

# CHAPTER 07:13 SUPREME COURT ACT

Acts 28/1981, 3/1984 (s. 4); 31/1984, 1/1992, 15/1992; 9/1997 (s. 10), 10/2006; 5/2014 (s. 33).

[Date of commencement: 28th August, 1981.]

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**AN ACT to make provision for the jurisdiction, powers, practice and procedure of the Supreme Court of Zimbabwe and for the making of rules and regulations in connection therewith; to make provision for appeals**

**from decisions of courts and tribunals in Zimbabwe; to confer powers of review on the Supreme Court of Zimbabwe; and to provide for matters incidental to or connected with the foregoing**

WHEREAS, in relation to the Supreme Court, sections 79 (1) (a), 79A, 79B and 80 of the Constitution provide that-

**79. (1) The judicial authority of Zimbabwe shall vest in -**

- (a) *the Supreme Court and;*
- (b) *.....*
- (c) *.....*

**79A. The judiciary of Zimbabwe shall consist of-**

- (a) *the Chief Justice, who shall be head of the judiciary; and*
- (b) *the judges of the Supreme Court; and*
- (c) *.....*
- (d) *.....*

**79B. In the exercise of his judicial authority, a member of the judiciary shall not be subject to the direction or control of any person or authority, except to the extent that a written law may place him under the direction or control of another member of the judiciary.**

**80. (1) There shall be a Supreme Court which shall be a superior court of record and the final court of appeal for Zimbabwe and shall have such jurisdiction and powers as may be conferred upon it by or in terms of this Constitution or any Act of Parliament.**

(2) *The Supreme Court shall consist of-*

- (a) *the Chief Justice;*
- (b) *such other judges of the Supreme Court, being not less than two, as the President may deem necessary;*
- (c) *such other judges as have been appointed under subsection (3).*

(3) *If the services of an additional judge are required for a limited period, the Chief Justice may appoint a person who holds the office of judge of the High Court or who has held office as a judge of the Supreme Court or the High Court to act as a judge of the Supreme Court for such period as may be specified by the Chief Justice.*

(4) *An Act of Parliament may provide for the conferring, by way of rules of court, upon a registrar of the Supreme Court, duly appointed thereto, of the jurisdiction and powers of the Supreme Court in civil cases in respect of -*

- (a) *the making of orders in uncontested cases, other than orders affecting status or the custody or guardianship of children;*
- (b) *deciding preliminary or interlocutory matters, including applications for directions but not including matters affecting the liberty of the subject:*

**Provided that any such Act of Parliament shall provide for the right of any person who is aggrieved by the order or decision of any such registrar to have the order or decision reviewed by a judge of the Supreme Court who may, on such review, amend, vary, set aside or confirm the order or decision concerned or give such other order or decision as he deems fit.**

AND WHEREAS it is desirable that an Act of Parliament make further provision in relation to the Supreme Court:

NOW, THEREFORE, be it enacted as follows-

PART I

*Preliminary*

**1. Short title**

This Act may be cited as the Supreme Court Act [Chapter 7:13].

**2. Interpretation**

In this Act -

"Chief Justice" means the Chief Justice of Zimbabwe;

"civil case" means any case or matter which is not a criminal case or matter;

"judge" includes an acting judge of the Supreme Court;

"judgment" includes a decision or order;

"Minister" means the Minister of Justice, Legal and Parliamentary Affairs or any other Minister to whom the President may, from time to time, assign the administration of this Act;

"rules of court" means the rules of court made in terms of [section 34](#).

## PART II

### *Composition and Procedure*

#### **3. Composition of Supreme Court**

For the purpose of exercising its jurisdiction in any matter, the Supreme Court shall be duly constituted if it consists of not less than three judges of whom one shall be-

- (a) the Chief Justice; or
- (b) a judge of the Supreme Court other than an acting judge of the Supreme Court:

Provided that-

- (i) except in the case of appeals from decisions of the High Court, the Chief Justice may give directions, either generally or in respect of any particular case, for the jurisdiction of the Supreme Court to be exercised by two judges of the Supreme Court, of whom at least one shall be a judge other than an acting judge of the Supreme Court;
- (ii) if an appeal involves a difficult or important question of law or if at any stage during the hearing of an appeal such a question of law arises, the presiding judge of the Supreme Court may direct that the hearing of the appeal or the hearing in respect of that question of law, as the case may be, shall proceed before such greater number of judges than originally constituted the court as may be determined by the Chief Justice;
- (iii) where the Chief Justice or the Minister so directs, in any case involving a question of the application, enforcement or interpretation or an infringement of the Constitution, the Supreme Court shall not be duly constituted unless it consists of not less than five judges of whom either -
  - (a) one shall be the Chief Justice and at least two others shall be judges of the Supreme Court, other than acting judges of the Supreme Court; or
  - (b) at least three shall be judges of the Supreme Court, other than acting judges of the Supreme Court.

#### **4. Decisions of Supreme Court**

(1) When more than two judges of the Supreme Court are sitting together the decision of the majority shall be the decision of the Supreme Court.

(2) When there is a difference of opinion on an appeal or application being heard by an even number of judges of the Supreme Court sitting together and the opinions are equally divided, the decision of the Supreme Court shall be suspended until the opinion of a further judge of the Supreme Court has been obtained, and thereupon the decision of the majority of such judges shall be the decision of the Supreme Court.

(3) If at any stage during the hearing of an appeal or application by three or more judges of the Supreme Court any such judge dies or retires or is otherwise unable to sit as a member of the Supreme Court or is absent, the presiding judge may in his discretion direct that the appeal or application shall proceed before the remaining judges or that a further judge of the Supreme Court be obtained to sit.

- (4) In any case in which -
  - (a) a decision has been suspended in terms of [subsection \(2\)](#) in order to obtain the opinion of a further judge of the Supreme Court; or
  - (b) a further judge of the Supreme Court has been obtained to sit in an appeal in terms of [subsection \(3\)](#);

the presiding judge may direct the recalling of any witness or order further argument before the judges who originally constituted the court and the further judge.

#### **5. Judge not to sit on appeal from his own decision**

A judge of the Supreme Court shall not sit as a judge on the hearing of an appeal to the Supreme Court from

any judgment given by himself or in which he has concurred or from which he has dissented or in respect of which he has been formally consulted.

## **6. Practice and procedure**

In any matter relating to records, practice and procedure for which no special provision is contained in this Act or in rules of court, the matter shall be dealt with by the Supreme Court or a judge thereof as nearly as may be in conformity with the law and practice for the time being observed in England by the Court of Appeal.

## **7. Process of Supreme Court**

The process of the Supreme Court shall run throughout Zimbabwe and any judgment of the Supreme Court shall have effect in Zimbabwe and shall be executed and enforced by the High Court in like manner as if it were an original judgment of the High Court.

## **8. Warrant for production of appellant before Supreme Court**

When the presence of an appellant who is in custody is necessary or desirable at the hearing of his appeal or he has been given leave to be present at the hearing of his appeal in terms of [section 29](#), a judge of the Supreme Court may issue a warrant for the production of the appellant at the appeal.

### PART III

#### *Criminal Appeals*

## **9. Jurisdiction in appeals in criminal cases**

(1) The Supreme Court shall have jurisdiction to hear and determine an appeal in any criminal case from the judgment of any court or tribunal from which, in terms of any other enactment, an appeal lies to the Supreme Court.

(2) Unless provision to the contrary is made in any other enactment, the Supreme Court shall hear and determine and shall exercise powers in respect of an appeal referred to in [subsection \(1\)](#) in accordance with this Act.

## **10. Concession of appeal by Prosecutor-General**

When an appeal against conviction in a criminal case, other than an appeal from the judgment of the High Court, has been noted to the Supreme Court, the Prosecutor-General may, at any time before the hearing of the appeal, give notice to the registrar of the Supreme Court that he does not for reasons stated by him support the conviction, whereupon a judge of the Supreme Court in chambers may allow the appeal and quash the conviction without hearing argument from the parties or their legal representatives and without their appearing before him.

## **11. Prosecution of appeals in person**

(1) Except where a judge of the High Court has, in terms of section 44 (2) (b) or (e) of the High Court Act [*Chapter 7:06*], granted leave to appeal, a person who has noted an appeal in a criminal case to the Supreme Court shall not be entitled to prosecute such appeal in person unless a judge of the Supreme Court has certified that there are reasonable grounds for appeal.

(2) An application for a certificate in terms of [subsection \(1\)](#) shall be made in such manner and within such time as may be prescribed in rules of court.

(3) In considering an application referred to in [subsection \(2\)](#) the judge of the Supreme Court may, if the Prosecutor-General has given notice to the registrar of the Supreme Court that he does not for reasons stated by him support the conviction, allow the appeal and quash the conviction without hearing argument from the parties or their legal representatives and without their appearing before him.

(4) If the certificate in terms of [subsection \(1\)](#) is withheld, the judge of the Supreme Court may -

- (a) in respect of the appellant, exercise any of the powers conferred upon the High Court by section 29 (2) (b) (ii), (iii) or (vi) of the High Court Act [*Chapter 7:06*]; or
- (b) in respect of any other person who was convicted after being charged jointly with the appellant,

exercise any of the powers conferred upon a judge of the High Court by [section 29 \(5\)](#) of the High Court Act [*Chapter 7:06*]:

Provided that -

- (i) a judge of the Supreme Court shall not exercise any of the powers conferred in terms of section 29 (2) (b) (i), (ii) or (iii) of the High Court Act [*Chapter 7:06*] unless another judge of the Supreme Court has agreed with the exercise of the power in that particular case;
- (ii) [paragraph \(b\)](#) shall not apply where the person who was charged jointly with the appellant has noted an appeal against the conviction or sentence and is to be represented by a legal practitioner at the hearing of the appeal.

