

Tanzania

Appellate Jurisdiction Act

Tanzania Court of Appeal Rules, 1979

Government Notice 102 of 1979

Legislation as at 31 July 2002

FRBR URI: /akn/tz/act/gn/1979/102/eng@2002-07-31

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PDF created on 20 April 2024 at 14:01.

Collection last checked for updates: 31 July 2002.

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Tanzania

Appellate Jurisdiction Act

Tanzania Court of Appeal Rules, 1979

Government Notice 102 of 1979

Published in Tanzania Government Gazette

Commenced on 28 September 1979

[This is the version of this document at 31 July 2002.]

[Note: This legislation has been thoroughly revised and consolidated under the supervision of the Attorney General's Office, in compliance with the Laws Revision Act No. 7 of 1994, the Revised Laws and Annual Revision Act (Chapter 356 (R.L.)), and the Interpretation of Laws and General Clauses Act No. 30 of 1972. This version is up-to-date as at 31st July 2002.]

[Section 12; G.N.s Nos. 102 of 1979; 103 of 1984; 125 of 1985; 451 of 1985; 388 of 1987; 78 of 1989; 222 of 1994; 114 of 1996; 120 of 1996; 238 of 1997; 240 of 1997; 278 of 1999; 312 of 2002; 375 of 2002]

Part I – Preliminary provisions (rules 1-2)

1. Citation and commencement

These Rules may be cited as the Tanzania Court of Appeal Rules, and shall come into operation on the twenty-eighth day of September, 1979.

2. Interpretation

(1) In these Rules, unless the context requires otherwise—

"**advocate**" means a person who, under Rule 31, has a 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 the High Court includes its jurisdiction in matters of revision, review, reference, case stated and point of law reserved;

"**appropriate registry**" has the meaning assigned to it by Rule 4;

"**Chief Justice**" means the Chief Justice of the Court of Appeal of the United Republic of Tanzania and, in relation to the hearing of any appeal or to the delivery of judgment on an appeal, includes the presiding Judge of the Court as constituted for that appeal;

"**Constitution**" means the Constitution of Tanzania entitled "Katiba ya Jamhuri ya Muungano wa Tanzania, ya Mwaka 1977"¹, or the English translation, if any, of that Constitution published in the Gazette;

"**Court**" means the Court of Appeal of the United Republic of Tanzania established by the Constitution, and includes any division of that Court and a single Judge exercising any power vested in him sitting alone;

"**dies non**" means a Sunday or a public holiday, and includes any other day on which the Registry is closed;

"deputy registrar" means a deputy registrar of the Court, and includes any officer of the High Court appointed by the Chief Justice to be a deputy registrar of the Court;

"High Court" means the High Court of the United Republic of Tanzania established by the Constitution and, for the purposes of appeals to the Court, includes a subordinate court with extended jurisdiction from which an appeal may lie direct to the Court; and the expression "trial judge" includes a magistrate exercising extended jurisdiction;

"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 61, and, in relation to a civil appeal, means a notice lodged in accordance with Rule 76;

"notice of cross-appeal" means a notice lodged in accordance with Rule 87;

"notice of grounds for affirming the decision" means a notice lodged in accordance with Rule 93;

"prison" means a prison established or deemed to have been established under section 23 of the Prisons Act ², and 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 of the Court;

"Registrar of the High Court" means the Registrar of the High Court, and includes a district and a deputy registrar of that court;

"Registry" means the Registry of the Court and, where one has been established, includes a sub-registry of the 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.

- (2) Any reference to a party to an appeal shall include the advocate acting for that party in the appeal, but an advocate shall not be deemed to be acting for a party by reason only of his having acted for that party in the proceedings from which the appeal is brought.

Part II – General administrative and procedural provisions (rules 3-41)

3. Practice and procedure of Court

- (1) The practice and procedure of the Court in connection with appeals and intended appeals from the High Court, and the practice and procedure of the High Court in connection with appeals to the Court shall be as prescribed in these Rules, but the Court may at any time, direct a departure from these Rules in any case in which this is required in the interests of justice.
- (2) Where it is necessary to make an order for the purposes of—
 - (a) dealing with any matter for which no provision is made by these Rules or any other written law;
 - (b) better meeting the ends of justice; or
 - (c) preventing an abuse of the process of the Court,

the Court may, on application or on its own motion, give directions as to the procedure to be adopted or make any other order which it considers necessary.

3A. Language of the court

The language of the court shall be either English or Kiswahili as the Chief Justice or, as the case may be, the presiding Judge holding such court, shall direct, but the judgment, Order or decision of the court shall be in English.

4. Registry and sub-registries

- (1) The Registry shall be situated at Dar es Salaam, but where the Court is sitting or about to sit in any place other than Dar es Salaam, then, for the purposes of any application or appeal to be heard in that place, the Registry shall be deemed to be situated in that place.
- (2) The Chief Justice may, by order published in the *Gazette*, establish such number of sub-registries in such places in Tanzania as he may determine.

5. Registrar

The President shall, after consultation with the Chief Justice, appoint, on such terms and conditions as he may specify, a Registrar of the Court who shall be the chief administrative officer of the Court.

6. 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 an act or thing shall be deemed to be exclusive of the day in which the event happens or the act or thing is done;
- (b) if the last day of the period is a *dies non*, the period shall include the next following day not being a *dies non*;
- (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 a *dies non*, the act or proceeding shall be construed as done or taken in due time if it is done or taken on the next day afterwards not being a *dies non*;
- (d) where any act or proceeding is directed or allowed to be done or taken within any time not exceeding six days, a *dies non* shall not be reckoned in the computation of time;
- (e) unless the Court directs otherwise, the period of the Christmas vacation shall not be reckoned in the computation of time.

7. Dies non

Save as is provided in Rule 6, in computing time limited for any act or proceeding under these Rules a *dies non* shall be reckoned unless that day is the last day of that time, in which case it shall be excluded from that computation.

8. Extension of time

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

9. Suspension of sentence and stay of execution

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

- (2) Subject to the provisions of subrule (1), the institution of an appeal shall not operate to suspend any sentence or to stay execution, but the Court may—
 - (a) in any criminal proceedings, where notice of appeal has been given in accordance with Rule 61, order that the appellant be released on bail or that the execution of any warrant of distress be suspended pending the determination of the appeal;
 - (b) in any civil proceedings, where a notice of appeal has been lodged in accordance with Rule 76, order a stay of execution,on such terms as the Court may think just.

10. Form of documents for use in proceedings of Court

- (1) Except where 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 to permit of binding in book form.
- (2) All documents prepared for use in the Court shall be clear and easily legible and may be printed, mimeographed, typewritten, written or reproduced in photostat, photography, type lithography, stencil duplicating, xerography or in any combination of those 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 volumes more than one, and the title of the appeal shall appear on the cover.
- (4) The pages of every application and, in criminal cases, of the record of appeal, and in civil cases, of the memorandum of appeal and the record of appeal shall be numbered consecutively.
- (5) In all applications and appeals, every tenth line of each page of the record shall be indicated in the margin on the right side of the sheet.
- (6) Whatever medium is adopted for the production and reproduction of documents for use in the Court, the taxing officer shall on taxation allow only those costs which would in his opinion have been incurred by using the most economical method permitted or available.

