety days and where the reasons are so deposited, copies thereof shall be available to the parties and they shall be so informed.

- (6) Where one judgment is given at the close of the hearing as the judgment of the Court, it shall be delivered by the presiding judge or by such other member of the Court as the presiding judge may direct.
- (7) Where judgment, or the reasons for a decision, has been reserved, the judgment of the Court, or a judgment of any judge, or such reasons, as the case may be, being in writing and signed, may be delivered by any judge, whether or not he sat at the hearing.
- (8) A judgment shall be dated as of the day when it is delivered or, where a direction has been given under the proviso to sub-rule (4), as for the day when the decision was delivered.
- (9) For the purposes of this rule, "presiding judge" includes the next senior judge, where the original presiding judge has died, ceased to hold office, or is unable to perform the functions of his office by reason of infirmity of mind or body.

33. Decisions to be embodied in orders

- (1) Every decision of the Court on an application or appeal, other than a decision on an application made informally in the course of a hearing, shall be embodied in an order.
- (2) Every such order shall be dated as of the date on which the decision was delivered and shall in addition show the date on which the order was extracted.
- (3) An order on an application shall be substantially in the Form I in the First Schedule and an order on an appeal substantially in the Form J in the Schedule.

34. Preparation of orders

- (1) Where a decision of the Court was given in a criminal application or appeal, the order shall be drawn up by the Registrar who, in drawing up the order, shall not be required to consult the parties or their advocates.
- (2) Where a decision of the Court was given in a civil application or appeal—
 - (a) the party who has substantially been successful shall within 14 days from date of judgment prepare a draft of the order and submit it for the approval of the other parties;
 - (b) the party to whom the draft has been submitted shall approve the same within seven days from the date of delivery;
 - (c) if all parties approve the draft, the order shall, unless the presiding judge otherwise directs, be in accordance with it;
 - (d) if the parties do not agree on the form of the order, or if there is non-compliance with sub-rules (a) and (b), the form of the order shall be settled by the presiding judge or by such judge who sat at the hearing as the presiding judge shall direct, after giving all the parties an opportunity of being heard;
 - (e) 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 such direction shall be final.
- (3) The order embodying the decision on an application or in a civil appeal will be issued out of the Registry or sub-registry in the place where the application or appeal was heard.

35. Correction of errors

- (1) A clerical or arithmetical mistake in any judgment of the Court or any error arising therein from an accidental slip or omission may at any time, whether before or after the judgment has been embodied in an order, be corrected by the Court, either of its own motion or the application of any

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interested person so as to give effect to what the intention of the Court was 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 it supports to embody or, where the judgment has been corrected under sub-rule (1), with the judgment as so corrected.

36. Notification of decisions

- (1) The Registrar shall send to the registrar of the superior court a sealed copy of the order embodying the decision of the Court in any civil or criminal appeal from that court.
- (2) The Registrar shall, so far as is practicable, inform any party to any proceeding in the Court who was not present or represented at the hearing of the result of such proceeding.
- (3) A deputy registrar of any sub-registry shall send to the Registrar a copy of every order issued out of the sub-registry.

37. Signature and sealing of documents

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

Part II – APPLICATIONS

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

- (1) In criminal matters—
 - (a) where an appeal lies on certification by the superior court certifies that the case is a fit case of appeal, application for such a certificate may be made informally and ex parte;
 - (b) where an appeal lies with the leave of the Court, application for such leave shall be made in the manner laid down in rules 42 and 43.
- (2) An application under this rule shall be made without unreasonable delay but need not be made before notice of appeal is lodged.

39. Application for leave to appeal in civil matters

In civil matters—

- (a) where an appeal lies on certification by the superior court that the case is fit for such leave may be made informally, at the time when the decision against which it is desired to appeal is given, or by motion or chamber summons according to the practice of the superior court, within fourteen days of such decision;
- (b) where an appeal lies with the leave of the Court, application for such leave shall be made in the manner laid down in rules 42 and 43 within fourteen days of the decision against which it is desired to appeal or, where application for leave to appeal has been made to the superior court and refused, within fourteen days of such refusal.

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

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

- (a) informally, at the time when the decision against which it is desired to appeal is given; or

- (b) by motion or chamber summons according to the practice of the superior court, within fourteen days of that decision:

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

41. Application to superior Court

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

42. Form of applications to Court

- (1) Subject to sub-rule (3) 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.

43. 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 and application for such leave may be made informally.
- (3) Any application for leave to appeal shall, where practicable be accompanied by—
- (a) a copy of the decision, including the reasons therefor (if any) against which leave to appeal is sought; and
 - (b) where an application under rule 38(1)(a) or 39(a) has been refused, a copy of the decision, including the reasons therefor (if any), refusing that application.
- (4) Where the documents referred to in sub-rule (3) are not filed with the application, the applicant shall file and serve them at least twenty-four hours before the application is heard.

44. 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, handed to the Court and to the respondent at the time of the hearing.
- (2) 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 so specified then within forty-eight hours of the giving of leave and on failure to comply with the requirements of this sub-rule, the leave so given shall determine.

45. Applications to be lodged in appropriate registry

- (1) An application to the Court shall be lodged in the appropriate registry:
- Provided that where the matter is one of urgency, an application may be lodged in the Registry, notwithstanding that it is not the appropriate registry.
- (2) All subsequent documents required to be lodged in relation to an application shall, if the application is to be heard by a single judge, be lodged in the appropriate registry and in any other case, shall be lodged in the Registry.

46. Procedure regarding applications lodged in sub-registries

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

47. Urgent applications

- (1) Any application which the applicant desires to set down for hearing as a matter of urgency shall be accompanied by a certificate of urgency signed by the applicant or his advocate, supported by affidavit setting forth the matters upon which the applicant relies as showing that his application should be heard without delay.
- (2) The application, together with the certificate and the supporting affidavit shall be placed before a single judge, who shall peruse it, and the application shall not be set down for hearing as a matter of urgency unless the judge certifies that it is urgent.
- (3) The Registrar shall maintain, in addition to the Court register of application, a separate register of every application made as a matter of urgency which shall be numbered consecutively in each year showing the date it is made, the parties, if any, and the decision of the single judge thereon.
- (4) The provisions of this rule shall apply to the hearing of urgent applications during the term and in vacations.
- (5) The refusal by the judge to certify an application as urgent under this rule shall not be subject to a reference to the court under rule 55, but the applicant may apply informally for the matter to be placed before a single judge for hearing inter partes.

48. Number of copies of applications required

- (1) When an application is to be heard by a single judge, the application and other documents relating thereto shall be filed in duplicate, and in all other cases, in quadruplicate.
- (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, the person applying to the Court shall before the date of the hearing by the Court file two extra copies of the application and the other documents relating thereto, including any affidavits filed by any other party prior to the adjournment or the giving of notice as the case may be.