(5) Where a case is dealt with in terms of [subsection \(4\) \(b\)](#), sections 59, 63 and 64 of the Magistrates Court Act [*Chapter 7:10*] shall apply, *mutatis mutandis*, as if such case were subject to review.

[Subsection as amended by s. 10 of No. 9 of 1997.]

## **12. Determination of appeals in ordinary cases**

(1) Subject to this section and [section 14](#), on an appeal against conviction, the Supreme Court shall allow the appeal and quash the conviction if it thinks that the judgment of the court or tribunal before which the appellant was convicted should be set aside -

- (a) on the ground that-
  - (i) it is unreasonable; or
  - (ii) it is not justified, having regard to the evidence;
- or
- (b) on the ground of a wrong decision on any question of law; or
- (c) because on any other ground there was a miscarriage of justice;

and in any other case shall dismiss the appeal.

(2) Notwithstanding that the Supreme Court is of the opinion that any point raised might be decided in favour of the appellant, no conviction or sentence shall be set aside or altered unless it appears to that court that a substantial miscarriage of justice has in fact resulted.

(3) If any point raised is decided in favour of the appellant and it consists of a misdirection by the trial court or tribunal of itself on a question of law or a question of fact or a question of mixed law and fact, the Supreme Court shall dismiss the appeal if it is satisfied that the evidence which has to be considered has not been substantially affected by the misdirection and that the conviction is justified having regard to the evidence.

(4) On an appeal against sentence the Supreme Court shall, if it thinks that a different sentence should be passed -

- (a) quash the sentence passed at the trial and pass such other sentence warranted in law in substitution therefor, whether more or less severe, as it thinks ought to be passed, having regard to all the circumstances, including events which have occurred after the date of sentence:

Provided that in no case shall any sentence be increased by reason of or in consideration of any evidence that was not given at the trial; or

- (b) without altering the sentence passed at the trial, declare what sentence the court or tribunal of first instance should have passed;

and in any other case shall dismiss the appeal.

## **13. Special powers of Supreme Court in respect of appeals by Prosecutor-General on points of law or against acquittals**

(1) Where the Prosecutor-General seeks the leave of a judge of the Supreme Court to appeal against the judgment of a court -

- (a) on a point of law; or
- (b) because it has acquitted or quashed the conviction of any person who was the accused in the case on a view of the facts which could not reasonably be entertained;

a judge of the Supreme Court may, in granting such leave or at any time thereafter, make such orders or give such directions as he thinks fit in order to secure the attendance before the Supreme Court of the person who was the accused in the case concerned, including orders or directions for the issue of a summons or warrant of arrest, and

the granting of bail or taking of recognizances.

(2) On an appeal by the Prosecutor-General on a point of law or against the acquittal or quashing of a conviction by any court or tribunal, the Supreme Court -

- (a) may confirm the decision of the court or tribunal concerned; or
- (b) may give judgment declaring the verdict and sentence which it considers the court or tribunal concerned should have given without, however, altering the judgment in the particular case concerned; or
- (c) may exercise such other powers as are conferred upon it in relation to appeals against conviction or sentence by any other provision of this Act and may, where there has been an acquittal or the quashing of a conviction and where it is considered desirable having regard to the interests of justice to do so, substitute a verdict of guilty and either pass sentence itself or remit the case to the court concerned for the passing of sentence.

#### **14. Powers of Supreme Court in special cases**

(1) If it appears to the Supreme Court that an appellant, though not properly convicted on some count of the indictment, summons or charge, has been properly convicted on some other count of the indictment, summons or charge, the Supreme Court may either confirm the sentence passed on the appellant at the trial or pass such sentence, whether more or less severe, in substitution therefor as it thinks proper and as may be warranted in law on the count of the indictment, summons or charge on which the Supreme Court considers that the appellant has been properly convicted.

(2) Where an appellant has been convicted of an offence and the trial court or tribunal could on the indictment, summons or charge have found him guilty of some other offence, whether because it was, according to law, a competent verdict or because that other offence had been alleged as an alternative count and on the findings of the trial court or tribunal it appears to the Supreme Court that the trial court or tribunal must have been satisfied of facts which proved him guilty of that other offence, the Supreme Court may instead of allowing or dismissing the appeal, substitute for the judgment of the trial court or tribunal a judgment of guilty of that other offence, whether or not the appellant had been acquitted of that offence in the trial, and may-

- (a) pass such sentence; or
- (b) remit the case to the court or tribunal concerned for the passing of such sentence;

in substitution for the sentence passed at the trial, whether more or less severe, as may be warranted in law for that other offence.

(3) If on any appeal it appears to the Supreme Court that, although the appellant did the act or made the omission charged against him, he was mentally disordered or defective at the time the act was done or the omission was made so as not to be responsible for his actions according to law, the Supreme Court may set aside the sentence passed at the trial and order that the appellant be kept in custody in some prison, and thereafter be dealt with in accordance with law in like manner as if a special verdict had been made at the trial that he was guilty of the act or omission charged but was mentally disordered or defective when he did the act or made the omission.

#### **15. Determination by Supreme Court of questions reserved by High Court**

(1) Where the High Court has reserved for the determination of the Supreme Court -

- (a) any question decided by the High Court on exception or objection taken to an indictment in a criminal trial; or
- (b) after the conclusion of a criminal trial, any question of law which arose in that trial;

the Supreme Court shall, subject to this section and rules of court, determine the question.

(2) On the determination of a question referred to in [subsection \(1\) \(a\)](#), the Supreme Court may confirm, amend or set aside the decision in respect of which the question was reserved and give such directions as the Supreme Court thinks fit to give as to the indictment concerned and further proceedings in the High Court.

(3) The determination by the Supreme Court of any question referred to in [subsection \(1\) \(b\)](#) shall in no way affect the finality of the finding of the High Court in the particular case in which the question was reserved if that finding was made in favour of the accused.

#### **16. Powers of Supreme Court in relation to order ancillary to conviction**

(1) Where the operation of any award or order of restitution or revesting of property and of any other award or order which is an award or order ancillary to conviction is suspended pending the determination of an appeal to the Supreme Court, that court may by order annul or vary any such award or order although the conviction is not

quashed and the award or order, if annulled, shall not take effect and, if varied, shall take effect as so varied.

(2) If a conviction is quashed on appeal any award or order such as is referred to in [subsection \(1\)](#) shall not take effect.

## **17. Supplementary powers of Supreme Court**

For the purposes of this Part, the Supreme Court may, if it thinks it necessary or expedient in the interests of justice-

- (a) order the production of any document, exhibit or other thing connected with the proceedings, the production of which appears to it necessary for the determination of the case;
- (b) order any witness who would have been a compellable witness at the trial to attend and be examined before the Supreme Court, whether he was or was not called at the trial, or order the examination of any such witness to be conducted in the manner provided by rules of court before any judge of the Supreme Court or before any officer of the Supreme Court or justice of the peace or other person appointed by the Supreme Court for the purpose, and allow the admission of any deposition so taken as evidence before the Supreme Court;
- (c) receive the evidence, if tendered, of any witness, including the appellant, who is a competent but not compellable witness and, if the appellant makes application for the purpose, of the husband or wife of the appellant in cases where the evidence of the husband or wife could not have been given at the trial except on such application;
- (d) set aside the conviction and remit the case to the court or tribunal of first instance for further hearing, with such instructions as regards the taking of further evidence or otherwise as appears to it necessary;
- (e) where any question arising at the appeal involves prolonged examination of documents or accounts or any scientific or local investigation which cannot, in the opinion of the Supreme Court, conveniently be conducted before that court, order the reference of the question in the manner provided by rules of court for inquiry and report to a special commissioner appointed by the Supreme Court, and act upon the report of any such commissioner so far as the Supreme Court thinks fit to adopt it;
- (f) appoint any person with special expert knowledge to act as an assessor in an advisory capacity in any case where it appears to the Supreme Court that such knowledge is required for the proper determination of the case;
- (g) issue any warrant necessary for enforcing an order or sentence of the Supreme Court;
- (h) exercise any of the powers of review conferred upon the High Court by [section 29](#) of the High Court Act [*Chapter 7:06*]:

Provided that whenever the Supreme Court receives further evidence or gives instructions for the taking of further evidence, it shall make such order as will secure an opportunity to the parties to the proceedings to examine every witness whose evidence is taken.

## **18. Statement of case or question of law arising on appeal**

In the case of an appeal in a criminal case which involves a question of law alone, a judge of the Supreme Court may, if he thinks fit, request the court or tribunal from which the appeal is brought to state the question, together with all the circumstances under which the said question has arisen, in such manner as may be prescribed by rules of court.

## **19. Time for obtaining leave to appeal**

(1) In any case where a person desires to apply to a judge of the Supreme Court for leave to appeal, such application shall be submitted to the registrar of the Supreme Court within such period and in such manner and form as may be prescribed by rules of court.

(2) If the applicant is in prison, an application in terms of [subsection \(1\)](#) may, within the time prescribed, be given to the officer in charge of the prison, who shall forward the application to the registrar of the Supreme Court.

(3) A judge of the Supreme Court may extend the time for giving notice of intention to appeal or of submitting an application for leave to appeal, notwithstanding that the time for giving such notice or submitting such application has already expired:

Provided that, where sentence of death has been passed by the High Court, no extension of time shall be granted after the sentence has been confirmed by the President.

## 20. Detention as unconvicted prisoner

The time during which an appellant in custody is treated, pending the determination of his appeal, as an unconvicted prisoner shall not, unless the Supreme Court otherwise directs, count as part of any term of imprisonment under his sentence.