11. Power of Registrar or Registrar of High Court to reject documents

- (1) The Registrar or the Registrar of the High Court, as the case may be, may refuse to accept any document which does not comply with the requirements of Rule 10.
- (2) Subject to the provisions of Rules 120 and 122, the Registrar or the Registrar of the High Court, as the case may be, shall not 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 a result of an error, a document is accepted which ought to have been rejected under subrule (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 required fee or the balance of it or lodge the required security.
- (4) Any person who is dissatisfied with a decision of the Registrar, or of the Registrar of the High Court, rejecting any document under 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 after the decision.

12. Hours for lodging documents

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

13. Document may be lodged otherwise than at appointed place

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

14. Signature of documents

- (1) Any document may be signed on behalf of the person making it by any person entitled under Rule 28 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 28 to appear on his behalf or by any person in whose care that person may be for the time being, including a medical officer, a police or prison officer.

15. Endorsement of documents lodged

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

16. Acceptance of documents lodged out of time

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

17. 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.

18. Form of amendments

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

- (2) Where any person lodges an amended version of a document, he 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.

19. Maintenance of registers

- (1) The Registry 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 Registry 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 notice 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 maintained under this Rule shall show the number of the application or appeal, the number of the proceedings in the High 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; but registers maintained in a sub-registry need not show the result of applications, 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.

20. Process of Court and service

- (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, which shall normally be in such manner as would be appropriate if it were a process of the High Court, and in the absence of any special direction shall be made personally on the person to be served or any person entitled under Rule 28 to appear on his behalf; but where a party to any proceeding has given an address for service, service may be effected by delivery at that address.
- (2) Where any document is required to be served on the appellant or on the respondent, or on two or more appellants or respondents as the case may be, 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) Where any person out of the jurisdiction of the Court is a necessary or proper party to a proceeding the Court may allow service out of the jurisdiction of any document required to be served upon that party or that notice of that document be served *in lieu* of the document.
- (5) Proof of service may be given where necessary by affidavit, unless in any case the Court requires proof by oral evidence.
- (6) If the person to be served is in prison, service may be effected by transmitting the document to the officer in charge of the prison for delivery to the prisoner, and service on the prisoner may be proved by a letter purporting to be signed by the officer in charge of the prison and certifying that the document was delivered to the prisoner on a specified date.
- (7) Where any document is required to be sent to any person, the document may be sent by hand or by registered post to that person or to any person entitled under Rule 28 to appear on his behalf and notice of the date fixed for the hearing of an application or appeal or for the delivery of judgment or the reasons for any decision may be given by telephone or telegram.
- (8) Where by these Rules a party is required to serve any document on another party within a limited time, and by virtue of this Rule or any other written law or order of the Court that document is required to be served by or through a process server or other officer of any court, the party shall be deemed to have served the document in due time if within the time limited for service he files the document in the Registry together with any necessary copies and a requisition for service and pays all fees and charges payable in respect of it, but if the party is required to assist the officer by identifying the person to be served or otherwise, he shall do so with all due diligence and in default of so doing shall be deemed to have failed to serve the other party in due time.

21. Signature and sealing of summonses, etc.

Every summons, warrant, order, notice or other mandatory process of, or 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.

22. 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.

23. Locus of appeals and notice of sittings

- (1) The Court shall sit, and appeals shall be heard by the Court, in such places in Tanzania as the Chief Justice may from time to time determine.
- (2) The sittings of the Court and the matters to be disposed of at those sittings shall be advertised and notified in such manner as the Chief Justice may direct, but the Court may at any sitting, dispose of, any matter or business which has not been advertised or notified.

24. Business during vacations

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

25. Composition of Court at sitting

Save where a matter is dealt with by a single Judge, for the purpose of hearing any appeal the Court shall consist of three Judges selected by the Chief Justice for that purpose.

26. Power of a single Judge

A single Judge may exercise any power vested in the Court, which does not involve the decision of an appeal, but if any Judge rejects any application for the exercise of the power, the person making that application shall be entitled to have his application determined by the Court.

27. Appeals to be heard in court

- (1) Every appeal shall be heard in court, to which all members of the public shall have access so far as space in the court permits and so long as they conduct themselves in an orderly manner, subject to subrules (2) and (3).
- (2) The presiding Judge may, if in exceptional circumstances he is satisfied that the interests or justice so require, direct that the public of any particular person or category of persons be excluded or removed from the court in which an appeal is being heard.
- (3) No child (other than an infant in arms) shall be permitted to be present in court during the hearing of any appeal, or during any proceedings preliminary to the hearing, except during such time as his presence is required as a witness or for other purposes of justice; and where any child is in court contrary to this subrule he shall be ordered to be removed.
- (4) Nothing in this Rule shall be construed so as to prejudice other inherent powers of the Court to hear proceedings *in camera*.

28. Appearances

- (1) Subject to the provisions of Rule 73, a party to any proceedings in the Court may appear in person or by advocate.
- (2) A person not resident in the United Republic may appear by lawfully authorised attorney.
- (3) A corporation may appear either by advocate or by its director or manager or secretary, who is appointed by resolution under the seal of the company, a sealed copy of which shall be lodged with the Registrar.
- (4) Any person under disability may appear by advocate or by his committee, next friend or guardian *ad litem* as the case may be. 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. In any other case, the Court may appoint a guardian *ad litem* for the purpose of an appeal. The Court may at any time remove and replace any guardian *ad litem*, however appointed.

29. 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, he may, with the consent of that appellant or respondent, as the case may be, assign an advocate to represent him and may require that appellant or respondent, as a condition of having an advocate assigned to him, to undertake to refund the fees and expense of the 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 provisions of subrule (1) or subrule (2) shall be as set out in the Fourth Schedule to these Rules and the same shall be defrayed out of the funds of the court:

Provided that the Chief Justice may, in special circumstances, direct that higher fees be paid.

- (4) The Registrar may take such action as he may think necessary to enforce any undertaking given in accordance with subrule (2) and any moneys so recovered shall be paid into the Consolidated Fund.

30. Change of advocate

Where any party to an 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 notice of the change and shall serve a copy of the notice on the other party appearing in person or separately represented, as the case may be.

31. Right of audience of advocates

- (1) The Attorney-General, the Director of Public Prosecutions or the Chief Corporation Counsel of the Tanzania Legal Corporation, when appearing as such in any application or appeal, whether of his own motion or at the instance of the Court, shall have the right of audience in the Court and shall take precedence over all other advocates; but where only the Attorney-General and the Chief Corporation Counsel of the Tanzania Legal Corporation appears as such, the Attorney-General shall take precedence.
- (2) Other legal officers of the State or of the Tanzania Legal Corporation shall have the right of audience before the Court in all proceedings within the scope of their official duties.
- (3) Every advocate who is for the time being entitled to practise before the High Court shall have the right of audience before the Court save that an advocate who has been struck off the roll of advocates or who is under suspension from practice in the United Republic shall have no right of audience in the Court, notwithstanding that he may be entitled to practise in any other country.
- (4) Any other person entitled to appear as counsel or advocate before any court of unlimited jurisdiction in any country in the Commonwealth shall, if licensed in that behalf by the Chief Justice and subject to payment of the prescribed fee, have the right of audience before the Court in respect of any one appeal, including any cross-appeal heard with it, or any two or more appeals consolidated for hearing.