49. 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:

Provided that in case of urgency, an application, other than an application under rule 115, 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.

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

50. Affidavits in reply

- (1) Any person served with a notice of motion under rule 49 may lodge one or more affidavits in reply and shall as soon as practicable serve a copy or copies thereof on the applicant.
- (2) Any such person may, with the leave of a judge or with the consent of the applicant, lodge one or more supplementary affidavits.

51. Abatement of applications

- (1) A criminal application shall abate, where the applicant is the State, on the death of the respondent and, in any other case on the death of the applicant.
- (2) A civil application shall not abate on the death of the applicant or the respondent but the Court shall, on the application of any interested person, cause the legal representative of the deceased to be made a party in place of the deceased.
- (3) If no application is made under sub-rule (2) within 12 months by the applicant or the respondent, the application shall abate.
- (4) The person claiming to be the legal representative of a deceased party or any interested person to an application may apply for an order to revive the application which has abated and, if it is proved that he was prevented by sufficient cause from continuing with the application, the court shall revive the application upon such terms as to costs or otherwise as it deems fit.

52. Application for leave to withdraw

An applicant may at any time apply to the Court for leave to withdraw the application and such application may be made informally.

53. Hearing of applications

- (1) Every application, other than an application included in sub-rule (2), shall be heard by a single judge:
Provided 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;
 - (b) an application for a stay of execution, injunction, or stay of further proceedings;
 - (c) an application to strike out a notice of appeal or an appeal; or
 - (d) an application made as ancillary to an application under paragraph (a) or (b) or made informally in the course of a hearing.

54. Hearing in open court or chambers

- (1) An application to be heard by a single judge shall be heard in open court or in chambers as the judge may direct:
Provided 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 open court, unless the Chief Justice or the presiding judge shall otherwise direct.

55. Reference from decision of a single judge

- (1) Where under the proviso to section 5 of the Act, any person being dissatisfied with the decision of a single judge—
 - (a) in any criminal matter, wishes to have his 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, he may apply therefor informally to the judge at the time when the decision is given or by writing to the Registrar within seven days thereafter.
- (2) At the hearing by the court of an application previously decided by a single judge, no additional evidence shall be adduced.

56. Procedure on non-appearance

- (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 sub-rule (1) or allowed under sub-rule (2), the party in whose absence the application was determined may apply to the Court to restore the application for hearing or to re-hear it, as the case may be, if he can show that he was prevented by any sufficient cause from appearing when the application was called on for hearing.
- (4) An application made under sub-rule (3) shall be made within thirty days of the decision of the Court, or in the case of a party who would have been served with notice of the hearing but was not so served, within thirty days of his first hearing of that decision.
- (5) The provisions of sub-rule (1) shall not apply to any criminal application if the applicant is in prison and is not represented by an advocate and in any such case, the application shall be heard notwithstanding the absence of the applicant, unless the Court shall otherwise order.

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 in the absence of that judge by any other judge or by the Court on the application of any person affected thereby, if—
 - (a) the order was one extending the time for doing any act, otherwise than to a specific date; or
 - (b) the order was one permitting the doing of some act, without specifying the date by which the act was to be done, and the person on whose application the order was made has failed to show reasonable diligence in the matter.
- (2) An order made on an application to the Court may similarly be varied or rescinded by the Court.

Part III – CRIMINAL APPEALS AND REVIEW**58. Application of Part III**

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

59. Notice of appeal

- (1) Any person who desires to appeal to the Court shall give notice in writing, which shall be lodged in sextuplicate with the registrar of the superior court at the place where the decision against which it is desired to appeal was given, within fourteen days of the date of that decision, and the notice of appeal shall institute the appeal.
- (2) Every notice of appeal shall—
 - (a) state shortly the nature of the acquittal, conviction, sentence or finding against which it is desired to appeal; and
 - (b) contain the address at which any documents connected with the appeal may be served on the appellant.
- (3) Where two or more persons have been convicted at the same trial and any two or more of them desire to appeal to the Court, they may at their option lodge separate notices or a joint notice of appeal and where a joint notice of appeal is lodged, it may include, in addition to the grounds of appeal common to all the appellants, grounds peculiar to one or more of them.
- (4) Where an appeal lies only on a certificate that the case is a fit case for appeal, or with leave, or on a certificate that a point of law of general public importance is involved, it shall not be necessary to obtain such certificate or leave before lodging the notice of appeal.
- (5) Where a notice of appeal is signed by or on behalf of an appellant who is in prison, it shall include a statement that the appellant intends or does not intend, as the case may be, to appear at the hearing of his appeal.
- (6) Where a notice of appeal is signed by an advocate, he shall add after his signature the words "Retained only to prepare this notice", "Retained to appear at the hearing of the appeal" or "Assigned to appear at the hearing of the appeal", as the case may be.
- (7) Where the Attorney-General certifies under subsection (3) of section 379 of the Criminal Procedure Code (Cap. 75) that a sentence passed by the High Court should be revised, the certificate shall be lodged in sextuplicate with the Registrar within one month of the date of the sentence.
- (8) A notice of appeal shall be substantially in the Form B in the First Schedule hereto and shall be signed by or on behalf of the appellant.
- (9) Two additional copies of each notice of appeal shall be lodged by the appellant in the Nairobi Registry of the Court of Appeal within twenty-one days of the decision against which it is desired to appeal.

60. Consolidation of appeals

- (1) Where two or more appeals are brought from convictions or sentences passed at the same trial, they shall, unless the Court otherwise orders, be consolidated and shall proceed as one appeal.
- (2) Where two or more persons convicted by a subordinate court have appealed to a superior court where their appeals 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.

61. Transmission of notices of appeal

On receipt of a notice of appeal, the registrar of the superior court shall forthwith send a copy thereof to the Registrar and one to the respondent named therein.

62. Preparation of record of appeal

- (1) As soon as practicable after a notice of appeal has been lodged, the registrar of the superior court shall prepare the record of appeal.
- (2) For the purpose of an appeal from a superior 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 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 the intended witnesses:

Provided that the registrar of the superior court may in his 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 or 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 based his summing up, and the opinions of the assessors;
 - (h) the judgment;
 - (i) the order, if any, giving leave to appeal or the certificate, if any, that the case is a fit case for appeal;
 - (j) the notice of appeal; and
 - (k) any other documents which the trial judge may order to be included, which may include additional grounds or explanation of his decision which he considers would be of assistance to the Court, or which appear to the registrar of the superior court to be necessary for the proper disposal of the appeal, and such documents may include a report made after sentence on an appellant's health.
- (3) Where any person convicted by a magistrate's court was committed for sentence to a superior court and is appealing to the Court against the sentence imposed by the superior court, the record of appeal shall, in addition to the documents set out in sub-rule (2), contain also a certificate by the registrar of the superior court—
 - (a) that the appellant was convicted on his own plea of guilty; or
 - (b) that the appellant has lodged no notice of appeal against conviction and that the time for lodging such a notice has expired; or
 - (c) that the appellant has appealed against conviction to the superior court and that the appeal has been determined, as the case may be.
- (4) For the purpose of appeal from a superior 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 sub-rule (2) and shall contain also copies of the following documents relating to the appeal to the first appellate court—
 - (i) the petition of appeal;