### PART IV

#### *Civil Appeals*

## 21. Jurisdiction in appeals in civil cases

(1) The Supreme Court shall have jurisdiction to hear and determine an appeal in any civil case from the judgment of any court or tribunal from which, in terms of any other enactment, an appeal lies to the Supreme Court.

(2) Unless provision to the contrary is made in any other enactment, the Supreme Court shall hear and determine and shall exercise powers in respect of an appeal referred to in [subsection \(1\)](#) in accordance with this Act.

## 22. Powers of Supreme Court in appeals in civil cases

(1) Subject to any other enactment, on the hearing of a civil appeal the Supreme Court -

- (a) shall have power to confirm, vary, amend or set aside the judgment appealed against or give such judgment as the case may require;
- (b) may, if it thinks it necessary or expedient in the interests of justice-
  - (i) order the production of any document, exhibit or other thing connected with the proceedings, the production of which appears to it necessary for the determination of the case;
  - (ii) order any witness who would have been a compellable witness at the trial or proceedings to attend and be examined before the Supreme Court, whether he was or was not called at the trial or proceedings, or order the examination of any such witness to be conducted in the manner provided by rules of court before any judge of the Supreme Court or before any officer of the Supreme Court or justice of the peace or other person appointed by the Supreme Court for the purpose, and allow the admission of any deposition so taken as evidence before the Supreme Court;
  - (iii) receive the evidence, if tendered, of any witness, including any party, who is a competent but not compellable witness and, if the appellant makes application for the purpose, of the husband or wife of that party in cases where the evidence of the husband or wife could not have been given at the trial or proceedings except on such application;
  - (iv) having set aside the judgment appealed against, remit the case to the court or tribunal of first instance for further hearing, with such instructions as regards the taking of further evidence or otherwise as appear to it necessary;
  - (v) where any question arising at the appeal involves prolonged examination of documents or accounts or any scientific or local investigation which cannot, in the opinion of the Supreme Court, be conveniently conducted before that court, order the reference of the question in the manner provided by rules of court for inquiry and report to a special commissioner appointed by the Supreme Court, and act upon the report of any such commissioner so far as the Supreme Court thinks fit to adopt it;
  - (vi) appoint any person with special expert knowledge to act as an assessor in an advisory capacity in any case where it appears to the Supreme Court that such knowledge is required for the proper determination of the case;
  - (vii) issue any warrant necessary for enforcing any order or sentence of the Supreme Court;
  - (viii) make such order as to costs as the Supreme Court thinks fit;
  - (ix) take any other course which may lead to the just, speedy and inexpensive settlement of the case;
- (c) may, if it appears to the Supreme Court that a new trial or fresh proceedings should be held, set aside the judgment appealed against and order that a new trial or fresh proceedings be held.

(2) When the Supreme Court receives further evidence or gives instructions for the taking of further evidence, it shall make such order as will secure an opportunity to the parties to the proceedings to examine every witness whose evidence is taken.



### **23. Statement of case or question of law arising on appeal**

(1) Where an appeal in any civil case involves a question of law alone, a judge of the Supreme Court may, if he thinks fit, request the parties thereto to state the question for determination by the Supreme Court.

(2) Upon a request made in terms of [subsection \(1\)](#) the parties shall, if they are able to agree thereon, state the question, together with all the circumstances under which that question has arisen, in such manner and within such period as may be prescribed by rules of court.

(3) If the parties are unable to agree upon the statement of the question and the circumstances under which it has arisen, they shall inform the registrar of the Supreme Court and thereupon the appeal shall be dealt with as if such request had not been made.

### **24. Effect of judgment of Supreme Court in civil appeals**

Except as otherwise provided in any other law, judgment of the Supreme Court in any appeal in terms of this Part shall be recorded in the court or tribunal of first instance and such judgment may be enforced in all respects as if it had been given by that court or tribunal.

## PART V

### *General*

### **25. Review powers**

(1) Subject to this section, the Supreme Court and every judge of the Supreme Court shall have the same power, jurisdiction and authority as are vested in the High Court and judges of the High Court, respectively, to review the proceedings and decisions of inferior courts of justice, tribunals and administrative authorities.

(2) The power, jurisdiction and authority conferred by [subsection \(1\)](#) may be exercised whenever it comes to the notice of the Supreme Court or a judge of the Supreme Court that an irregularity has occurred in any proceedings or in the making of any decision notwithstanding that such proceedings are, or such decision is, not the subject of an appeal or application to the Supreme Court.

(3) Nothing in this section shall be construed as conferring upon any person any right to institute any review in the first instance before the Supreme Court or a judge of the Supreme Court, and provision may be made in rules of court, and a judge of the Supreme Court may give directions, specifying that any class of review or any particular review shall be instituted before or shall be referred or remitted to the High Court for determination.

### **26. Finality of decisions of Supreme Court**

(1) There shall be no appeal from any judgment or order of the Supreme Court.

(2) The Supreme Court shall not be bound by any of its own judgments, rulings or opinions nor by those of any of its predecessors.

### **27. Sittings of Supreme Court**

The Supreme Court shall sit at such places and at such times as may be prescribed by rules of court or as directed by the Chief Justice or, in the absence of the Chief Justice, by a judge of the Supreme Court.

### **28. Seal of Supreme Court**

The Supreme Court shall have and use as occasion may require a seal in a design approved by the President.

### **29. Right of person to be present at hearing of his appeal or other application**

(1) A person who is not in custody shall be entitled to be present, if he so desires, at the hearing of his appeal or any application made by him to the Supreme Court.

(2) A person who is in custody, whether he is legally represented or not, shall not be entitled to be present

at the hearing of his appeal or any application made by him to the Supreme Court except with the leave of a judge of the Supreme Court.

(3) The right of a person who is in custody to be present at the hearing of any matter referred to in [subsection \(2\)](#) shall be subject to his paying all expenses of and incidental to his transfer to and from the place where the Supreme Court sits:

Provided that a judge of the Supreme Court may direct that he be brought before the court in any case where, in the opinion of the judge, his presence is advisable, in which event such expenses shall be defrayed out of moneys appropriated for the purpose by Act of Parliament.

(4) A person who does not appear himself or who is not legally represented at any appeal or application made by him to the Supreme Court may present his case and argument in writing and any case or argument so presented shall be considered by the court.

(5) The power of the Supreme Court to pass any sentence in terms of this Act may be exercised notwithstanding that the appellant is for any reason not present.

### **30. Right of audience**

Subject to [section 29](#), the rules of court and any other law, in all proceedings before the Supreme Court the parties may appear in person or be represented and appear by any legal practitioner registered in terms of the Legal Practitioners Act [*Chapter 27:07*].

### **31. Proceedings in open court and in English**

Except as otherwise provided in the rules of court or in any other law, all proceedings in the Supreme Court shall be carried on in open court and the pleadings and proceedings thereof shall be in the English language.

### **32. Administration of oaths**

(1) The Supreme Court or any judge thereof may require and administer any necessary oath.

(2) The oath to be administered to any person shall be administered in the form which most clearly conveys to him the meaning of the oath and which he considers to be binding on his conscience.

### **33. Officers of Supreme Court**

(1) There shall be a registrar of the Supreme Court and such deputy registrars, assistant registrars and other officers of the Supreme Court as may be required, whose offices shall be public offices and shall form part of the Judicial Service.

[Subsection amended by [10 of 2006](#).]

(2) A deputy registrar and assistant registrar shall be subject to the direction of the registrar of the Supreme Court.

### **34. Rules of Court**

(1) Subject to [subsection \(4\)](#), the Chief Justice, after consultation with a committee appointed by him, may make rules of court for regulating all matters in relation to the proceedings of the Supreme Court, including any matter in respect of which rules of court may in terms of this Act be made.

(2) Rules of court made in terms of [subsection \(1\)](#) may provide for the following matters -

- (a) the circumstances in which any proceedings or decision may be reviewed by the Supreme Court and the remittal or reference of any matter to the High Court for review by that court;
- (b) the summary determination of any appeal or application which appears to the Supreme Court to be frivolous or vexatious or to have been brought for the purpose of delay;
- (c) the procedure, including the hearing of further evidence or the remittal of the matter, for an appeal or reference to the Supreme Court which is provided for in any enactment in so far as no procedure is expressly provided for in the enactment concerned;
- (d) the sittings of the Supreme Court and of the judges of the Supreme Court, whether sitting in court or in chambers;

- (e) all matters relating to the manner and form of procuring and adducing evidence;
- (f) the process of the Supreme Court and the issue and service thereof;
- (g) the exclusion from the proceedings of the Supreme Court of persons other than the parties thereto and their legal representatives and the circumstances in which such exclusion may take place;
- (h) the conduct and dress of persons appearing before and attending hearings of the Supreme Court;
- (i) any matters relating to the costs of proceedings in the Supreme Court and the taxation thereof;
- (j) the proof of any particular facts by affidavit in any proceedings or in any application in connection therewith at any stage of proceedings, and the examination of witness by interrogatories or otherwise, and the allowing of the same in evidence;
- (k) the appointment of commissioners to take bail and to examine witnesses, the payment of fees and allowances to such commissioners, the examination of witnesses *de bene esse*, and the allowing of the same in evidence;
- (l) the appointment of assessors in any criminal or civil case and the payment of fees and allowances to such assessors;
- (m) the fees to be paid in respect of the service or execution of any process of the Supreme Court, except subpoenas or warrants in criminal matters issued at the request of the State, or in respect of the summoning of persons to answer interrogatories;
- (n) the tariff of costs and expenses which may be allowed in respect of the service or execution of any process referred to in paragraph (1) or to persons appearing to answer interrogatories;
- (o) the tariff of fees and allowances which shall be paid to witnesses and the manner of procuring the attendance of witnesses;
- (p) the manner of determining the amount of security to be given in any case where security is required to be given and the form and manner in which such security may be given;
- (q) the hours during which the office of the registrar of the Supreme Court shall be open for the transaction of business;
- (r) the manner of recording or noting of evidence and of the proceedings in the Supreme Court;
- (s) the time within which any requirement of the rules is to be complied with and the extension of such time;
- (t) the circumstances in which an appeal shall be deemed to have been abandoned;
- (u) the condonation of the noting of an appeal out of time in special circumstances in any case where this is not expressly or by necessary implication prohibited by the enactment concerned;
- (v) the procedure, including the hearing of further evidence or the remittal of the matter, in connection with the hearing of an appeal from a decision in any court or tribunal where an enactment provides for such appeal but does not expressly provide for the procedure in connection therewith;
- (w) the tariff of fees chargeable by legal practitioners in respect of any matter relating to the Supreme Court;
- (x) generally, any matter in respect of which, in the opinion of the Chief Justice, it is necessary or desirable to make provision in order to ensure or facilitate the proper dispatch and conduct of the business of the Supreme Court and, in relation to criminal cases, for carrying the criminal law, practice and procedure into effect.