32. List of authorities and copies of judgment 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 the appeal is to be heard, a list containing the titles of the case or cases with their citations and the names, authors and editions of the book or books, and shall serve a copy of that list on the other party or on each other party appearing in person or separately represented, as the case may be; but a supplementary list may, when necessary, be produced at the time of the hearing.
- (2) The 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 an application or appeal, to rely on the judgement in any unreported case shall, at or before the hearing, produce a certified or a photostat copy of that judgement and, except in the case of an application to be heard by a single Judge, two other copies of it for the use of the Court, and in every case, one copy for the use of the other party, or each other party appearing in person or separately represented, as the case may be.

33. Order of addresses

- (1) The Court shall, at the hearing of an application or appeal, hear first the applicant or appellant, then the respondent and then the applicant or appellant in reply.

- (2) At the hearing of an appeal where notice of a 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.

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

- (1) On any appeal from a decision of the High Court acting in the exercise of its original jurisdiction, the Court may—
 - (a) re-appraise the evidence and draw inferences of fact; and
 - (b) in its discretion, for sufficient reason, take additional evidence or direct that additional evidence be taken by the trial court or by a commissioner.
- (2) When additional evidence is taken by the Court, it may be oral or by affidavit, and the Court may allow the cross-examination of any deponent.
- (3) When additional evidence is taken by the trial court, it shall certify such evidence to the Court, with a statement of its own 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 statement, of his own opinion on the credibility of the witness or witnesses.
- (4) The parties to the appeal shall be entitled to be present when any additional evidence is being taken, but that evidence shall not be taken on the presence of any assessor.

35. Power to call for report

In dealing with any appeal before it, the Court may, if it thinks fit, call for and receive from the trial court a report on any matter connected with the trial proceedings.

36. General powers of the Court

The Court may, in dealing with any appeal, so far as its jurisdiction permits, confirm, reverse or vary the decision of the High Court, or remit the proceedings to the High Court with such directions as may be appropriate, or to order a new trial, and to make any necessary incidental or consequential orders, including orders as to costs.

37. Judgement

- (1) At the close of the hearing of an application or appeal, the Court may give its judgement at once or on some future day which may be appointed then or subsequently notified to the parties.
- (2) In criminal applications (other than applications heard by a single Judge) and criminal appeals, one judgement shall be given as the judgement of the Court, but a Judge who dissents shall not be required to sign the judgement and in any particular case, the presiding Judge may direct that separate judgements be given.

- (3) In civil applications (other than applications heard by a single Judge) and civil appeals, separate judgements shall be given by the members of the Court unless, the decision being unanimous, the presiding Judge directs otherwise.
- (4) Subject to subrule (5), the judgement or judgements of the Court on an application shall, where the application was heard in chambers, be delivered in chambers, and the judgement or judgements on an application heard in court and the judgement or judgements on an appeal shall be delivered in court.
- (5) The presiding Judge may, in any particular case, direct that only the decision of the Court and not the reasons for it shall be delivered in chambers or in court, and in that case the judgement or judgements shall be deposited in the Registry or sub-registry in the place where the application or the appeal was heard and copies of the judgement or judgements shall be available to the parties when the decision is delivered.
- (6) Notwithstanding the provisions of subrule (1), the Court may at the close of the hearing of an application or appeal, give its decision but reserve its reasons and in such a case the reasons may be delivered in court or deposited in the Registry or sub-registry in the place where the application or appeal was heard and where the reasons are so deposited, copies of those judgements shall be available to the parties and they shall be so informed.
- (7) Where one judgement is given as the judgement of the Court at the close of the hearing, it shall be delivered by the presiding Judge or by such other member of the Court as the presiding Judge may direct.
- (8) Where the judgement, or the reasons for a decision, has been reserved, the judgement of the Court, or a judgement of any Judge or 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, or by the Registrar.
- (9) A judgement shall be dated as of the day when it is delivered or, where a direction has been given under subrule (5), as of the day when the decision was delivered.

38. 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 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 set out in the First Schedule to these Rules, and an order on an appeal substantially in the Form I in that Schedule.

39. 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 doing so, shall not be required to consult the parties to the application or appeal, or their advocates.
- (2) Where a decision of the Court was given in civil application or appeal—
 - (a) the party who has substantially been successful shall, as soon as practicable, prepare a draft of the order and submit it for the approval of the other parties;
 - (b) if all parties approve the draft, the order shall, unless the presiding Judge directs otherwise, be in accordance with it;
 - (c) if the parties do not agree on the form of the order, or if there is unreasonable delay in the preparation or approval of a draft, 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;

- (d) if the parties are unable to agree which party was substantially successful, the Registrar, on the application of either party, which application may be made informally, and after giving all parties an opportunity of being heard, shall direct by which party the draft is to be prepared, and 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.

40. Correction of errors

- (1) A clerical or arithmetical mistake in any judgement of the Court or any error arising in it from an accidental slip or omission may at any time, whether before or after the judgement has been embodied in an order, be corrected by the Court, either of its own motion or on the application of any interested person so as to give effect to what the intention of the Court was when judgement 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 judgement it purports to embody or, where the judgement has been corrected under subrule (1), with the judgement as corrected.

41. Notification of decisions

- (1) The Registrar shall send to the Registrar of the High Court a sealed copy of the order embodying the decision of the Court in any civil or criminal appeal from 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 shall send to the Registrar a copy of every order issued out of his sub-registry.

Part III – Applications (rules 42-59)

42. Application for leave to appeal or for certificate of point of law

- (1) In criminal matters—
 - (a) where an appeal lies with the leave of the Court, application for leave shall be made in the manner prescribed by Rules 46 and 47;
 - (b) where an appeal lies if the High Court certifies that a point of law is involved, application for that certificate may be made informally and *ex parte*.
- (2) An application under this Rule shall be made without unreasonable delay but need not be made before notice of appeal is lodged.

43. Application for leave to appeal in civil matters

In civil matters—

- (a) where an appeal lies with the leave of the High Court, application for leave may be made informally, when the decision against which it is desired to appeal is given, or by chamber summons according to the practice of the High Court, within fourteen days of the decision;
- (b) where an appeal lies with the leave of the Court, application for leave shall be made in the manner prescribed in Rules 46 and 47 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 High Court and refused, within fourteen days of that refusal.

44. Applications to High Court first

Whenever application may be made either to the Court or to the High Court, it shall in the first instance be made to the High Court, but in any criminal matter the Court may in its discretion, on application or of its own motion give leave to appeal or extend the time for the doing of any act, notwithstanding the fact that no application has been made to the High Court.

45. Form of applications to Court

- (1) Subject to the provisions of subrule (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.
- (2) A notice of motion shall be substantially in the Form A in the First Schedule to these Rules and shall be signed by or on behalf of the applicant.
- (3) The provisions of this Rule shall not apply—
 - (a) to applications made in the course of hearing, which may be made informally; or
 - (b) to applications made by consent of all parties, which may be made informally by letter.