- (ii) the record of proceedings;
 - (iii) the judgment; and
 - (iv) the order, if any.
- (5) Notwithstanding sub-rule (1), the registrar of the superior court shall not prepare the record of appeal where—
- (a) the notice of appeal has been lodged out of time, until he has been notified that the time has been extended by order of the superior court or of the Court or unless the Chief Justice shall otherwise direct;
 - (b) the appeal cannot be heard without leave to appeal or a certificate that the case is a fit case for appeal or a certificate that a point of law of general public importance is involved, until he has been notified that such leave or certificate has been given or unless the Chief Justice shall otherwise direct; or
 - (c) the appeal is from a superior court in its appellate jurisdiction, until the prescribed fee, or such part thereof (if any) as the appellant may be liable to pay under an order made under rule 113, has been paid or a deposit on account thereof has been made to satisfaction of the registrar of the superior court.
- (6) The registrar of the superior court shall certify each copy of the record of appeal to be a true copy of the original proceedings:

Provided that where the record is produced by printing, type lithography, stencil duplicating, photography, xerography, or other electronic means approved by the court.

63. Service and transmission of record of appeal and exhibits

- (1) As soon as the record of appeal has been prepared, the registrar of the superior court shall cause a copy of it 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 superior court shall at the same time send to the Registrar the original record of proceedings; in the superior court, the original documentary exhibits in the superior court, other than any of great bulk, and a copy of the record of the preliminary inquiry, if any, but shall not send any exhibits other than documentary ones, unless requested to do so by the Registrar.
- (3) The registrar of the superior court shall ensure so far as practicable that all other exhibits are available for inspection by the Court at the hearing of the appeal.

64. Memorandum of appeal

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

Provided that where the memorandum of appeal is lodged with the deputy registrar at the place where the appeal is to be heard the appellant shall lodge two additional copies with the Registrar within twenty-one days after service on him of the record of appeal.
- (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 and, in the case of any other appeal, the points of law, which are alleged to have been wrongly decided.
- (3) The Registrar or the deputy registrar, as the case may be, shall as soon as practicable cause a copy of the memorandum of appeal to be served on the respondent.

Repealed

- (4) A memorandum of appeal shall be substantially in the Form C in the First Schedule 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:

Provided that where an appeal is dismissed under this sub-rule, the appellant, if he can show sufficient cause, may apply to the Court to restore it for hearing.

65. 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 Chief Justice or the presiding judge to represent an appellant may within fourteen days after the date when he is notified of his 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 thereof to be served on the respondent.

66. 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 argument's in support of or in opposition to the appeal, as the case may be.
- (2) Every such statement shall be signed by or on behalf of the appellant or respondent, as the case may be, and shall be lodged in quintuplicate 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 may with leave of the Court, address the Court at the hearing of the appeal.
- (4) On receipt of a statement under sub-rule (1), the Registrar or deputy registrar shall forthwith send one copy of the statement to the other party.

67. Procedure where appellant in prison

- (1) If the appellant is in prison, he shall be deemed to have complied with the requirements of rules 59, 64, 65 and 66 or any of them if he gives to the officer in charge of such prison the notice of appeal, memorandum of appeal or statement, provided for in those rules respectively.
- (2) In any such case, in computing the time limited for lodging such notice, memorandum or statement, there shall be excluded—
 - (a) the time between the appellant's conviction and his arrival at the prison to which he 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 with the registrar of the superior court or the Registrar or deputy registrar, as the case may be.
- (3) An officer in charge of a prison receiving a notice or statement under this rule shall forthwith endorse the same with the date and time of receipt.

68. Withdrawal of appeals

- (1) An appeal may be withdrawn at any time before hearing by notice in writing to the Registrar signed by the appellant, and upon such notice being given the appeal shall be deemed to have been dismissed.
- (2) When any appeal is withdrawn, the Registrar shall forthwith notify the respondent and the registrar of the superior 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.
- (4) An appeal may be withdrawn by an informal application in court at any time before the hearing is concluded.

69. Abatement of appeals

- (1) An appeal shall abate—
 - (a) in the case of an appeal, other than an appeal against a sentence of a fine or an order for costs, compensation or forfeiture, on the death of the appellant, or, where the appellant is the State, on the death of the respondent; or
 - (b) in any case, where the fee, part thereof or deposit referred to in rule 61(5)
 - (c) has not been paid or made within fourteen days of the appellant having notified of the amount of the fee or deposit payable by him.
- (2) For the purpose of sub-rule (1)(b), the appellant shall be deemed to have received notification four days after it has been dispatched by the registrar of the superior court to the appellant or advocate of the appellant at the address stated in the notice of appeal.

70. 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) Such notice shall be given not less than seven days before the date appointed for the hearing, unless in any case the Chief Justice or the presiding judge shall otherwise direct.

71. Appearance at hearing and dismissal for non-appearance

- (1) The appellant and the respondent shall be entitled to be present at the hearing of the appeal:
Provided that an appellant or respondent who is in prison other than an appellant under sentence of death not represented by an advocate, shall, unless in any particular case the Court otherwise directs, be so entitled only on terms of paying the expenses of his transport and that of his escort to and from the Court.
- (2) Where an appellant is represented by advocate or has lodged a statement under rule 66 or is in prison, it shall not be necessary for him to attend personally the hearing of his appeal, unless the Court shall order his attendance:
Provided that if an appellant is on bail, he shall attend the hearing of his appeal or, with the leave of the Registrar, shall before the time of hearing attend at the superior court at the place where the bail bond was executed and submit himself to the order of such court pending disposal of the appeal.
- (3) Where an appellant is in prison and has stated that he does not intend to appear at the hearing of his appeal, the appeal shall be heard in his absence, unless the Court shall order his attendance.

Repealed

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

Provided that where an appeal has been dismissed under this sub-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.

- (5) The cost of transport to and from the Court of an appellant who is in prison and that of his escort shall be borne out of the funds of the Court where—
- (a) the appellant is under sentence of death and desires to attend hearing of his appeal; or
 - (b) the Court has ordered his attendance under sub-rule (2) or sub-rule (3).
- (6) If on the day fixed for the hearing of an appeal the appellant does not appear in person or by advocate, and it appears to the court that the appellant is no longer in custody and cannot be traced, or cannot be traced without an amount of delay or expense which, in the circumstances of the case, the Court considers unreasonable, the Court may, if it appears that no injustice will be done thereby, order that the appeal shall abate:

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

72. Arguments at hearing At the hearing of an appeal—

- (a) the appellant shall not, without the leave of the Court, argue any ground of appeal not specified in the memorandum of appeal or in any supplementary memorandum lodged under rule 65; and
- (b) the arguments contained in any statement lodged under rule 66 shall receive the same consideration as if they had been advanced orally at the hearing.