(3) In any case not covered by rules made in terms of paragraph (2) (c), the Supreme Court or judge, as the case may be, shall subject to [section 6](#), act in such manner and on such principles as it or he thinks best fitted to do substantial justice and to effect and carry out the objects and provisions of the enactment concerned.

(4) Rules of court shall not have effect until they have been approved by the Minister and published in a statutory instrument.

### **35. Regulatory power to fix fees**

The Minister may make regulations providing for the fees which shall be payable in respect of instruments, services or other matters received, issued, provided or otherwise dealt with by the registrar or any other officer of the Supreme Court in the course of his duties or in the office of such officer.

**SUPREME COURT ACT  
CHAPTER 07:13**

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**NOTICE**

**G.N. No. 620 of 2018: Supreme Court Calendar 2019**

**as amended by**

Supreme Court Calendar 2019, G.N. No. 439 of 2019

*(Section 27)*

IT is hereby notified that the Chief Justice has, in terms of section 27 of the Supreme Court Act [*Chapter 7:13*], directed that the sitting and vacation of the Supreme Court during the year 2019 shall be as specified in [the Schedule](#).

**HON. CHIEF JUSTICE MALABA C.J.**  
**CHAIRPERSON, JUDICIAL SERVICES COMMISSION**  
**DATE: 10-8-2018**

**Schedule**

SUPREME COURT CALENDAR 2019

First Term	14th January, 2019 to 5th April, 2019
Easter Vacation	6th April, 2019 to 12th May, 2019
Second Term	13th May, 2019 to 2nd August, 2019
Mid-Year Vacation	3rd August, 2019 to 8th September, 2019
Third Term	9th September, 2019 to 29th November, 2019
Christmas Vacation	30th November, 2019 to 13th January, 2020

SUPREME COURT CIRCUITS 2019

**First Circuit**

Bulawayo 25th March, 2019 to 29th March, 2019

**Second Circuit**

Bulawayo 22nd July, 2019 to 26th July, 2019

**Third Circuit**

Bulawayo 18th November, 2019 to 22nd November, 2019

[Sch. amended by G.N. No. 439 of 22 March 2019.]

## REGULATION

### **S.I. No. 425 of 1992 Supreme Court (Fees) (Civil Cases) Regulations**

#### **as amended by**

S.I. No. 152 of 2009

Supreme Court (Fees) (Civil Cases) (Amendment) Regulations (No. 6),  
S.I. No. 49 of 2016

*(Section 33)*

1. (1) These regulations may be cited as the Supreme Court (Fees) (Civil Cases) Regulations, 1992.  
(2) These Regulations shall come into operation on the 1st January, 1993.
2. For any matter referred to in [the Schedule](#), the appropriate fee specified therein shall be payable.
3. The Supreme Court, High Court and Sheriff's Office (Fees) Regulations, 1982, published in Statutory Instrument 238 of 1982, and the Supreme Court, High-Court and Sheriffs Office (Fees) (Amendment) Regulations, 1986 (No. 1), published in Statutory Instrument 25 of 1986, are repealed in so far as they apply to the Supreme Court.

#### **Schedule**

##### **FEES**

*(Section 2)*

[Sch. substituted by S.I. No. 152 of 2009 and amended by S.I. No. 49 of 2016.]

	US\$
1. Constitutional application	5,00
2. Appeal from lower court	5,00
3. Application for condonation or extension of time or reinstatement	10,00
4. Order of court or certified copy thereof	1,00
5. Certificate by the Registrar	10,00
6. Affixing the seat of the Court to any document	10,00
7. (a) Notice of taxation	30,00
(b) Application for set down for taxation	30,00
8. Make a copy of any document, other than a certified copy of an Order of Court-	
(a) by photocopying, per page	0,20
(b) by original typing, per page	1,00
(c) by duplicated or printed-copy, per page	0,20
9. Supplying transcript of shorthand notes, per typed page-	
(a) for the first copy requested by any party	1,00
(b) for the second and each subsequent copy made at the same time and supplied to the same party that requested the first copy	1,00
10. Search fee	1,00
11. Retrieving file from Archives	5,00

#### **RULE**

### **S.I. No. 84 of 2018: Supreme Court Rules**

*(Section 34 (4))*

#### ARRANGEMENT OF RULES

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#### PART I

##### *Preliminary*

## 1. Title

These rules may be cited as the Rules of the Supreme Court, 2018.

## 2. Interpretation

(1) In these rules-

**"court"** means the Supreme Court;

**"judge"** means the Chief Justice, a judge of the Supreme Court and an acting judge of the Supreme Court;

**"legal practitioner"** means a legal practitioner registered in terms of the Legal Practitioners Act [*Chapter 27:07*].

(2) Where the word "registrar" appears in these rules such reference shall-

- (a) except where mention is made specifically of a registrar of the High Court, be construed as a reference to a registrar of the Supreme Court;

- (b) be construed as including a deputy registrar and an assistant registrar appointed in terms of section 33 of the Act;
- (c) be construed as being the appropriate registrar, that is to say, the registrar whom any registrar shall indicate as the appropriate registrar and, in the absence of any such indication-
  - (i) in the event of an appeal, the registrar upon whom the appellant serves his or her notice of appeal or, where leave to appeal is necessary, the registrar at the place where application for leave to appeal is made,
  - (ii) in the event of an application, the registrar upon whom a copy of the application is first served.

(3) Any reference in these rules to "counsel" shall be read and construed as a reference to a legal practitioner.

(4) Any reference in these rules to "legal representative" includes any person authorised by any law to represent any litigant.

## PART II

### *General*

#### **3. Reckoning of time**

Where anything is required by these rules to be done within a particular number of days or hours, a Saturday, Sunday or public holiday shall not be reckoned as part of the period.

#### **4. Departure from rules**

Subject to the provisions of section 19 (3) of the Act, a judge or the court may direct a departure from these rules in any way where this is required in the interests of justice and, additionally or alternatively, may give such directions in matters of practice or procedure as may appear to him or it to be just and expedient.

#### **5. Hearing of applications**

An application made to a judge under these rules may be heard either in chambers or in open court and at such time as the judge may determine.

#### **6. Heads of argument**

(1) Subject to the provisions of [rule 52](#), counsel may, in any matter which is to be heard before the court or a judge submit written heads of argument for the assistance of the court and shall submit such written heads of argument when requested to do so by a judge.

(2) Where written heads of argument are requested by a judge in terms of [subrule \(1\)](#) and subject to any direction which may be given by the judge, the provisions of [rule 52](#) shall apply *mutatis mutandis*.

#### **7. Report**

(1) A judge may, in any appeal or application, request any judge or magistrate of a subordinate court to furnish a report on any matter which arises in, or is relevant to, such appeal or application.

(2) Copies of such request and of such report shall be given to such persons as the judge may direct.

#### **8. Judgment**

(1) In an application, judgment may be given at the hearing or in such other manner as the court or judge hearing the application may think fit and by the issue, thereafter, of an order by a registrar.

(2) Judgment in an appeal, if not given at the hearing of the appeal or at a time specified by the court, shall be given at a time of which notice shall be given to the parties by a registrar.

(3) Judgment in an appeal shall be pronounced in such manner as may be determined by a judge of the court which gives it, whether or not he or she was present at the hearing and whether or not the other judges who were



present at the hearing are present.

(4) A registrar shall draw up and certify all judgments and shall transmit a certified copy of the judgment, together with the reasons therefor, if any, to the registrar or clerk of the court appealed from.

## 9. Postponement and settlement

(1) If for any reason it appears desirable that the hearing of an appeal or an application must be postponed, an order to that effect may be made by the court or by a judge.

(2) It shall be the duty of all parties to a civil appeal to furnish without delay to a registrar all available information as to the appeal being or being likely to be settled, or affecting the estimated length of hearing, and, if the appeal is settled or is withdrawn, to notify a registrar of that fact without delay.

## 10. Address for service

(1) Every appellant or applicant in the court shall, at the time when he or she notes an appeal or makes any application, give an address at which he or she will accept service in terms of these rules, including service by registered post or electronic mail in terms of [rule 11](#).

(2) If a person is legally represented, the address given in terms of [subrule \(1\)](#) shall be the address of his or her legal practitioner.