46. 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 an application for such leave may be made informally.
- (3) Every application for leave to appeal shall be accompanied by a copy of the decision against which it is desired to appeal and where application has been made to the High Court for leave to appeal by a copy of the order of the High Court.

47. Applications for leave to amend

- (1) Whenever 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 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 subrule, the leave so given shall cease to have effect.

48. Applications to be lodged in appropriate registry

An application to the Court shall be lodged in the appropriate registry, save where the matter is one of urgency, in which case it may be lodged in the Registry, even if it is not the appropriate registry.

49. Where application is lodged in sub-registry

When an application to be heard by a single Judge is lodged in a sub-registry, the deputy registrar shall send it to the Registrar, together with the original record.

50. Applications during vacations

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

51. Number of copies of applications required

- (1) When an application is to be heard by a single Judge, the application and other documents relating to it shall be filed in duplicate, and in all other cases in 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 57, the person applying to the Court shall, before the date of the hearing by the Court, file two extra copies of the application and the other documents relating to it, including any affidavits filed by any other party prior to the adjournment or the giving of notice, as the case may be.

52. Service of notice of motion

- (1) The notice of motion and copies of all affidavits shall be served on all necessary parties not less than two clear days before the hearing.
- (2) Notwithstanding the provisions of subrule (1), in case of urgency, an application, other than an application under Rule 122, may be made *ex parte*, but in that case, if the applicant is represented by an advocate, the advocate shall sign a certificate of urgency, which shall be filed with the proceedings.
- (3) Where any person required to be served with a notice of motion 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.

53. Affidavits in reply

- (1) Any person served with a notice of motion under Rules 52 may lodge one or more affidavits in reply and shall as soon as practicable serve a copy or copies of the affidavit or affidavits 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, and application for leave to do so may be made informally.

54. 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.

55. Hearing of applications by single Judge

Every application shall be heard by a single Judge, save that that application may be adjourned by the Judge for determination by the Court.

56. Hearing in Court or in chambers

- (1) An application to be heard by a single Judge shall be heard in Court or in chambers as the Judge may direct but where an application is made informally by letter with the consent of all parties the Judge may dispense with the appearance of the parties.
- (2) Any other application shall be heard in Court, unless the Chief Justice or the presiding Judge directs otherwise.
- (3) Where an application has been dismissed under subrule (1) or allowed under subrule (2), the party in whose absence the application was determined may apply to the Court to restore the application for hearing or to re-hear it as the case may be if 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 subrule (3) 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.
- (5) The provisions of subrule (1) shall not apply to any criminal application if the applicant is in prison and is not represented by an advocate, and in that case the application shall be heard notwithstanding the absence of the applicant, unless the Court orders otherwise.

57. Reference from decision of single Judge

- (1) Where any person is dissatisfied with decision of a single Judge exercising the powers conferred by section 123 of the Constitution he may apply informally to the Judge at the time when the decision is given or by writing, to the Registrar within seven days after the decision of the Judge—
 - (a) in any criminal matter, to have his application determined by the Court; or
 - (b) in any civil matter, to have any order, direction or decision of a single Judge varied, discharged or reversed by the Court.
- (2) At the hearing by the Court of an application previously decided by a single Judge, no additional evidence shall be adduced except with the leave of the Court.

58. 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 subrule (1) or allowed under subrule (2), the party in whose absence the application was determined may apply to the Court to restore the application for hearing or to re-hear it, as the case may be, if 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 subrule (3) 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.
- (5) The provisions of subrule (1) shall not apply to any criminal application if the applicant is in prison and is not represented by an advocate, and in that case the application shall be heard notwithstanding the absence of the applicant, unless the Court orders otherwise.

59. Rescinding of orders

- (1) An order made on an application heard by a single Judge may be varied or rescinded by that Judge or any other Judge or by the Court on the application of any person affected by it, 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 IV – Criminal appeals (rules 60-74)

60. Application of Part IV

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

61. Notice of appeal

- (1) Any person who desires to appeal to the Court shall give notice in writing, which shall be lodged in triplicate with the Registrar of the High 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 state briefly the nature of the acquittal, conviction, sentence, order or finding against which it is desired to appeal, and shall contain a full and sufficient address at which any notices or other documents connected with the appeal may be served on the appellant or his advocate and, subject to Rule 14, shall be signed by the appellant or his advocate.
- (3) Where two or more persons have been jointly tried 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 a point of law is involved, or with leave, it shall not be necessary to obtain that 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) A notice of appeal shall be substantially in the Form B in the First Schedule to these Rules and shall be signed by or on behalf of the appellant.

62. Consolidation of appeals

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

- (2) Where two or more persons convicted by a subordinate court have appealed to the High Court where their appeals were consolidated and any two or more of them give notice of appeal to the Court, their appeals shall, unless the Court orders otherwise, be consolidated and shall proceed as one appeal.
- (3) In any other case, where the Court is of the opinion that it would be convenient either for itself or for the parties concerned if two or more appeals were consolidated, it may, of its own motion or at the instance of any of the parties, direct that the appeals be consolidated and treated as one.

63. Transmission of notices of appeal

On receipt of a notice of appeal, the Registrar of the High Court shall forthwith send a copy each to the Registrar and to the respondent named in the notice.

64. Preparation of record of appeal

- (1) As soon as practicable after a notice of appeal has been lodged, the Registrar of the High Court shall prepare the record of appeal.
- (2) For the purposes of an appeal from the High Court in its original jurisdiction, the record of appeal shall contain copies of the following documents in the following order—
 - (a) an index of all documents in the record with numbers of the pages at which they appear, showing also under the reference to the trial Judge's notes and under the reference to the transcript, if any, or 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 the sentence;
 - (d) the transcript of any shorthand notes taken at the trial;
 - (e) a list of all exhibits put in at the trial;
 - (f) all documentary exhibits, photographs and plans put in at the trial and all depositions read in consequence of the absence of intended witnesses; but the Registrar of the High 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 of any of those 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 judgement;
 - (i) the order, if any, giving leave to appeal or the certificate, if any, that there is a point of law involved;
 - (j) the notice of appeal.
- (3) Where any person convicted by a magistrate's court was committed for sentence to the High Court and is appealing to the Court against the sentence imposed by the High Court, the record of appeal shall, in addition to the documents specified in subrule (2), contain also a certificate by the Registrar of the High Court—
 - (a) that the appellant was convicted on his own plea of guilty;
 - (b) that the appellant has lodged no notice of appeal against conviction and that the time for lodging the notice has expired; or

- (c) that the appellant has appealed against conviction to the High Court and that the appeal has been determined, as the case may be.
- (4) For the purposes of appeal from the High Court in its appellate jurisdiction, the record of appeal shall contain documents relating to the proceedings in the trial corresponding as nearly as may be to those set out in subrule (2) and shall contain also copies of the following documents relating to the appeal to the first appellate court—
 - (a) the petition of appeal;
 - (b) the record of proceedings;
 - (c) the judgement;
 - (d) the order, if any,and in the case of a third appeal, shall contain also the corresponding documents in relation to the second appeal and the certificate of the High Court that a point of law is involved.
- (5) Notwithstanding the provisions of subrule (1) the Registrar of the High Court shall not prepare the record of appeal—
 - (a) where the notice of appeal has been lodged out of time, until he has been notified that time has been extended by order of the High Court or of the Court unless the Chief Justice directs otherwise;
 - (b) where the appeal cannot be heard without leave to appeal or a certificate that a point of law is involved, until he has been notified that the leave or the certificate has been given or unless the Chief Justice directs otherwise;
 - (c) where the appeal is from the High Court in its appellate jurisdiction, until the prescribed fee, or the part of it (if any) which the appellant may be liable to pay under an order under Rule 122, has been paid or a deposit in that behalf has been made to the satisfaction of the Registrar of the High Court.
- (6) The Registrar of the High Court shall certify each copy of the record of appeal to be true copy of the original proceedings, save that where the record is produced by printing, type lithography, stencil duplicating, photography, or xerography, it shall suffice if one copy is so certified.