73. Review

- (1) Where, under the provisions of section 379(5) of the Criminal Procedure Code (Cap. 75) the Attorney-General has filed a certificate that the determination of a trial involved a point of law of exceptional public importance and that it is desirable in the public interest that it should be determined by the Court, the Attorney-General shall within thirty days thereafter lodge with the Registrar in sextuplicate a record containing the information, the judgment of the superior court and such parts of the proceedings before the superior court as are necessary to enable the Court to review the case and shall inform His Court whether or not he desires to be heard thereon.
- (2) The Registrar shall cause one copy of the certificate and of the record to be served on the person who was acquitted and require him to inform the Court, within fourteen days, whether or not he desires to be heard in the matter.
- (3) Where both the Attorney-General and the person who was acquitted desire to be heard, the provisions of these Rules relating to the hearing of criminal appeals shall thereafter apply so far as they are appropriate, with such modification as may be necessary.
- (4) An application for review shall not abate on the death of the person who was acquitted.

Part IV – CIVIL APPEALS**74. Application of Part**

This Part shall apply only to appeals from superior courts acting in original and appellate jurisdiction in civil cases and the matters relating thereto.

75. Notice of appeal

- (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 superior court.
- (2) Every such notice shall, subject to rules 84 and 97, be so lodged within fourteen days of 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, shall specify the part complained of, shall state the address for service of the appellant and shall 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 such leave or certificate before lodging the notice of appeal.
- (5) where it is intended to appeal against a decree or order, it shall not be necessary that the decree or order be extracted before lodging notice of appeal.
- (6) A notice of appeal shall be substantially in the Form D in the First Schedule and shall be signed by or on behalf of the appellant.

76. Transmission of notice of appeal

On receipt of a notice of appeal, the registrar of the court shall forthwith send one copy thereof to the appropriate registry.

77. 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 thereof on all persons directly affected by the appeal:

Provided that the Court may on application, which may be made ex parte, within seven days after lodging the notice of appeal, direct that service need not be effected on any person who took no part in the proceedings in the superior 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 superior court, and has not subsequently given any other address for service, the copy of the notice of appeal may be served on him at that address, notwithstanding that it may be that of an advocate who has not been retained for the purpose of an appeal.

78. 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.

79. Respondent to give address for service

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

- (2) A notice of address for service shall be substantially in the Form E in the First Schedule 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 as a waiver of any irregularity.

80. Separate notices of appeal from same decision

- (1) Where two or more parties have given notice of appeal from the same decision, the second and all subsequent notices to be lodged shall be deemed to be notices of address for service within the meaning of rule 79 and the party or parties giving those notices shall be respondents in the appeal.
- (2) A party whose notice of appeal is deemed to be a notice of address for service shall not be required to comply with rule 79 if he has served copies of his notice of appeal on all persons on whom under that rule he would have been required to serve notice of his address for service.

81. Withdrawal of notice of appeal and notice of cross-appeal

A party who has lodged a notice of appeal may withdraw the notice of appeal by notice in writing to all the parties who have been served. The costs of the withdrawal shall be borne by the party withdrawing the notice of appeal.

82. Institution of appeals

- (1) Subject to rule 115, an appeal shall be instituted by lodging in the appropriate registry, within sixty days of the date when the notice of appeal was lodged—
 - (a) a memorandum of appeal, in quadruplicate;
 - (b) the record of appeal, in quadruplicate;
 - (c) the prescribed fee; and
 - (d) security for the costs of the appeal:

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

- (2) An appellant shall not be entitled to rely on the proviso to sub-rule (1) unless his application for such copy was in writing and a copy of it was served upon the respondent.
- (3) The period limited by sub-rule (1) for the institution of appeals shall apply to appeals from superior courts in the exercise of their bankruptcy jurisdiction.

83. Effect of default in instituting appeal

If a party who has lodged a notice of appeal fails to institute an appeal within the appointed time he shall be deemed to have withdrawn his notice of appeal and the court may on its own motion or on application by any party make such order. The party in default shall be liable to pay the costs arising therefrom of any persons on whom the notice of appeal was served.

84. Application to strike out notice of appeal or appeal

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

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

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 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 wrongly 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 the Form F in the First Schedule 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 a superior court in its original jurisdiction, the record of appeal shall, subject to sub-rule (3), 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 or service as required by rule 79, his last known address and proof of service on him of the notice of appeal;
 - (c) the pleadings;
 - (d) the trial judge's notes of the hearing;
 - (e) the transcript of any shorthand notes taken at the trial;
 - (f) the affidavits read and all documents put in evidence at the hearing, or, if such documents are not in the English language, certified translations thereof;
 - (g) the judgment or order;
 - (h) the certified decree or order;
 - (i) the order, if any, giving leave to appeal;
 - (j) the notice of appeal; and
 - (k) such other documents, if any, as may be necessary for the proper determination of the appeal, including any interlocutory proceedings which may be directly relevant:

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

- (2) For the purpose of an appeal from a superior court in its appellate jurisdiction, the record of appeal shall contain documents relating to the proceedings in the trial court corresponding as nearly as

Repealed

may be to those set out in sub-rule (1) and shall contain also the following documents relating to the appeal to the first appellate court—

- (i) the order, if any, giving leave to appeal;
 - (ii) the memorandum of appeal;
 - (iii) the record of proceedings; and
 - (iv) the certified decree or order.
- (3) A judge or registrar of the superior court may, on the application of any party, direct which documents or parts of documents should be excluded from the record and an application for such direction may be made informally.
- (4) The documents mentioned in sub-rule (1) shall be bound in the order in which they are set out to that sub-rule and documents produced in evidence shall be put in order of the dates they bear or, where they are undated, the dates when they are believed to have been made, without regard to the order in which they were produced in evidence:
- Provided that an affidavit filed in support of a chamber summons or notice of motion shall be bound immediately following the summons or notice, as the case may be.
- (5) Each copy of the record of appeal shall be certified to be correct by the appellant or by any person entitled under rule 22 to appear on his behalf.

88. Where documents are omitted from the record of appeal

Where a document referred to in rule 87(1) and (2) is omitted from the record of appeal the appellant may within fifteen days of lodging the record of appeal, without leave, include the document in a supplementary record of appeal filed under rule 92(3) and thereafter with leave of the deputy registrar on application.