(3) Subject to [rule 14](#), a legal practitioner may at any time renounce his or her agency by giving notice to his or her client and to a registrar but, until the client furnishes the registrar with, and notifies the opposite party of, a new address for service and any process served on the retiring legal practitioner at his or her address for service shall be considered good service and the retiring legal practitioner shall notify his or her former client of the service of any such process by letter addressed to the client's last-known address.

(4) If an address for service has been given in terms of these rules other than the address of a legal practitioner in terms of [subrule \(2\)](#) and the person concerned changes such address, he or she shall notify a registrar and other parties to the proceedings of the new address and if he or she fails to make such notification, his or her address for service shall be deemed to be the address given in terms of [subrule \(1\)](#).

## 11. Service

(1) Subject to [rule 12](#), any document required by these rules or by direction of the court or any judge to be served on any person shall be served as follows-

- (a) if the person to be served has given his or her address for service as being that of a legal practitioner, by delivery at the office of that legal practitioner or by sending the document by registered post to that legal practitioner;
- (b) if the person to be served has given an address other than that of his or her legal practitioner for service, service may be effected personally or on a responsible person thereat by any person authorised thereto by a registrar or by the Sheriff or by sending the document by registered post, electronic mail or express courier service;
- (c) if the person to be served is in custody, by delivery to, or by sending the document by registered post to, the person in charge of the place of custody in which that person is detained;
- (d) if the person to be served is the Attorney-General or Prosecutor-General, by delivery to his or her office or by posting the document by registered post to him or her;
- (e) if the person to be served is a registrar of the Supreme Court or High Court or any other court, by delivery to, or posting the document by registered post to, the registrar concerned:

Provided that for the purposes of this paragraph, service of the document shall be deemed to have been effected at the time it is received by the registrar concerned.

(2) Proof of service in terms of [subrule \(1\)](#) shall be effected-

- (a) where service is effected at the office of a legal practitioner, by production of a receipt signed by the legal practitioner or his or her agent accompanied by a certificate by the person effecting service to the effect that the document delivered is the document to which the receipt relates;
- (b) where service is effected by means of registered post, by production of a certificate of posting by registered post accompanied by a certificate by the person posting the document that the document posted is the document to which the certificate of posting relates;
- (c) where service is effected by a litigant himself or herself, by an affidavit of service in Form 1 stating that the document concerned was personally served by him or her on the person concerned and

stating the specific manner in which service was effected;

- (d) where service is effected by electronic mail, by production of a copy of the mail and the document so sent together with an affidavit from the sender that the document sent is the one to which the email relates;
- (e) where service is effected by express courier service, by production of a receipt accompanied by an affidavit by the person effecting service to the effect that the document delivered is the one to which the receipt relates;
- (f) where service is effected by the Sheriff, by means of a return of service;
- (g) where service is effected by delivery to the person in charge of the place of custody in which a person is detained, by production of a receipt signed by an official at the place of custody accompanied by a certificate by the person effecting service to the effect that the document delivered is the document to which the receipt relates.

(3) If a document has to be served by a person who is in custody and who is not legally represented, it shall be submitted to the officer in charge of the place of custody who shall forward it forthwith to a registrar or the registrar of the High Court, as the case may be and that registrar shall thereafter be responsible for ensuring it is served on the person to be served. For the purpose of determining whether any act performed by the person in custody has been performed timeously the time of service shall be regarded as the time when the document was submitted to the officer in charge of the place of custody.

(4) If any difficulty arises in serving a document in accordance with this rule, a judge may, at the request of a registrar, give special directions as to service and a document served in accordance with such directions shall be regarded as properly served.

(5) Notwithstanding anything to the contrary in this rule, any document required by these rules or by the direction of the court or any judge to be served on any person may be served in the manner specified in section 40 of the Interpretation Act [*Chapter 1:01*].

## **12. Service of notices of set down**

(1) All notices of set down shall be served by the Sheriff at the appropriate address for service provided in terms of [rule 10](#).

(2) At the time of filing an appeal or application, the appellant or applicant shall deposit with the Sheriff an amount as determined by the Sheriff as security for costs of service of all notices of set down.

(3) A copy of the receipt obtained in terms of [subrule \(2\)](#) shall be furnished to a registrar by the party concerned within five days of filing the appeal or application.

(4) When a matter is ready for set down, the registrar shall submit a notice of set down to the Sheriff for service to be effected.

(5) The Sheriff shall submit the return of service to the registrar within five days after service has been effected and, in any event, not less than five days before the date of hearing.

(6) If a party fails to comply with the provisions of [subrule \(3\)](#), the appeal or application shall be regarded as abandoned and shall be deemed to have been dismissed.

## **13. Orders of registrar**

(1) Any person aggrieved by any act, order or decision of a registrar, other than an act performed or order or decision made at the direction of a judge, may apply to have such act, order or decision set aside.

(2) An application in terms of [subrule \(1\)](#) shall be by chamber application served on the registrar and any other person interested in the matter and shall state clearly and specifically the grounds on which it is sought to have the act, order or decision set aside.

(3) The registrar shall report on the application and shall serve copies of his or her report on the applicant and any person cited as co-respondent.

(4) On receipt of a copy of the report referred to in [subrule \(3\)](#), the applicant and co-respondent may file submissions in relation to any matter arising therefrom and thereafter a judge shall hear the application and may make such order in the matter as he or she may think fit.

## **14. Renunciation of agency by legal practitioner**

(1) Subject to this rule, an appellant's legal practitioner may for good cause renounce his or her agency at any time before the appeal has been set down for hearing or, after it has been set down, not later than three

weeks after he or she has been notified of the date of hearing of the appeal in terms of [rule 25](#) or [52](#), as the case may be:

Provided that, where he or she has agreed to less than six weeks' notice of the date of hearing, he or she may not renounce his or her agency in terms of this subrule later than one month before the date of hearing.

(2) Where an appellant's legal practitioner wishes to renounce his or her agency in terms of [subrule \(1\)](#), he or she shall-

- (a) without delay file a notice with a registrar substantially in Form 2;
- (b) as soon as possible thereafter, serve copies of the notice upon the appellant and upon every other party to the appeal; and
- (c) lodge proof of such service with the registrar in accordance with [rule 11](#).

(3) A renunciation of agency in terms of [subrule \(1\)](#) shall be effective from the date on which the notice referred to in [subrule \(2\)](#) is filed with the registrar.

(4) Where an appellant's legal practitioner wishes to renounce his or her agency after the period specified in [subrule \(1\)](#), he or she shall apply to the court or a judge for leave to do so and the court or judge, as the case may be, may grant leave if it or he or she, as the case may be, considers that the circumstances of the case justify such a course.

(5) If an appellant's legal practitioner purports to renounce his or her agency otherwise than in terms of [subrule \(1\)](#) or [\(2\)](#) or without leave granted in terms of [subrule \(4\)](#), as the case may be, the renunciation shall be ineffective, and-

- (a) any process served upon him or her in relation to the appeal shall be considered good service; and
- (b) he or she shall appear on behalf of the appellant at the hearing of the appeal.

## **15. Special orders as to costs**

(1) If the court or a judge considers that the conduct of a party to an appeal or application under these rules has been such as to warrant such a course, the court may make any one or more of the following orders-

- (a) depriving a successful party of all or part of his or her costs in the appeal or application and additionally, or alternatively, in the trial court;
- (b) ordering a successful party to pay all or part of the costs of the other party in the appeal or application and additionally, or alternatively, in the trial court;
- (c) ordering a party to pay costs on a legal practitioner and client scale or on any other appropriate scale.

(2) If the court or a judge considers that the conduct of a legal practitioner representing a party to an appeal or application under these rules has been such as to warrant such a course, the court or judge may make any one or more of the following orders-

- (a) ordering him or her personally to pay all or part of the costs of the appeal or application and additionally, or alternatively, in the trial court;
- (b) ordering him or her to refund to his or her client all or any of the fees his or her client may have paid him or her in respect of the appeal and additionally, or alternatively, in the trial court;
- (c) ordering him or her not to charge his or her client any fee in respect of all or part of the work done by him or her in respect of the appeal or application and additionally, or alternatively, the proceedings in the trial court;
- (d) ordering him or her to pay the costs referred to in [paragraph \(a\)](#) on a legal practitioner and client scale or on any other appropriate scale.

(3) Before making an order in terms of [subrule \(1\)](#) or [\(2\)](#), the court or judge shall give the party or legal practitioner concerned an opportunity to make representations as to whether or not the order must be made.

(4) This rule shall not derogate from the power of the court or a judge to make any other order or give any direction, whether as to costs or otherwise, arising out of the conduct of parties or legal practitioners.

## PART III

### *Appeals from the High Court*

## **16. General for all appeals**

(1) All written proceedings shall be-

- (a) on A4-size paper of good quality, unless the nature of the document renders this impracticable;
- (b) clear and easily legible; and
- (c) printed, cyclostyled, typewritten or reproduced in photostat or in any combination of these media.

(2) The typewriting or printing shall be double-spaced, in a minimum font size of 12 and only one side of the paper shall be used, a margin of not less than fifty millimetres being left on the left-hand side of each sheet.

(3) Notwithstanding the provisions of subrules (1) and (2), any particulars on, or attached to, a notice of appeal lodged in terms of [rule 18](#) or on, or attached to, an application for leave to appeal made in terms of [rule 20](#), lodged or made by a person who is in custody, may be set out in legible handwriting.

(4) Every registrar shall refuse to accept any document that does not comply with the requirements of subrules (1), (2) and (3).

## 17. Record

(1) The record shall comply with the provisions of subrules (1) and (2) of [rule 16](#).