65. 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 sextuplicate, with the Registrar or with the deputy registrar at the place where the appeal is to be heard.
- (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.
- (4) A memorandum of appeal shall be substantially in the Form C in the First Schedule to these Rules and shall be signed by or on behalf of the appellant.
- (5) If no memorandum of appeal is lodged within the prescribed time, the Court may dismiss the appeal or may direct that it be set down for hearing; but where an appeal is dismissed under this subrule, the appellant, if he can show sufficient cause may apply to the Court to restore it for hearing.

66. Supplementary memorandum

- (1) The appellant may, at any one 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 of the memorandum to be served on the respondent.

67. 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 written statement of his arguments in support of or 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 sextuplicate at the time of or within fourteen days after lodging the memorandum of appeal.
- (3) A person who has lodged a statement under this Rule shall not, except with leave of the Court, address the Court at the hearing of the appeal.
- (4) On receipt of a statement under subrule (1), the Registrar or deputy registrar shall forthwith send one copy of it to the other party.

68. Where appellant is in prison

- (1) If the appellant is in prison, he shall be deemed to have complied with the requirements of Rules 61, 65, 66 and 67 or any of them if he gives to the officer-in-charge of the prison in which he is serving sentence a written notice of his intention to appeal and the particulars required to be included in the memorandum of appeal or statement, pursuant to the provisions of those Rules.
- (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 High Court or the Registrar or deputy registrar, as the case may be.
- (3) An officer-in-charge of a prison receiving a notice, memorandum of appeal or statement under this rule, shall forthwith endorse them with the date and time of receipt, and shall forward them to the Registrar of the High Court or the Registrar or deputy registrar, as the case may be.
- (4) The provisions of this Rule shall apply *mutatis mutandis* to applications.

69. Transmission of record, etc., to Court

- (1) As soon as the record of appeal has been prepared, the Registrar of the High Court shall cause a copy of it to be served on the appellant and on the respondent and shall send four copies to the Registrar.

- (2) The Registrar of the High Court shall at the same time send to the Registrar the original record of proceedings in the High Court, the original documentary exhibits in the High 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 High Court shall ensure so far as practicable that all other exhibits are available for inspection by the Court at the hearing of the appeal.

70. Withdrawal of appeals

- (1) An appeal may be withdrawn at any time before hearing by a written notice to the Registrar signed by the appellant or his advocate, and upon that 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 High Court.
- (3) An appeal which has been withdrawn may be restored by leave of the Court on the application of the appellant if the Court is satisfied that the notice of withdrawal was induced by fraud or mistake and that the interests of justice required that the appeal be heard.

71. Abatement of appeals

- (1) An appeal, other than an appeal against a sentence of fine or an order for costs, compensation or forfeiture, shall abate on the death of the appellant or, where the appellant is the State, on the death of the respondent.
- (2) Upon the death of the appellant or the respondent, as the case may be, in an appeal against a sentence of fine or an order for costs, compensation or forfeiture, the Court shall, on the application of any interested person, cause the legal representative of the deceased to be made a party in the place of the deceased.

72. Notice and time 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) The 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 directs otherwise.

73. Appearance at hearing and dismissal for non-appearance

- (1) The appellant and the respondent shall be entitled to be present at the hearing of the appeal:
Provided that an appellant or respondent who is in prison, other than an appellant under sentence of death not represented by an advocate, shall, unless in any particular case the Court directs otherwise, 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 an advocate or has lodged a statement under Rule 67 or is in prison it shall not be necessary for him to attend personally at the hearing of his appeal, unless the Court orders his attendance; but if an appellant is on bail he shall attend at the hearing of his appeal or, with the leave of the Registrar, shall before the time of the hearing attend at the High Court at the place where the bail bond was executed and submit himself to the order of that 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 orders his attendance.

- (4) Subject to the provisions of subrule (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 67, the appeal may be dismissed or may be heard in his absence; save that where an appeal has been dismissed under this subrule, 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 who is under sentence of death is not represented by an advocate and desires to attend the hearing of his appeal; or
 - (b) the Court has issued a direction under the proviso to subrule (1) or has ordered his attendance under subrule (2) or subrule (3).
- (6) If on the day fixed for the hearing of an appeal the respondent does not appear in person or by advocate, the appeal shall proceed, unless the Court sees fit to adjourn the hearing.

74. Arguments at hearing

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 66;
- (b) the arguments contained in any statement lodged under Rule 67 shall receive the same consideration as if they had been advanced orally at the hearing.

Part V – Appeals in civil matters (rules 75-111)

75. Application of Part V

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

76. Notice of appeal

- (1) Any person who desires to appeal to the Court shall lodge a written notice in duplicate with the Registrar of the High Court.
- (2) Every notice shall, subject to the provisions of Rules 84 and 96, 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 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 is involved, it shall not be necessary to obtain the leave or the 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 to these Rules and shall be signed by or on behalf of the appellant.

77. Service of notice of appeal on person affected

- (1) An intended appellant shall, before, or within seven days after lodging a notice of appeal, serve copies of it on all persons who seem to him to be directly affected by the appeal; but the Court may, on an *ex parte* application, direct that service need not be effected on any person who took no part in the proceedings in the High Court.
- (2) Where any person required to be served with a copy of a notice of appeal gave any address for service in or in connection with the proceedings in the High Court, and has not subsequently given any other address for service, the copy of the notice of appeal may be served on him at that address, notwithstanding that it may be that of an advocate who has not been retained for the purpose of an appeal.

78. Transmission of notice of appeal

On receipt of a notice of appeal lodged under the provisions of Rule 76, the Registrar of the High Court shall forthwith send one copy of it to the appropriate registry.

79. Respondent to give address for service

- (1) Every person on whom a notice of appeal is served shall—
 - (a) within fourteen days after service on him 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) within a further fourteen days serve a copy of the notice of address for service on every other person named in the notice of appeal as a person intended to be served.
- (2) A notice of address for service shall be substantially in the Form E in the First Schedule to these Rules and shall be signed by or on behalf of the person lodging it.
- (3) The lodging 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. 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.

81. Separate notices of appeal from same decision

- (1) Where two or more parties have given notice of appeal from the same decision, the second and all subsequent notices to be lodged shall be 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 a notice of his address for service.