89. Contents of decrees and orders for purposes of appeal

- (1) For the purposes of an appeal to the Court against any decree or order it shall not be necessary for the amount of any costs ordered to be paid to be stated therein, and such decree or order shall be deemed to be duly drawn up and extracted if in addition to other matters required to be embodied therein it sets out the order or orders for costs but not the result of any taxation.
- (2) Where leave to appeal or for a certificate that a point of law of general public importance is involved has been given or refused by the superior court immediately following the delivery of the decision against which it is desired to appeal, a statement that leave or a certificate has been given or refused shall be included in the decree or order.

90. Service of memorandum and record of appeal

- (1) The appellant shall, before or within seven days after lodging the memorandum of appeal and the record of appeal in the appropriate registry, serve copies thereof on each respondent who has complied with the requirements of rule 79.
- (2) The appellant shall also serve copies of the memorandum of appeal and the record of appeal on such other parties to the original proceedings as the Court may at any time on application or of its own motion direct and within such time as the Court may appoint.

91. Notification and transmission of papers to Registrar

- (1) When an appeal has been instituted in a sub-registry—
 - (a) the deputy registrar shall inform the Registrar of the names of the appellant and the respondent and the names of their respective advocates and the date when the appeal was instituted;
 - (b) as soon as practicable thereafter, the deputy registrar shall obtain from the registrar of the superior court the original record of the proceedings of the superior court and the exhibits and shall send them to the Registrar together with the memorandum of appeal, three copies thereof, and four copies of the record of appeal:

Provided that the deputy registrar shall not, unless requested to do so, send to the Registrar any exhibits which, because of their size or nature, cannot conveniently be so sent;
 - (c) the deputy registrar shall ensure so far as practicable that all exhibits not so sent to the Registrar are available for inspection by the Court at the hearing of the appeal.
- (2) When an appeal has been instituted in the Registry, the Registrar shall obtain from the register of the superior court the original record of the proceedings of the superior court, and so far as is practicable, the exhibits.

92. Preparation and service of supplementary record

- (1) If a respondent is of the opinion that the record of appeal is defective or insufficient for the purposes of his case, he 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 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 each other respondent who has complied with the requirements of rule 79.
- (3) An appellant may at any time lodge in the appropriate registry four copies of a supplementary record of appeal and shall as soon as practicable thereafter serve copies of it on every respondent who has complied with requirements of rule 79.
- (4) A supplementary record of appeal shall be prepared as nearly as may be in the same manner as a record of appeal.

93. Notice of cross-appeal

- (1) A respondent who desires to contend at the hearing of the appeal that the decision of the superior court or any part thereof should be varied or reversed, either in any event or in the event of the appeal being allowed in whole or in part, shall give notice to that effect, specifying the grounds of his contention and the nature of the order which he proposes to ask the Court to make, 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 addresses of any persons intended to be served with copies of the notice and shall be lodged in quadruplicate in the appropriate registry not more than thirty days after service on the respondent of the memorandum of appeal and the record of appeal or not less than thirty days before the hearing of the appeal, whichever is the later.
- (3) A notice of cross-appeal shall be substantially in the Form G in the First Schedule and shall be signed by or on behalf of the respondent.

94. Notice of grounds for affirming decision

- (1) A respondent who desires to contend on an appeal that the decision of the superior court should be affirmed on grounds other than or additional to those relied upon by that court shall give notice to that effect, specifying the grounds of his 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 appropriate registry not more than thirty days after service on the respondent of the memorandum of appeal and the record of appeal, or not less than thirty days before the hearing of the appeal, whichever is the later.
- (3) A notice of grounds for affirming a decision shall be substantially in the Form H in the First Schedule 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 superior court should be varied or reversed and that part of that decision should be affirmed on grounds other than or additional to those relied upon by that court may include both such contentions in a notice of cross-appeal under rule 90 and shall not be required to give notice also under this rule.
- (5) The provisions of sub-rules (1), (2) and (3) of this rule and those of rule 95 shall apply mutatis mutandis to an appellant who desires to contend in opposition to a cross-appeal that the decision of the superior court should be affirmed on grounds other than or additional to those relied on by that court.

95. 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 superior court should be affirmed on grounds other than those relied on by that court shall, before or within seven days after lodging his notice of cross-appeal or notice of grounds for affirming the decision, as the case may be, serve a copy thereof on the appellant and copies thereof on all other person 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.

96. Withdrawal of appeal

- (1) An appellant may at anytime after instituting his appeal and before the appeal is called on for hearing lodge in the appropriate registry notice in writing that he intends to withdraw the appeal.
- (2) The appellant shall within seven days after lodging the notice of withdrawal, serve copies thereof on each respondent who has complied with the requirements of rule 79.
- (3) If all the parties to the appeal consent to the withdrawal of the appeal the appellant shall file, in the appropriate registry, a consent letter signed by the parties or their advocates and thereupon the appeal shall be struck out of the list of pending appeals.
- (4) If all the parties to the appeal do not consent to the withdrawal of the appeal, the appellant may before the conclusion of its hearing apply for leave to withdraw the appeal.
- (5) An application for withdrawal of the appeal after the commencement of the hearing may be made informally in court.

97. Rights of respondent when appeal withdrawn

- (1) If an appeal is withdrawn under rule 96 after notice of cross-appeal has been given, the respondent who gave the notice may withdraw it within fourteen days of the service on him of the notice of withdrawal; if it is not so withdrawn, the cross-appeal shall proceed to hearing and the provision of these Rules shall apply as if the cross-appellant were an appellant and the appellant a respondent.
- (2) If an appeal is withdrawn under rule 96 within fourteen days of the date when the appeal was instituted, any respondent who has not lodged a notice of cross-appeal shall be entitled to give notice of appeal notwithstanding that the time limited by rule 75 has expired, if he does so within fourteen days of the date when the appellant's notice of withdrawal was served on him.

98. Withdrawal of notice of cross appeal or notice of grounds for affirming decision

- (1) A respondent who has given notice of cross-appeal or notice of grounds for affirming the decision of the superior court may withdraw the same at any time before the appeal is called on or hearing by lodging in the appropriate registry notice in writing to that effect, signed by him or on his behalf.
- (2) The respondent shall, before or as soon as practicable after lodging the notice of withdrawal, serve a copy thereof on the appellant and copies thereof 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.

99. Death of party to appeal

- (1) An appeal shall not abate on the death of the appellant 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.
- (2) If no application is made under sub-rule (1) within twelve months from the date of death of the appellant or respondent, the appeal shall abate.
- (3) The person claiming to be the legal representative of a deceased party to an appeal may apply for an order to revive an appeal which has abated; and, if it is proved that the legal representative prevented by sufficient cause from continuing the appeal, the court shall revive the appeal upon such terms as to costs or otherwise as it deems fit.