(2) The record shall be paginated continuously throughout but in criminal cases notices of appeal or applications for leave to appeal and other documents which were not before the High Court at the trial may, for the purposes of this subrule, be disregarded in the numbering of pages.

(3) Every tenth line of each page shall be indicated by numbering in the unbound portion of the margin.

(4) At the top of each page containing evidence the name of the witness whose evidence is recorded on that page shall appear.

(5) The record shall contain an index of the names of witnesses whose evidence is included in the record and of all proceedings and documents which are included in the record. In addition there shall be a list of evidence, proceedings and documents omitted from the record. Such index and such list shall appear at the beginning of the record.

(6) The record shall be securely bound in suitable covers with the title of the appeal on the outside.

(7) Bulky records shall be-

- (a) divided into separate conveniently sized volumes of approximately 150 pages each;
- (b) securely bound in book format to withstand constant use; and
- (c) so bound that, upon being used, they will lie open without restraint.

(8) If the record consists of more than one volume, the first volume shall contain an index of all the volumes so prepared, and each volume shall also have an index of the documents contained therein.

(9) The volumes referred to in [subrule \(8\)](#) shall be consecutively numbered and shall state the number of the volume in relation to the other volumes so prepared and filed.

(10) A registrar of the High Court as well as the parties and their legal representatives shall endeavour to-

- (a) exclude from the record all documents, more particularly such as are purely formal, that are not relevant to the appeal;
- (b) reduce the bulk of the record as far as practicable to avoid the duplication of documents and the unnecessary repetition of headings and other formal parts of documents;
- (c) avoid the inclusion of evidence which is not relevant to the appeal.

(11) A registrar of the High Court responsible for preparing a record shall invite the appellant and the respondent or their legal representatives to inspect the record before it is bound in order to ensure that-

- (a) all necessary documents are included in the record and are in the proper order;
- (b) any unnecessary documents are omitted from the record;
- (c) the record has been compiled in accordance with subrules (1) to (10);
- (d) the papers are all properly paginated; and
- (e) the record is legible.

(12) If the appellant or his or her legal representative does not inspect the record as provided in [subrule \(11\)](#) within 10 days after being invited to do so, or within any further time granted by the registrar of the High Court, the registrar of the High Court shall notify the registrar of that fact, and thereupon-

- (a) the appellant shall be deemed to have abandoned his or her appeal;
- (b) the notification in terms of this subrule shall be treated as notice by the appellant in terms of [rule 48](#) that he or she has abandoned his or her appeal.

(13) The preparation of a record under the provisions of rules 23 and 46 shall be subject to the supervision of a registrar of the High Court. The parties may submit any matter in dispute arising from the preparation of such record to a judge of the High Court who shall give such directions thereon as justice may require.

(14) After completion and inspection of the record, a registrar of the High Court shall certify that it is correct.

#### PART IV

#### *Criminal Appeals from the High Court*

### **18. Noting of appeals**

(1) Subject to the provisions of [subrule \(4\)](#), an accused person wishing to appeal against any conviction or sentence shall note his or her appeal by lodging a notice of appeal with a registrar and a registrar of the High Court. Such notice shall be in Form 3 and shall be signed by the appellant or his or her legal representative and shall be accompanied by grounds of appeal in the form specified in [rule 19](#).

(2) In a case in which leave to appeal is not necessary, the notice of appeal together with two copies thereof shall be delivered to a registrar of the High Court and a duplicate notice to a registrar within ten days of the date of the conviction or sentence against which the appeal is made.

(3) In a case in which leave to appeal has been granted by a judge of the High Court, the notice together with two copies thereof shall be delivered to a registrar of the High Court and a duplicate notice to a registrar within four days of the granting of leave to appeal or within ten days of the conviction or sentence against which the appeal is noted, whichever is the later.

(4) Where the Supreme Court grants leave to appeal, the appeal shall be regarded as having been instituted on the day when such leave is granted and no notice of appeal shall be required.

(5) Notwithstanding the provisions of subrules (2) and (3), if the person instituting an appeal is not legally represented and is in custody, it shall not be necessary for him or her to deliver a copy of the notice of appeal and the accompanying grounds of appeal where it is not reasonably possible for him or her to do so.

(6) A registrar of the High Court shall forward one copy of the notice of appeal delivered under [subrule \(2\)](#) or [\(3\)](#) to the Prosecutor-General. If by reason of the provisions of [subrule \(5\)](#) there are no copies of the notice of appeal, it shall be the responsibility of a registrar of the High Court to make them.

(7) If it appears to a registrar that an appellant has instituted an appeal on a ground of appeal for which leave to appeal is necessary, without obtaining such leave, the registrar shall report the matter to a judge who may give such directions in the matter as he or she thinks fit.

### **19. Grounds of appeal**

(1) The notice of appeal shall set out clearly and specifically, in separate numbered paragraphs, the grounds on which the appeal is made:

Provided that the grounds of appeal in respect of conviction or other order shall be separated from grounds of appeal in respect of sentence.

(2) Where an appeal has been instituted by an appellant who is not legally represented but who thereafter obtains legal representation, his or her legal representative may, not later than five days before the hearing of the appeal, file a notice amending, altering or supplementing the grounds of appeal:

Provided that a ground of appeal for which leave to appeal is necessary may not be added in a case where leave to appeal has not been granted.

(3) The appellant shall not, without leave of the Court, urge or be heard in support of any ground of appeal not set out when the appeal was noted or in respect of which leave to appeal was not granted, or added under [subrule \(2\)](#), but the court in deciding the appeal shall not be confined to the grounds so stated:

Provided that the court shall not rest its decision on any-

- (i) other ground unless the parties have had sufficient opportunity of contesting the case on that ground,
- (ii) ground for which leave to appeal is necessary, if leave to appeal on such ground has not been granted.

## 20. Applications for leave to appeal

(1) A person who has been refused leave to appeal by a judge of the High Court may, within ten days of the date when leave to appeal was refused, or within fifteen days of conviction, whichever is the later date, apply to a judge for leave to appeal.

(2) An application for leave to appeal in terms of this rule shall be-

- (a) in Form 4;
- (b) signed by the applicant or his or her legal representative;
- (c) accompanied by grounds of appeal in the form specified in [rule 19](#); and
- (d) delivered together with two other copies thereof to a registrar and a copy thereof to a registrar of the High Court.

(3) The application for leave to appeal may be accompanied by written argument in support thereof.

(4) Notwithstanding the provisions of [subrule \(2\)](#), if the person making the application in terms of this rule is not legally represented and is in custody, it shall not be necessary for him or her to deliver a copy of Form 4 and the accompanying grounds of appeal where it is not reasonably possible for him or her to do so.

(5) On receipt of the notice of appeal and accompanying documents in terms of [subrule \(2\)](#), a registrar shall request a registrar of the High Court to forward a copy of the judgment in the case, the reasons of the judge of the High Court for refusing leave to appeal, a copy of the indictment, and such other documents in the case as he or she may require.

(6) On receipt of the documents requested in terms of [subrule \(5\)](#), the registrar shall forward to the Prosecutor-General-

- (a) a copy of the application for leave to appeal together with the grounds of appeal and any written arguments submitted by the applicant; and
- (b) a notification as to whether or not the applicant has applied for leave to appear in person or is legally represented.

(7) Subject to the provisions of section 29 of the Act, if the applicant applies for leave to appear either in person or by his or her legal practitioner, the judge shall, unless he or she grants leave to appeal, allow the applicant or his or her counsel to be heard.

(8) If the judge decides to hear the applicant in terms of [subrule \(7\)](#), the Prosecutor-General may also appear and the applicant and the Prosecutor-General shall be notified by the registrar of the date of the hearing. If the applicant is not to be represented or to appear, the Prosecutor-General may, within four days of receipt of the documents referred to in [subrule \(6\)](#), submit written representations as to why the application should not be granted and, if he or she does so, opportunity shall be given to the applicant to reply thereto.

(9) After hearing the applicant and the Prosecutor-General, or, if they do not appear, on consideration of the papers, the judge may grant or refuse the application.

## 21. Application for extension of time or leave to appeal out of time

(1) A person who wishes to apply for an extension of time in which to institute an appeal in terms of [rule 18](#) or for leave to appeal in terms of [rule 20](#) shall do so in Form 5 signed by himself or herself or his or her legal representative.

(2) The Form referred to in [subrule \(1\)](#) shall be accompanied either by the documents required in terms of [rule 18 \(1\)](#) or the documents required in terms of [rule 20 \(2\)](#), whichever rule is applicable, together with an affidavit setting out why the applicant did not institute his or her appeal or apply for leave to appeal within the time specified.

(3) The documents referred to in [subrule \(2\)](#), together with one copy thereof, shall, unless the applicant is not legally represented and is in custody and cannot reasonably provide copies, be delivered to a registrar.

(4) On receipt of the application for extension of time and the accompanying documents in terms of subrules (1) and (2), a registrar shall request a registrar of the High Court to forward a copy of the judgment in the case and of any judgment of the High Court refusing leave to appeal, and of such other documents in the case as he or she may require.

(5) On receipt of the documents requested in terms of [subrule \(4\)](#), the registrar shall forward, to the Prosecutor-General a copy of the documents referred to in subrules (1) and (2), together with a notification whether or not the applicant has applied for leave to appear in person or is legally represented. The Prosecutor-General may submit an affidavit in reply to that filed by the applicant and, if he or she does so, an opportunity shall be given to the applicant to reply thereto.

(6) Subject to the provisions of section 29 of the Act, the applicant shall have the right either to be represented or to appear at the hearing of the application and, if he or she does so appear or is so represented, the Prosecutor-General may also appear.