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

A person on whom a notice of appeal has been served may at any time, either before or after the institution of the appeal, apply to the Court to strike out the notice or the appeal, as the case may be, on the ground that no appeal lies or that some essential step in the proceedings has not been taken or has not been taken within the prescribed time.

83. Institution of appeals

- (1) Subject to the provisions of Rule 122, 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 quintuplicate;
 - (b) the record of appeal, in quintuplicate;
 - (c) security for the costs of the appeal,save that where an application for a copy of the proceedings in the High Court has been made 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 High Court as having been required for the preparation and delivery of that copy to the appellant.
- (2) An appellant shall not be entitled to rely on the exception to subrule (1) unless his application for the copy was in writing and a copy of it was sent to the respondent.
- (3) The period limited by subrule (1) for the institution of appeals shall apply to appeals in the exercise of its bankruptcy jurisdiction.

84. Effect of default in instituting appeal

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

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

85. Death of party to intended appeal

- (1) An appeal shall not be instituted in the name of a person who is dead but may be instituted in the name of his 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. 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 to these Rules and signed by or on behalf of the appellant.

87. Notice of cross-appeal

- (1) A respondent who desires to contend at the hearing of the appeal that the decision of the High Court or any part of it 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.
- (3) A notice of cross-appeal shall be substantially in the Form G in the First Schedule to these Rules and shall be signed by or on behalf of the respondent.

88. 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 in it, 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 in it, 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 is involved has been given or refused by the High Court immediately following the delivery of the decision against which it is desired to appeal, a statement that leave or a certificate has been given or refused shall be included in the decree or order.

89. Record of appeal

- (1) For the purposes of an appeal from the High Court in its original jurisdiction, the record of appeal shall, subject to the provisions of subrule (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 for 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, their certified translations;
 - (g) the judgement or order;
 - (h) the decree or order;
 - (i) the order, if any giving leave to appeal;
 - (j) the notice of appeal;
 - (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,save that the copies referred to in paragraphs (d), (e) and (f) shall exclude copies of any documents or any of their parts that are not relevant to the matters in controversy on the appeal.
- (2) For the purposes of any appeal from the High Court in its appellate jurisdiction, the record of appeal shall contain documents relating to the proceedings in the trial court corresponding as

nearly as may be to those set out in subrule (1) and shall contain also the following documents relating to the appeal to the first appellate court—

- (a) the order, if any, giving leave to appeal;
- (b) the memorandum of appeal;
- (c) the record of proceedings;
- (d) the judgement or order;
- (e) the decree or order;
- (f) the notice of appeal,

and in the case of a third appeal, shall contain also the corresponding documents in relation to the second appeal and the certificate of the High Court that a point of law is involved.

- (3) A Judge or Registrar of the High Court may, on the application of any party, direct which documents or parts of documents should be excluded from the record, application for which direction may be made informally.
- (4) The documents mentioned in subrule (1) shall be bound in the order in which they are specified in that subrule 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 but 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 28 to appear on his behalf.

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 of them 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 possible thereafter, the deputy registrar shall obtain from the Registrar of the High Court the original record of the proceedings of the High Court and the exhibits and shall send them to the Registrar together with the memorandum of appeal in three copies, and four copies of the record of appeal; but the deputy registrar shall not, unless requested to do so, send to the Registrar any exhibits which, because of their size, 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 Registrar of the High Court the original record of the proceedings of the High Court and, so far as practicable, the exhibits.

92. Preparation and service of supplementary record

- (1) If a respondent is of opinion that the record of appeal is defective or insufficient for the purposes of his 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 after doing so serve copies of it on every respondent who has complied with the 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 grounds for affirming decision

- (1) A respondent who desires to contend on an appeal that the decision of the High Court should be affirmed on grounds other than or additional to those relied upon by that court shall give notice to that effect, specifying the grounds for 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.
- (3) A notice of grounds for affirming a decision shall be substantially in the Form H in the First Schedule to these Rules and shall be signed by or on behalf of the respondent.
- (4) A respondent who desires to contend at the hearing of the appeal that part of the decision of the High Court should be varied or reversed and that part of that decision should be affirmed on grounds other than or additional to those relied upon by that court may include both contentions in a notice of cross-appeal under Rule 87 and shall not be required to give notice also under this Rule.
- (5) The provisions of subrules (1), (2) and (3) of this Rule and those of Rule 94 shall apply *mutatis mutandis* to an appellant who desires to contend in opposition to a cross-appeal that the decision of the High Court should be affirmed on grounds other than or additional to those relied on by that court.

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

- (1) A respondent who intends to cross-appeal or to contend that the decision of the High Court should be affirmed on grounds other than those relied on by that court shall, before or within seven days after lodging his notice of cross-appeal or notice of grounds for affirming the decision, as the case may be, serve a copy of it on the appellant and copies of it on all other persons directly affected by the cross-appeal or by the appeal, as the case may be.
- (2) The respondent shall also serve copies of the notice of cross-appeal or notice of grounds for affirming the decision, as the case may be, on such other parties to the original proceedings as the Court may at any time on application or of its own motion direct and within such time as the Court may appoint.

95. Withdrawal of appeal

- (1) An appellant may at any time after instituting his appeal and before the appeal is called on for hearing lodge in the appropriate registry a written notice that he does not intend further to prosecute the appeal.
- (2) The appellant shall, before or within seven days after lodging the notice of withdrawal, serve copies of it on each respondent who has complied with the requirements of Rule 79.
- (3) If all the parties to the appeal consent to the withdrawal of the appeal, the appellant may lodge in the appropriate registry the document or documents signifying the consent of the parties and 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 appeal shall stand dismissed with costs, except as against any party who has consented, unless the Court, on the application of the appellant, orders otherwise; and any such application shall be made within fourteen days after the lodging of the notice of withdrawal.

96. Appeal by respondent where appeal withdrawn

- (1) If an appeal is withdrawn under Rule 95 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 provisions 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 95 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 76 has expired, if he does so within fourteen days of the date when the appellant's notice of withdrawal was served on him.

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

- (1) A respondent who has given notice of cross-appeal or notice of grounds for affirming the decision of the High Court may withdraw it at any time before the appeal is called on for hearing by lodging in the appropriate registry a written notice 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 of it on the appellant and copies of it 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.

98. Death of party to appeal

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.

99. Presentation of arguments in writing

- (1) Any party to an appeal who does not intend to appear in person or by advocate at the hearing of the appeal may lodge in the appropriate registry a written statement of his 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) Every such statement shall be lodged—
 - (a) by an appellant, within fourteen days of lodging his memorandum of appeal;

- (b) by a respondent, within thirty days of service on him of the memorandum and record of appeal.
- (3) An appellant who has lodged a statement under subrule (1), may, if served with a notice of cross-appeal, lodge a supplementary statement of his arguments in opposition to it.
- (4) No party who has lodged a statement under this Rule shall, except with leave of the Court, address the Court at the hearing of the appeal.