100. Written submissions

- (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 appropriate registry written submissions of the 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 other party appearing in person or separately represented.
- (2) The written submissions shall be lodged by—
 - (a) an appellant, within fourteen days of lodging his memorandum of appeal;
 - (b) a respondent, within thirty days of service on him of the memorandum and record of appeal.
- (3) An appellant who has lodged written submissions under sub-rule (1) may, if served with notice of a cross-appeal, lodge supplementary submissions of the arguments in opposition to it within fourteen days of service.
- (4) A party who has lodged written submissions under this rule may, with leave of the Court, address the Court at the hearing of the appeal.

101. Notice of hearing

The Registrar shall give all parties to an appeal not less than fourteen days notice of the date fixed for the hearing of an appeal:

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

102. Appearances at hearing and procedure on non-appearance

- (1) If on any day fixed for the hearing of an appeal the appellant does not appear, the appeal may be dismissed and any cross-appeal may proceed, unless the Court sees fit to adjourn the hearing:

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

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

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

- (3) An application for restoration under the proviso to sub-rule (1) or the proviso to sub-rule (2) shall be made within thirty days of 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 of his first hearing of that decision.
- (4) For the purposes of this rule, a party who has lodged a statement under rule 100 shall be deemed to have appeared.

103. 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.

104. Arguments at hearing

At the hearing of an appeal—

- (a) No party shall, without the leave of the Court, argue that the decision of the superior court should be reversed or varied except on a ground specified in the memorandum of appeal or in a notice of cross-appeal, or support the decision of the superior court on any ground not relied on by that court or specified in a notice given under rule 93 or rule 94.
- (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 84.
- (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.
- (d) The arguments contained in any statement lodged under rule 100 shall receive the same consideration as if they had been advanced orally at the hearing.

Part V – FEES AND COSTS

105. Fees payable

Subject to rules 113 and 115 the fees set out in the Second Schedule shall be payable in respect of the matters and services therein set out:

Provided that—

- (a) no fees shall be payable upon any appeal from the superior 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 to any party to any such appeal;
- (b) no fee shall be payable by the Government in respect of any criminal application or appeal;
- (c) copies of any document's may be issued without fee to such persons as the Chief Justice may nominate or at such reduced fees as the Chief Justice may direct.

106. Time of payment of fees

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

107. Security for costs in civil appeals

- (1) Subject to rule 115, there shall be lodged in Court on the institution of a civil appeal as security for the costs of the appeal the sum of two thousand shillings.
- (2) Where an appeal has been withdrawn under rule 96 after notice of cross-appeal has been given, the Court may, on the application of any person who is a respondent to the cross-appeal, direct the cross-appellant to lodge in Court as a security for costs the sum of two thousand shillings or any specified sum less than two thousand shillings, or 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 same either by consent of the parties or in conformity with the decision of the Court and having regard to the rights of the parties thereunder.

108. Assessment or taxation of costs

- (1) When making any decision as to the payment of costs, the Court may assess the same or direct them to be taxed and any decision as to the payment of costs, not being a decision whereby the amount of the costs is assessed, shall operate as a direction that the costs be taxed.
- (2) For the purpose of execution in respect of costs, the decision of the court directing taxation and the certificate of the taxing officer as to the result of such taxation shall together be deemed to be a decree.

109. Costs improperly incurred

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

110. Improper agreements for remuneration

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

111. Taxation

- (1) The Registrar shall be a taxing officer with power to tax the costs arising out any application or appeal to the Court as between party and party.
- (2) Such costs shall be taxed in accordance with the rules and scale set out in the Third Schedule.
- (3) The remuneration of an advocate by his clients in respect of application or appeal shall be governed by the rules and scales to proceedings in the High Court.

112. Reference on taxation

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

and for the purpose of this sub 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 over-riding discretion given him by paragraph 12 of the Third Schedule shall be deemed to involve a matter of principle.
- (2) 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 shall have power to make such deduction or addition as will render the bill reasonable and except as in this sub-rule provided, there shall be no reference on a question of quantum only.
- (3) An application for a reference may be made to the Registrar informally at the time of taxation or by writing within seven days thereafter.
- (4) A reference to a judge may be adjourned by him for the consideration of the Court.
- (5) Any person dissatisfied by the decision of a judge given under sub-rule (1) or sub- rule (2) may apply to the Court to vary, discharge or reverse the same and such application, may be made either informally to the judge at the time of the decision or by writing to the Registrar within seven days of the time.

113. Waiver of fees in criminal appeals

- (1) If in any appeal from a superior court acting in appellate jurisdiction in any criminal matter a judge of the superior court is satisfied on the application of the appellant—
 - (a) that the appeal raises one or more questions of law proper for determination by the Court;
and

Repealed

- (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 may by order direct that the whole or any part of such fees be waived.
- (2) An application for an order under sub-rule (1) may be made informally at any time but not later than seven days after the appellant has been informed of the amount which, in the absence of an order, he would be required to pay as fees or to deposit in respect thereof:
- Provided that a judge of a superior court may entertain any such application out of time if it shall appear to him that there was sufficient cause for the delay in making the same.
- (3) No fee shall be payable on the lodging of any such application.
- (4) A judge of a superior court considering the means of an applicant may rely on a report made to him by the Registrar.
- (5) A judge of a superior court, making an order under sub-rule (1) may, at the same time and without formal application, order the extension of the time for giving notice of appeal or for lodging the memorandum of appeal.
- (6) An order allowing or dismissing an application under sub-rule (1) shall be final:
- Provided that the decision by the judge of the superior court that an appeal raises or does not raise a question of law proper for determination by the Court shall be conclusive of that question only in relation to the application.

114. Refund of fees paid in criminal appeals

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

115. Relief from fees and security in civil appeals

- (1) If in any appeal from a superior court, in its original or appellate jurisdiction in any civil case the Court is satisfied on the application of an appellant that he lacks the means to pay the required fees or to deposit the security for costs and that the appeal is not without reasonable possibility of success, the Court may by order direct that the appeal may be lodged—
- (a) without prior payment of fees of Court, or on payment of any specified amount less than the required fees;
- (b) without security for costs being lodged, or on lodging of any specified sum less than the amount fixed by rule 107, and may order that the record of appeal be prepared by the registrar of the superior court without payment therefor or on payment of any specified sum less than the fee set out in the Second Schedule, conditionally on the intended appellant undertaking to pay the fees or the balance of the fees out of any money or properly he may recover in or consequence of the appeal.
- (2) The Registrar shall be entitled to be heard on any such application.
- (3) No fee shall be payable on the lodging of any such application.
- (4) The Registrar shall have power to take such action as he may think necessary to enforce any undertaking given in accordance with sub-rule (1).

Part VI – REVOCATION AND TRANSITIONAL PROVISIONS

116. Revocation

The Court of Appeal Rules (Sub. Leg.) are revoked.

117. Transitional provisions

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

Provided that—

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

FIRST SCHEDULE

(¹) Delete inappropriate words

THE FIRST SCHEDULE
FORMS
FORM A
(Rule 42)

In the Court of Appeal at

Criminal (¹)

Application No. of, 20....