(7) If the applicant is not to be represented or to appear, the Prosecutor-General may, within four days of the receipt of the documents in terms of [subrule \(5\)](#) and, if affidavits are to be filed, at the time of lodging his or her affidavits, submit written representations as to why the application should not be granted.

(8) If the application is for the purpose of obtaining an extension of time for making an application for leave to appeal, the Prosecutor-General may also submit written representations as to why such leave should not be granted.

(9) The applicant shall be given an opportunity of replying to any representations made in terms of subrules (7) and (8).

(10) After hearing the applicant and the Prosecutor-General or, if they do not appear, on consideration of the papers, a judge may, subject to the provisions of section 19 (3) of the Act, grant or refuse the application.

(11) If the application is granted in terms of [subrule \(10\)](#), and the case is one in which leave to appeal is necessary, the judge may, thereupon, grant or refuse leave to appeal:

Provided that leave to appeal shall not be granted in terms of this subrule unless application for leave to appeal has been made to the High Court and has been refused.

(12) If leave to appeal out of time is granted in terms of this rule, the appeal shall be deemed to have been instituted on the date of the granting of such leave, unless the judge otherwise orders.

## **22. Legal aid**

(1) A person who wishes to apply for legal aid, in terms of the Legal Aid Act [*Chapter 7:16*], to pay the costs of the preparation of the record or to have a legal practitioner assigned to argue an appeal or application to which he or she is a party, may apply to a registrar by submitting Form 6-

- (a) with his or her notice of appeal in terms of [rule 18](#); or
- (b) if he or she has applied for leave to appeal in terms of [rule 20](#), within four days of notification that leave to appeal has been granted.

(2) On receipt of an application referred to in [subrule \(1\)](#), the registrar shall inquire into the question of the means of the applicant and, for that purpose, may require the applicant to give evidence on oath either in person or by affidavit.

(3) After inquiry in terms of [subrule \(2\)](#), the application shall be dealt with in terms of the Legal Aid Act [*Chapter 7:16*] and regulations made thereunder.

## **23. Record**

(1) Subject to the provisions of [rule 24 \(3\)](#) and [\(4\)](#), the record shall include particulars of the trial in Form 7, the notice of appeal and, alternatively or additionally, the notice of application for leave to appeal and the grounds of appeal.

(2) An appellant other than the Prosecutor-General shall, within ten days of instituting the appeal or, if he or she has applied for legal aid and it has been refused, within ten days of notification of such refusal, make arrangements with a registrar of the High Court for the preparation of the record.

(3) The registrar of the High Court may, in his or her discretion and at any time, allow the appellant such time and terms for the preparation of the record or the payment of the costs thereof as he or she thinks fit.

(4) In considering the time allowed for the preparation of the record, the registrar shall have regard to the fact that a stated case has, or has not, been requested or will or, will not be, requested.

(5) Where arrangements have been made in terms of [subrule \(2\)](#), or where legal aid has been granted for the preparation of the record, the registrar of the High Court shall be responsible for ensuring that the record is prepared in terms of this rule as read with [rule 17](#).

(6) When the record has been prepared, a registrar of the High Court shall certify its correctness and shall send to-

- (a) the Prosecutor-General two copies of the record; and
- (b) a registrar the certified record together with three copies of it, or, if further copies have been requested, such further copies.

(7) If legal aid has been granted for the preparation of a record, the registrar of the High Court shall, in addition, send to a registrar a copy of the record for each appellant to whom legal aid has been granted.



(8) An appellant who has not been granted legal aid may obtain any number of copies of the record as he or she may require from the registrar of the High Court upon payment of the fees due for the preparation of such record.

## **24. Stated case**

(1) In the case of an appeal involving a question of law alone, the appellant or the Prosecutor-General may make written request to a judge that a request be made to the High Court to state the question in terms of section 18 of the Act.

(2) If the judge makes a request to the High Court to state a case, it shall be the responsibility of the High Court to state the case. It may, but need not, consult the parties to the appeal.

(3) When the case has been stated, the record shall be prepared in the manner specified in rules 17 and 23 save, however, that the record shall consist only of Form 7, the notice of appeal, the stated case, the judgment of the High Court and such other documents as the judge may direct to be included.

(4) If the High Court reserves a question of law in terms of section 24 or 25 of the High Court Act [*Chapter 7:06*], it shall be the responsibility of the court reserving the question to state the question so reserved and it may, but need not, consult the parties. A record shall be prepared in accordance with the directions of the High Court consisting of the indictment, any exception or objection thereto, the question as stated, the judgment of the court and any other matters which, in the opinion of the court reserving the question, are relevant.

## **25. Set down**

(1) A registrar of the High Court shall notify the appellant or his or her legal practitioner of the date that the record was sent to a registrar in terms of [subrule \(5\)](#) of [rule 23](#) and, where the appellant is legally represented, shall call upon his or her legal practitioner to file heads of argument within fifteen days after the date of such notification.

(2) Notification in terms of [subrule \(1\)](#) shall be given to the appellant or his or her legal practitioner personally or sent by registered post to the address for service supplied in terms of [rule 10](#). If such notification is not given personally, it shall be deemed to have been received four days after it is posted by registered letter to the appellant's address for service.

(3) As soon as possible after sending notification to the appellant or his or her legal practitioner in terms of [subrule \(1\)](#), the registrar of the High Court shall send a copy of the notification to a registrar.

(4) Within fifteen days after being called upon to file heads of argument in terms of [subrule \(1\)](#), or within such longer period as a judge may for good cause allow, a legal practitioner shall file with a registrar a document setting out the heads of his or her argument together with a list of authorities to be cited in support thereof, and immediately thereafter shall deliver a copy to the Prosecutor-General.

(5) After receiving notification in terms of [subrule \(1\)](#) and, where appropriate, after filing heads of argument in terms of [subrule \(4\)](#), the appellant or his or her legal practitioner shall apply to a registrar in writing for a date of hearing, and may provide the registrar with an estimate of the time it is envisaged the hearing of the appeal will take.

(6) On receipt of an application in terms of [subrule \(5\)](#), the registrar shall, subject to [rule 26 \(1\)](#), set down the appeal for hearing on a day selected by him or her and shall forthwith give notice thereof to the appellant or his or her legal practitioner and to the Prosecutor-General:

Provided that the day selected for the hearing shall be such as to give all parties to the appeal not less than six weeks' notice thereof, unless they agree to shorter notice.

(7) Notice of set down shall either be given to the appellant or his or her legal practitioner personally or sent by registered post to the address for service supplied in terms of [rule 10](#).

(8) Within fifteen days after receiving the appellant's heads of argument or notice of set down, whichever is the earlier, the Prosecutor-General shall file a document setting out the heads of his or her argument together with a list of authorities to be cited in support thereof, and immediately thereafter shall deliver a copy to the appellant's legal practitioner:

Provided that, where the appeal is set down for hearing less than twenty days after the Prosecutor-General receives the appellant's heads of argument, the Prosecutor-General shall file his or her heads of argument as soon as possible and in any event not later than four days before the hearing of the appeal.

(9) If the appellant has been granted legal aid for the preparation of the record and is not legally represented, the registrar shall, when giving notice of set down, supply to the appellant a copy of the record. If the appellant has been assigned counsel, a copy of the record shall be provided to his or her counsel.



## **26. Dismissal of appeal for want of prosecution**

(1) If-

- (a) no arrangements have been made for the preparation of the record within the time specified in [rule 23 \(2\)](#); or
- (b) no heads of argument have been filed in terms of [rule 25 \(4\)](#) within the period specified in that rule; or
- (c) no application for a date of hearing has been made in terms of [rule 25 \(5\)](#) within eight weeks of receiving notification in terms of [subrule \(1\)](#) of that rule,

the appeal shall be regarded as abandoned and shall be deemed to have been dismissed.

(2) An appellant may apply to a judge for an appeal which is deemed to have been dismissed in terms of [subrule \(1\)](#) to be reinstated and for an extension of time to be granted in which to apply for a date of hearing and the provisions of [rule 21](#) shall, *mutatis mutandis*, apply to an application in terms of this subrule.

(3) The judge may grant or refuse an application made in terms of [subrule \(2\)](#) and may, in granting the application, impose such conditions as he or she thinks fit.

(4) An appellant may at any time abandon an appeal instituted by him by notice to a registrar and the appeal shall then be deemed to have been dismissed.

(5) The Prosecutor-General, after receiving a notice of appeal, may apply to the court to have the appeal dismissed on the grounds that it is frivolous or vexatious.

(6) When at the hearing of an appeal there is no appearance by, and no heads of argument on behalf of, an appellant who is not in custody, the court may dismiss the appeal:

Provided that a judge may on application and for good cause shown reinstate, on such terms as he or she thinks fit, any appeal dismissed in terms of this subrule.

(7) If an appeal is deemed to have been dismissed in terms of [subrule \(1\)](#) or [\(4\)](#), a registrar shall give notice of the fact to the appellant, the Prosecutor-General and a registrar of the High Court.

(8) If an appeal is reinstated or is dismissed in terms of this rule, a registrar shall forthwith give notice thereof to a registrar of the High Court and to the Prosecutor-General.

## **27. Applications**

(1) Except as otherwise provided in these rules, all applications under this Part, other than an application for leave to appeal, for extension of time in which to perform any act or for legal aid, shall be made by court application.

(2) If it is necessary in any such application to rely on facts outside any record, such facts shall be set out in an affidavit or, if the facts are set out by the Prosecutor-General, in a statement.

(3) The court application together with supporting documents shall be served on a registrar and on the respondent not less than five days before the hearing of the application.