100. Preliminary objection

Where a respondent intends to take a preliminary objection to any appeal or any part of it, he shall, as soon as practicable before the hearing begins, give reasonable notice to the Court and to the other parties to the appeal of that objection, and if that notice is not given the Court may adjourn the hearing and make such order as to costs as it may deem just.

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

102. Additional parties

- (1) When an appeal is called on for hearing or at any earlier time on the application of any interested person, the Court may direct that the record of appeal, or any notice of cross-appeal, be served on any party to the appeal who has not been served with it, or on any other person not already a party to the appeal and may, for the purposes of such service, adjourn the hearing upon such terms as are just, and may give such judgement and make such order as might have been given or made if the parties served with such record or notice had been parties originally.
- (2) In any such case the Court may direct that any additional copies of the record or notice of cross-appeal which may be necessary be prepared by the Registrar of the High Court and served at the expense of any party.

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. Amendment of documents

The Court may at any time allow amendment of any notice of appeal or notice of cross-appeal or memorandum of appeal, as the case may be, or any other part of the record of appeal, on such terms as it thinks fit.

105. Appearances at hearing and procedure on non-appearance

- (1) If on any day fixed for the hearing of an appeal, the appellant does not appear, the appeal may be dismissed and any cross-appeal may proceed, unless the Court sees fit to adjourn the hearing; save that where an appeal has been so dismissed or any cross-appeal so allowed has been heard, 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; but where an appeal has been allowed or a 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 subrule (1) or the proviso to subrule (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 a notice of the hearing but was not 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 the provisions of Rule 99 shall be deemed to have appeared.

106. 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 High Court should be reversed or varied except on a ground specified in the memorandum of appeal or in a notice of cross-appeal, or in support of the decision of the High Court on any ground not relied on by that court or specified in a notice given under Rule 87 or Rule 93;
- (b) a respondent shall not, without the leave of the Court, raise any objection to the competence of the appeal which might have been raised by application under Rule 82;
- (c) the Court shall not allow an appeal or cross-appeal on any ground not specified 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) at the hearing of an appeal, the arguments contained in any statement lodged under Rule 99 shall receive the same consideration as if they had been advanced orally at the hearing.

107. Orders as to costs

The Court may make such order as to the whole or any part of the costs of appeal in the court below as may be just, and may assess them or direct taxation of them; and in the case of a second appeal this Rule shall apply to costs in the trial court as well as in the first appellate court.

108. Immaterial errors

No judgement decree or order of the High Court shall be revised or substantially varied on appeal, nor a new trial ordered by the Court, on account of any error, defect or irregularity, whether in the decision or otherwise, not affecting the merits, or the jurisdiction of the High Court; and in the case of a second appeal this Rule shall be construed as applying to both the trial court and the first appellate court.

109. Interlocutory order not to prejudice appeal

No interlocutory order from which a separate appeal has not been brought shall operate to prevent the Court from giving such decision upon the appeal as is just.

110. Judgement

- (1) The judgement of the Court shall be pronounced in open court, either on the hearing or at any subsequent time, of which notice shall be given by the Registrar to the parties to the appeal.
- (2) Such judgement may be pronounced notwithstanding the absence of the Judges who composed the Court or any of them, and the judgement of any Judge not present may be read by a Judge or by the Registrar.

- (3) A certified copy of the judgement shall be sent by the Registrar to the High Court.

111. Order for re-trial

- (1) Except as hereinafter provided, the Court may order that a new trial be held of any matter tried by the High Court in the exercise of its original jurisdiction.
- (2) A new trial shall not be granted on the ground of the improper admission or rejection of evidence unless in the opinion of the Court some substantial wrong or miscarriage of justice has thereby been occasioned; and if it appears to the Court that such wrong or miscarriage affects part only of the matters in controversy, or some or one only of the parties, the Court may give final judgement as to part of the matters, or as to some or one only of the parties, and direct a new trial as to the other part only, or as to the other party or parties.
- (3) A new trial may be ordered on any question without interfering with the finding or decision upon any other question.
- (4) In the case of a second appeal this Rule shall extend to empower the Court to order a retrial by the trial court or a re-hearing of the first appeal by the first appellate court.

Part VI – Fees and costs (rules 112-122)

112. Fees payable

Subject to the provisions of Rule 120 and Rule 122, the fees set out in the Second Schedule shall be payable in respect of the matters and services specified in that Schedule save that—

- (a) no fees shall be payable upon any appeal from the High Court acting in its original jurisdiction in a criminal case, or on any application in connection with any such appeal or for the supply of a 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 documents may be issued without fee to such persons as the Chief Justice may nominate or at such reduced fee as he may direct.

113. Time of payment of fees

- (1) The fees payable on lodging any document shall be payable at the time when the document is lodged.
- (2) The Registrar or Registrar of the High Court may require the payment in advance of the fee for any other service or, where the amount of the fee cannot conveniently be ascertained when the service is requested, may require a deposit towards it. 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.

114. Security for costs in civil appeals

- (1) Subject to the provisions of Rule 121, 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 95 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 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 it out either by consent of the parties or in conformity with the decision of the Court having regard to the rights of the parties under that decision.

115. Assessment or taxation of costs

- (1) Subject to Rule 107, when making any decision as to the payment of costs, the Court may assess them 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 purposes 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.

116. Costs improperly incurred

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

117. Improper agreement for remuneration

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

118. Taxation

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

119. 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 purposes of this subrule, 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 conferred 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 save as is provided by this subrule, there shall be no reference on a question of quantum only.

- (3) An application for reference may be made to the Registrar informally at the time of taxation or by writing within seven days after taxation.
- (4) A reference to a Judge may be adjourned by him for the consideration of the Court.
- (5) Any person dissatisfied with a decision of a Judge given under subrule (1) or subrule (2) may apply to the Court to vary, discharge or reverse the decision. The 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 that time.

120. Waiver of fees in criminal appeals

- (1) If in any appeal from the High Court acting in appellate jurisdiction in any criminal matter, a Judge of the High Court is satisfied on the application of the appellant—
 - (a) that the appeal raises one or more questions of law proper for determination by the Court; and
 - (b) that the appellant ought not, by reason of poverty, to be required to pay the whole of the fees ordinarily payable, including fees for preparing the record of appeal,he may by order direct that the whole or any part of the fees be waived.
- (2) An application for an order under subrule (1) may be made informally at any time but not later than seven days after the appellant has been informed of the amount which, in the absence of an order, he would be required to pay as fees or to deposit in respect of fees; save that a judge of the High Court may entertain any such application out of time if it appears to him that there was sufficient cause for the delay in making it.
- (3) No fee shall be payable on the lodging of any such application.
- (4) A Judge of the High Court considering the means of an applicant may rely on a report made to him by the Registrar of the High Court.
- (5) A Judge of the High Court making an order under subrule (1) may, at the same time and without formal application, order the extension of the time for giving notice of appeal or for lodging the memorandum of appeal.
- (6) An order allowing or dismissing an application under subrule (1) shall be final; but the decision by the Judge of the High Court that an appeal raises or does not raise a question of law proper for determination by the Court shall be conclusive of that question only in relation to the application.