Civil

an intended appeal (¹)

In the matter of

In the matter of

Criminal/Civil Appeal No. of, 20.....

between Applicant
and Respondent
(Appeal from the (²) of the High Court
of at (Hon. Justice)
dated, 20....., in

Criminal(¹) Application(¹) No. of 20

Civil Appeal

NOTICE OF MOTION

TAKE NOTICE that on, the day of

20, at o'clock in the morning(¹)

at afternoon

as soon thereafter as he can be heard, Mr. Advocate for

the Court(¹)

the above-named applicant, will move

a judge of the Court

for an order that on the grounds that

And for an order that the cost of and incidental to this application abide the result of the said appeal (²).

The application will be supported by the affidavit of

sworn on the, day of, 20.....

The address for service of the applicant is

Dated this day of, 20

Signed..... Applicant

Advocate for the applicant

Lodged in Registry

the

sub-registry at

on the day of, 20

....

(²) Insert conviction, sentence, judgment, decree, order or as the case may be.

FORM B

(Rule 39)

(Heading as in the proceeding appealed from)

NOTICE OF APPEAL

(¹) Delete inappropriate words or amend as necessary.

TAKE NOTICE that appeals to the Court of Appeal against the decision of the Honourable Mr. Justice given at on the day of 20..... whereby the appellant was convicted of and sentenced to

The appeal is against conviction only/conviction and sentence/ sentence only (¹).

The appellant intends/does not intend (¹) to be present at the hearing of the appeal.

The address for service of the appellant is

Dated this day of 20

Signed..... Appellant
Advocate for the appellant

(Retained only to prepare this notice /Retained to appear at the hearing of the appeal/Assigned to appear at the hearing of the appeal (¹).

To: -

The Registrar of the High Court at
Lodged in the High Court of at on the
day of 20

.....
Registrar

FORM C

(Rule 64)

In the Court of Appeal at

Criminal appeal No. of 20

Between

..... Appellant

and

..... Respondent

(¹) Insert conviction.

wherein, or in, or in the (Appeal from a (¹) of the High Court of
 case may be at (Mr. Justice) dated the
 day of 20..... in

Criminal Case No..... of 20.....).
 Appeal

MEMORANDUM OF APPEAL

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

1.
2.

Signed..... Appellant
 Advocate for the appellant

To:-

The Honorable the judges of the Court of Appeal lodged in the Registry /Sub-registry at on the day of 19.....

Registrar

FORM D

(Rule 75)

(Heading as in proceeding appealed from)

NOTICE OF APPEAL

(¹) Delete as appropriate.

(²) Specify part complained of.

(³) Copies of the notice should be served on all persons directly affected by the appeal.

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

The address for service of the appellant is

It is intended to serve copies of this notice on (³)

Dated this day of 20.....
 Signed..... Appellant

Advocate for the
appellant

To: -

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

Registrar

FORM E

(Rule 79)

(Heading as in proceeding appealed from)

NOTICE OF ADDRESS FOR SERVICE

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

Dated this day of, 20

Respondent

Signed:

Advocate for the
respondent

To: -

The Registrar /Deputy registrar of the Court of Appeal at

Copies to be served on lodged in the registry/sub-
registry at of 20.....

Registrar

FORM F

(Rule 86)

In the Court of Appeal at

Civil Appeal No. of 20

Between

() Insert description,
address, order, or as the
case may be.

..... Appellant
and

..... Respondent

(2) Define and amend as necessary. (*) Set out order which is to be made to the court to make

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

MEMORANDUM OF APPEAL

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

1.
2.

It is proposed to ask the Court for an order that (*)

Appellant

Signed..... Advocate for the appellant

To: -
The Honorable the Judges of the Court of Appeal

Copies to be served on lodged in the Registry/Sub-registry at on the day of 20.....

.....
Registrar

FORM G
(Rule 93)

(Headings as in Form F)

NOTICE OF CROSS-APPEAL

(*) Set out order which is to be made to the court to make

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

1.
2.

It is proposed to ask the Court for an order that (*)

It is intended to serve copies of this notice on

Dated thisday of..... 20.....
Respondent
Signed.....
Advocate for the respondent
To: -
The Honourable the Judges of the Court of Appeal lodged in the
Registry /Sub-registry aton the
.....day of..... 20.....
.....
Registrar

FORM H
(Rule 94)
(Heading as in Form F)

NOTICE OF GROUNDS FOR AFFIRMING THE DECISION

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

1.
2.

It is intended to serve copies of this notice on
Dated thisday of....., 20.....

Respondent
Signed.....
Advocate for the
respondent
To: -
The Honourable the Judges of the Court of Appeal lodged in the
Registry /Sub-registry at on the
.....day of....., 20.....
.....
Registrar

FORM I
(Rule 33)

SECOND SCHEDULE

(Heading as in Form A)

(1) Delete inappropriate words

ORDER

Beforein Chambers/in Court (1)

Upon hearing.....

and upon reading the affidavit of.....

Filed herein on the

IT IS ORDERED that

and that the costs of this application be.....

Dated this..... day of

Extracted on.....

.....

Registrar
FORM J
(Rule 33)
(Heading as in Form F)

ORDER

(2) Delete what is inappropriate

IN COURT:

Before

This appeal coming on for hearing this day of

in the presence of when the appeal was stood over
for judgment and this appeal coming for judgement this day⁽³⁾

IT IS ORDERED that -

1.

2.

etc.

AND IT IS ORDERED⁽³⁾

Dated this day of

Extracted on

.....

Registrar

SECOND SCHEDULE		(r. 105)
FEES		
Part 1.		
Fees in connection with applications, other than applications relating to criminal appeals from a superior court in its original jurisdiction and other than applications under rule 112.		
KSh.		
1. Upon lodging a notice of motion		500
2. Upon lodging a notice of motion under certificate of urgency	750	
For each subsequent day of hearing or part thereof excluding the first day		800
3. Upon lodging an affidavit, other than an affidavit annexed to a notice of motion	150	
4. Upon giving notice under rule 54 (1)		3,000
PART 2		
FEES IN CONNECTION WITH CRIMINAL APPEALS		
5. Upon lodging a notice of appeal from a superior court in its appellate jurisdiction.		200
6. For preparing the record of appeal, for each folio or part thereof -		
(a) for the first copy		10
(b) for each additional copy		5
PART 3		
FEES IN CONNECTION WITH CIVIL APPEALS		
7. Upon lodging a notice of appeal		450
8. Upon lodging a notice of address for service or a notice of change of address		100
9. Upon lodging a memorandum of appeal against an interlocutory decision or against a final decision		1,500

Where the appeal is against an award or the refusal to make an award, of money, or against a decision as to the ownership of or entitlement to the possession of property, if the amount of money (exclusive of any interest awarded thereon) or the value of property –

(a) Exceed Ksh. 10,000 but does not exceed Ksh. 210,000	2000 2000 and Ksh. 100 for each Ksh.
(b) exceeds Ksh.210,000 but does not exceed Ksh. 210,000	2000 or part thereof, of the value over Ksh.10,000.
(c) exceeds Ksh. 210,000	Ksh.3,000 and Ksh.100 for each Ksh. 2,000 or part thereof, of the value over Ksh.210,000, subject to a maximum of Ksh.100,000
(2) In any other case	Ksh.1,000 and Ksh. 800 for day, or part thereof, of the hearing, excluding the first day.
10. Upon lodging a notice of cross-appeal	300
11. Upon lodging a notice of grounds for affirming a decision	150
12. Upon lodging a notice withdrawing an appeal, or a notice of cross-appeal or a notice of grounds for	200

THIRD SCHEDULE (Rule 111.)