121. Refund of fees paid in criminal appeals

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

122. Relief from fees and security in civil appeals

- (1) If in any appeal from the High Court in its original or appellate jurisdiction in any civil case the Court is satisfied on the application of an appellant that he 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 114;

and may order that the record of appeal be prepared by the Registrar of the High Court without payment for it or on payment of any specified sum less than the fee specified in the Second Schedule, conditionally on the intended appellant undertaking to pay the fees or the balance of the fees out of any money or property he may recover in or in 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) No fees or security for costs shall be payable or lodged by an appellant who has been granted legal aid under the Legal Aid Scheme of either the Faculty of Law, University of Dar es Salaam, or the Tanganyika Law Society or the Tanzania Women Lawyers Association (TAWLA) or the Legal and Human Rights Centre.
- (5) The Registrar may take such action as he may think necessary to enforce any undertaking given in accordance with subrule (1).

Part VII – Miscellaneous provisions (rules 123-124)

123. Application of Rules

[Omitted]

124. Transitional provisions

[Omitted]

First Schedule

Forms A - J

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

Second Schedule (Rule 112)

Fees

Fees in connection with application other than application relating to appeals from a superior court in its original jurisdiction and other than applications other than rule 21

Item no.		Fees
1.	Upon lodging a notice of motion	3,000/-
2.	Upon lodging an affidavit, other than in affidavit annexed to a notice of motion	1,500/-
3.	Upon giving notice under rule 57(1)	1,500/-
4.	Upon lodging a notice of appeal, from superior court in its appellate jurisdiction	2,000/-
5.	For preparing the record of appeal, for each folio or part thereof:	
	for the first copy	5,200/-
	for each additional copy	500/-
6.	Upon lodging a notice of appeal	3,000/-
7.	Upon lodging a notice of address for service of a notice of change of address	2,000/-
8.	Upon lodging a memorandum of appeal	2,000/-
	(i)	Where the appeal is against an award of money or the refusal to make such an award or against any decision as to the ownership of the money (exclusive of any interest awarded thereon) or the value of the property.
	(ii)	The fees shall not exceed Shs. 50,000/- in any other case
	With each day or part of day of hearing after the first, but so that the fee shall not exceed Shs. 10,000/-	
	(a)	exceeds Shs. 20,000/-
	(b)	exceeds Shs. 20,000/- for the first 20,000/-

	for each subsequent Shs. 5,000/- or part thereof up to Shs. 500,000/-	500/-
	for each subsequent Shs. 5,000/- or part thereof	500/-
9.	Upon lodging a notice of cross-appeal	3,000/-
10.	Upon lodging a notice of grounds for affirming the decision	1,500/-
11.	Upon lodging a notice withdrawing an appeal, or a notice of cross-appeal, or notice of grounds for affirming the decision	1,500/-
12.	In connection with any civil application or appeal, in addition to all necessary expenses of travel where the person to be served resides or has his place of business within the city or town where the registry or a sub-registry of the court is situated	1,500/-
	in any other case	1,500/-
13.	For sealing an order in any civil application or appeal	2,000/-
14.	For preparing certified copies of any document for each folio or part thereof:	
	for the first copy	500/-
	for each subsequent copy	500/-
15.	For the grant of a licence under rule 31(4) a further Shs. 2,000/- for each day or part of a day of the hearing after the first	9,000/-
16.	Upon applying to inspect proceedings of any application or appeal that has been determined	1,500/-
17.	Upon lodging a bill of costs for taxation	2,000/-
18.	For the certificate of the result of taxation	1,500/-
19.	Upon applying for a reference under rule 118	2,000/-

Third Schedule (Rule 118)

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 in the form of a bill prepared in five columns as follows—
 - (a) the first of 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 service charged for;
 - (d) the fourth column for the professional remuneration or scale charged;
 - (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; and 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 any proceeding 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 instructions to make, support or oppose any application shall be such sum as the taxing officer shall consider reasonable but shall not be less than Shs. 100/-.
- (2) The fee to be allowed for instructions to appeal or to oppose an appeal shall be such sum as the taxing officer shall consider reasonable, having regard to the amount involved in the appeal, its nature, importance and difficulty, the interest of the parties, the other costs to be allowed, the general conduct of the proceedings, the fund or person to bear the costs and all other relevant circumstances.
- (3) The sum allowed under subparagraph (2) shall include all work necessarily and properly done in connection with the appeal and not otherwise chargeable including attendances, correspondence, perusals and consulting authorities.
- (4) Other costs shall, subject to the provisions of paragraphs 10, 11 and 12, be awarded in accordance with the scale set out in this schedule or, in respect of any matter for which no provision is made in those scales, in accordance with the scale 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, overcaution, negligence or mistake or by payment of special charges or expenses to witnesses or other persons or by other unusual expenses.
- (2) In taxing the costs of any civil appeal, the taxing officer shall disallow the costs of any matter improperly included in the record of appeal or in any supplementary record of appeal.

12. Overriding discretion

If, after a bill of costs has been taxed, the taxing officer considers that, having regard to all the circumstances, the total of the bill before signing the certificate of taxation is excessive, he 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 the 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 correct advocate and its total shown as a disbursement. 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 proceeding 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 person who may have attended the hearing, unless the Court has so ordered.

Scale of costs

		Shs.	Cts.
1.	For instructions to file a notice of appeal	60	00
2.	For instructions to act for a respondent—		
	Where an appeal is subsequently instituted	60	00
	Where no appeal is subsequently instituted, to cover all costs arising out of the notice of appeal, other than disbursements and those of any application to the High Court or the Court	100	00
3.	For drawing a notice of motion	30	00
4.	For drawing an affidavit, for each folio or part thereof, exclusive of exhibits	10	00
	with a minimum fee of	20	00
5.	For drawing a notice of appeal	15	00
6.	For drawing a notice of address for service	10	00
7.	For drawing a memorandum of appeal	150	00
8.	For drawing a notice of cross-appeal	75	00

9.	For drawing a notice of grounds for affirming a decision	50	00
10.	For drawing an order, for each folio or part thereof	10	00
	with a minimum fee of	20	00
11.	For drawing a bill of costs, for each		
	folio or part thereof	5	00
12.	For drawing any other necessary document to be filed or used in the Court, for each folio or part thereof	5	00
13.	For making any necessary copies, for each folio or part thereof		
	for the first copy	3	50
	for each subsequent copy	1	00
14.	For attendance at the Registry	10	00
15.	For attending on the Registrar—		
	for the first 15 minutes	15	00
	for each subsequent 15 minutes	25	00
16.	For attending on a Judge in chambers for the first 30 minutes	100	00
17.	For attending in Court, where the matter was listed but not reached, for each day	100	00

18.	For attending in Court on the hearing of any application or appeal—		
	for the first 30 minutes	150	00
	for each subsequent 30 minutes	50	00
19.	For attending in Court to hear judgement	50	00

Fourth Schedule (Rule 29)

Fees and expenses of an advocate assigned in terms of the provisions of sub-rule (1) and (2) of Rule 29 shall be as follows:

1.	In Criminal matters:		
	(a)	Criminal application	Shs. 600
	(b)	Criminal appeals	Shs. 800
2.	In Civil matters:		
	(a)	Civil applications	Shs. 700
	(b)	Civil appeals	Shs. 1,000