TAXATION OF COSTS

1. Interpretation

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

2. Lodging and service of bill of costs

- (1) Where costs are to be taxed, the advocate for the party to whom the costs were awarded shall lodge his bill with the taxing officer and shall before or within seven days after lodging it, serve a copy of it on the advocate for the party liable to pay it.
- (2) A bill of costs shall be lodged as soon as practicable after the making of the order for costs and not later than twenty-one days after a request in writing therefor by the party liable, or such further time as the Registrar may allow.
- (3) A bill of costs may not be lodged by an advocate who is not on the record.

3. Form of bill

- (1) A bill of costs shall be instituted and filed in the proceedings and shall be prepared in five columns as follows—
 - (a) the first or left hand column for the dates of the items;
 - (b) the second column for the serial numbers of the items;
 - (c) the third column for the particulars of the services charged for;
 - (d) the fourth column for the professional or scale charges;
 - (e) the fifth column for the taxing officer's deductions.
- (2) Every bill of costs shall be endorsed with—
 - (a) the name and address of the advocate lodging the same;
 - (b) the name and address of every party to be served or his advocate;
 - (c) a certificate signed by the advocate lodging the bill that the number of folios; in respect of any item in the bill charged for by the folio, is correct. If such certificate is found to be incorrect the item may be disallowed.
- (3) Every bill of costs shall be endorsed at the end thereof with a form of certificate for signature by the taxing officer certifying the result of the taxation.

4. Disbursements

- (1) Disbursements shall be shown separately at the foot of the bill of costs.
- (2) Receipts for all disbursements shall be produced to the taxing officer at the time of taxation.
- (3) No disbursement shall be allowed which has not been paid at the time of taxation.

5. Bills not to be altered after lodging

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

6. Notice of taxation

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

7. Time and adjournment

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

8. Failure to attend taxation

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

9. Quantum of costs

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

Repealed

- (2) The fees to be allowed for instructions to appeal or to oppose an appeal shall be such sum as the taxing officer shall consider reasonable, having regard to the amount involved in the appeal, its nature, importance and difficulty, the interest of the parties, the other costs to be allowed, the general conduct of the proceedings, the fund or person to bear the costs and all other relevant circumstances.
- (3) The sum allowed under sub-paragraph (2) shall include all works necessary and properly done in connection with the appeal and not otherwise chargeable, including attendances, correspondence, perusals, and consulting authorities.
- (4) Other costs shall, subject to the provisions of paragraphs 10, 11 and 12, be awarded in accordance with the scale set out below or, in respect of any matter for which no provision is made in those scales, in accordance with the scales applicable in the High Court.

10. Fees for drawing Documents

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

11. Taxation of bills

- (1) On taxation the taxing officer shall allow such costs, charges and disbursements as shall appear to him to have been reasonably incurred for the attainment of justice but no costs shall be allowed which appear to the taxing officer to have been incurred through overpayment, extravagance, over caution, negligence or mistake or payment of special charges or expenses to witnesses or other persons or by other unusual expenses.
- (2) In taxing the costs of any civil appeal, the taxing officer shall disallow the costs of any matter improperly included in the record of appeal or in any supplementary record of appeal.

12. Over-riding discretion

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

13. Excessive claims

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

14. Set-off of costs

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

15. Costs of more than one advocate

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

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

- (2) Where the Court has directed that the costs of two advocates be allowed—
- (a) where the senior advocate is not a member of the same firm as the advocate on the record, he shall be allowed the fee paid to him, including fees for attending in court, or so much thereof as the taxing officer shall consider reasonable;
 - (b) where the senior advocate is a member of the same firm as the advocate on the record, he shall be allowed such fee as would have been allowed in the case of an advocate not a member of that firm; and
 - (c) the advocate on record shall be allowed the usual instruction, hearing and other fees.
- (3) The fee paid to another advocate by the advocate on the record shall be shown as a disbursement.

16. Costs where advocate changed during proceedings

If there has been a change of advocates the bill of costs of the first advocate may be annexed to that of the current advocate and its total shown as a disbursement and the bill will be taxed in the ordinary way, the current advocate being heard on it, but the taxing officer may require the 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 such parties, the taxing officer shall consider in the taxation of such advocate's bill of costs whether such separate proceedings were necessary and proper, and if he is of opinion that any part of the costs occasioned thereby has been unnecessarily or improperly incurred, the same shall be disallowed.

18. Costs where trustees defend separately

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

19. Expenses of persons attending hearing

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

SCALE OF COSTS		Ksh
1. For instructions to file a notice of appeal		1,500
2. For instructions to act for a respondent—		
(a) where an appeal is subsequently instituted		1,500
(b) where no appeal is subsequently instituted, to cover all costs arising out of the notice of appeal, other than disbursements and those of any application to the superior court or the Court		750
3. For drawing a notice of motion		1,000
4. For drawing an affidavit, for each folio or part thereof, exclusive of exhibits		100
5. For drawing a notice of appeal		500
6. For drawing a notice of address for service		500
7. For drawing memorandum of appeal		2,000
8. For drawing a notice of cross-appeal		1,000
9. For drawing a notice of grounds for affirming a decision		1,000
10. For drawing an order, for each folio or part thereof		100
11. For drawing a bill of costs, for each folio or part thereof		100
12. For drawing any other necessary documents to be filed or used in the court, for each folio or part thereof		100
13. For making any necessary copies, for each folio or part thereof—		
(a) For the first copy		20
(b) For each subsequent copy		20
14. For attendance at the Registry		200
15. For attendance on the Registrar—		
(a) For the first 15 minutes		300
(b) For each subsequent 15 minutes		100
16. For attending on a judge in chambers—		
(a) For the first 30 minutes		1,000
(b) For each subsequent 30 minutes		500
17. For attending in court, where the matter was listed but not reached, for each day		750
18. For attending in court on the hearing of any application or appeal—		
(a) For the first 30 minutes		1,000
(b) For each subsequent 30 minutes		500
19. For attending in court to take judgement		1,000