(4) The respondent shall be entitled to file affidavits or statements, as the case may be, in reply to the application and these shall be served on the registrar and the applicant.

(5) Where the applicant is in custody and not legally represented, a registrar shall make copies of the court application and supporting documents, and any affidavit filed in terms of [subrule \(2\)](#), and serve the same on the respondent.

(6) If in any application there are heads of argument filed by the applicant, the Prosecutor-General shall not, except by special leave, be entitled to appear but may make written representations in regard to the application and the applicant shall have the right of replying thereto.

## **28. Applications to lead further evidence**

(1) An application to adduce further evidence on appeal shall be accompanied by an affidavit by the witness whose evidence it is sought to lead, an affidavit or a statement by counsel as to why that evidence was not adduced at the trial and a copy of the judgment at the trial.

(2) If in the course of the hearing of an appeal any party thereto wishes to make an application, he or she may do so verbally on such terms as the court may allow.

## **29. Written arguments in lieu of appearance**

(1) In the event of arguments in writing being presented in accordance with the provisions of section 29 (4) of the Act, the persons to be served with such arguments and the number of copies thereof required shall be as follows-

- (a) in an appeal, three copies on a registrar and one copy on the respondent, or appellant, as the case may be;
- (b) in an application, one copy on a registrar and one copy on the respondent or applicant, as the case may be.

(2) Notwithstanding the provisions of [subrule \(1\)](#), where a person wishing to submit an argument in writing is in custody and is not legally represented, he or she may serve one copy of the argument on a registrar who shall be responsible for the preparation and service of the other copies.

(3) The time within which written arguments shall be served shall be-

- (a) in an appeal, five days before hearing;
- (b) in an appeal by the Prosecutor-General where the respondent wishes to present argument, five days after service of Form 8 or Form 9;
- (c) in an application for leave to appeal or for an extension of time, at the time when Form 4 or Form 5 is delivered;
- (d) in any other application, one day prior to the hearing.

(4) Notwithstanding that written arguments have been filed, the court or a judge may allow the person filing such arguments to appear in person or by his or her legal practitioner.

## PART V

### *Appeals by Prosecutor-General from High Court*

#### **30. Noting of appeals where no leave required**

(1) Where the Prosecutor-General wishes to appeal-

- (a) against the judgment of the High Court in any case in terms of section 44 (6) of the High Court Act [*Chapter 7:06*], he or she shall, within ten days of the date of Judgment-
  - (i) lodge a notice of such appeal with a registrar of the High Court, and
  - (ii) file a duplicate notice with a registrar;
- (b) against the sentence imposed by the High Court in any case in terms of section 44 (7) (a) of the High Court Act [*Chapter 7:06*], he or she shall, within ten days of the passing of sentence-
  - (i) lodge a notice of such appeal with a registrar of the High Court, and
  - (ii) file a duplicate notice with a registrar.

(2) A notice of appeal referred to in [subrule \(1\)](#) shall-

- (a) in the case of a notice in terms of [subrule \(1\) \(a\)](#)-
  - (i) specify the judgment against which the appeal is brought and the point of law in issue, and
  - (ii) indicate whether or not a stated case is appropriate;
- (b) in the case of a notice in terms of [subrule \(1\) \(b\)](#), specify the sentence against which the appeal is brought and the grounds of the appeal.

#### **31. Preparation of record and service thereof on respondent**

(1) The Prosecutor-General shall, within ten days of noting an appeal in terms of [rule 30](#), make arrangements with a registrar of the High Court for the preparation of the record.

(2) The provisions of [rule 17](#) and [rule 23 \(1\)](#) shall, *mutatis mutandis*, apply in respect of a record prepared in terms of [subrule \(1\)](#):

Provided that, if a judge makes a request in terms of section 18 of the Act, the provisions of [rule 24 \(3\)](#) and [\(4\)](#) shall, *mutatis mutandis*, apply.

(3) When the record has been prepared, the registrar of the High Court shall certify its correctness and shall send to-

- (a) the Prosecutor-General, two copies of the record; and
- (b) a registrar, the certified record together with three copies thereof, or, if further copies have been requested, such further copies.

(4) The Prosecutor-General shall, as soon as possible after he or she has received the record, cause to be served on the respondent a copy of the record including a copy of the notice of appeal and-

- (a) in the case of an appeal referred to in [rule 30 \(1\) \(a\)](#), a notice in Form 8;
- (b) in the case of an appeal referred to in [rule 30 \(1\) \(b\)](#), a notice in Form 9.

### 32. Set down

(1) The Prosecutor-General shall, as soon as possible after receiving the copies of the record sent in terms of [rule 31 \(3\)](#), apply in writing to a registrar for a date of hearing, providing an estimate of the time it is envisaged the hearing of the appeal will take.

(2) On receipt of an application in terms of [subrule \(1\)](#) the registrar shall set down the appeal for hearing on a day selected by him and shall forthwith serve notice thereof on the Prosecutor-General and the respondent or his or her legal practitioner so as to give them at least five days' notice,

### 33. Applications for leave to appeal

(1) Where the Prosecutor-General wishes to appeal against the sentence of the High Court in any case in terms of section 44 (7) (b) of the High Court Act [*Chapter 7:06*], he or she shall lodge an application for leave to appeal with a registrar and a duplicate notice of appeal with a registrar of the High Court within ten days of the passing of sentence.

(2) The Prosecutor-General shall, in an application referred to in [subrule \(1\)](#)-

- (a) specify the sentence against which the appeal is brought and the proposed grounds of the appeal; and
- (b) submit written argument in support thereof,

and may, at the same time, submit a request that the matter be set down for oral argument.

(3) On receipt of an application in terms of [subrule \(1\)](#), the registrar shall request a registrar of the High Court to forward-

- (a) a copy of the judgment in the case, including the reasons of the judge of the High Court for sentence; and
- (b) a copy of the indictment and such other documents in the case as he or she may require.

(4) When the record has been prepared pursuant to a request in terms of [subrule \(3\)](#), the registrar of the High Court shall certify its correctness and, as soon as possible, forward the certified record together with one copy to the registrar and two copies to the Prosecutor-General.

(5) If the Prosecutor-General requests that the matter be set down for oral argument, the judge who is to decide the matter shall, unless he or she grants leave to appeal, allow the Prosecutor-General to be heard.

(6) A judge may, after considering written argument submitted in terms of this rule, decide to hear oral argument from the Prosecutor-General.

(7) After hearing the Prosecutor-General or, if he or she does not appear, on consideration of the written argument submitted in terms of [subrule \(2\) \(b\)](#), the judge may grant or refuse the application.

(8) If the application is granted, a registrar shall notify a registrar of the High Court, and forward a copy of the application referred to in [subrule \(1\)](#), and the appeal shall be deemed to have been noted and the provisions of rules 31 and 32 shall, *mutatis mutandis*, apply.

### 34. Applications out of time

(1) Where the Prosecutor-General wishes to-

- (a) note an appeal against the sentence of the High Court in any case; or
- (b) apply for leave to appeal against the sentence of the High Court in any case,

after the expiration of the time limit specified in this Part, an application for an extension of time in which to note an appeal or for leave to appeal, as the case may be, shall be lodged with a registrar and a duplicate notice of appeal

shall immediately thereafter be lodged with a registrar of the High Court.

(2) The provisions of [rule 33 \(2\)](#) to [\(7\)](#) shall, *mutatis mutandis*, apply in respect of an application referred to in [subrule \(1\)](#):

Provided that the Prosecutor-General shall, together with the written argument referred to in [rule 33 \(2\) \(b\)](#), submit an adequate statement explaining why the appeal was not noted or the application was not made, as the case may be, within the proper time.

(3) If an application for an extension of time in which to apply for leave to appeal is granted, the judge shall thereupon grant or refuse leave to appeal.

(4) If-

- (a) an application for an extension of time in which to note an appeal is granted; or
- (b) leave to appeal is granted in terms of [subrule \(3\)](#),

the registrar shall notify the registrar of the High Court, and forward a copy of the application referred to in [subrule \(1\)](#), and the appeal shall be deemed to have been noted and the provisions of rules 31 and 32 shall, *mutatis mutandis*, apply.

### **35. Abandonment of appeal**

The Prosecutor-General may, at any time before the hearing of an appeal referred to in this Part, give notice to a registrar and the respondent that he or she has abandoned his or her appeal and the appeal shall thereupon be deemed to have been dismissed.

### **36. Legal aid**

(1) A person who wishes to apply for legal aid in terms of the Legal Aid Act [*Chapter 7:16*] to have counsel assigned to appear on his or her behalf at the hearing of an appeal or application in terms of this Part may apply to a registrar, and attach his or her notification that he or she intends to oppose the application or appeal, as the case may be-

- (a) in the case of an appeal referred to in [rule 30 \(1\)](#), by submitting to the registrar his or her application in Form 8 or Form 9; and
- (b) in the case of an application referred to in [rule 33 \(1\)](#) or [rule 34 \(1\)](#), by submitting to the registrar his or her application in Form 10.

(2) On receipt of an application referred to in [subrule \(1\)](#), the registrar shall inquire into the question of the means of the applicant and, for that purpose, may require the applicant to give evidence on oath either in person or by affidavit.

(3) After inquiry in terms of [subrule \(2\)](#) the application shall be dealt with in terms of the Legal Aid Act [*Chapter 7:16*] and regulations made thereunder.

## PART VI

### *Civil Appeals from the High Court*

### **37. Entry of appeal**

(1) Every civil appeal shall be instituted in the form of a notice of appeal signed by the appellant or his or her legal practitioner, which shall state-

- (a) the date on which, and the court by which, the judgment appealed against was given;
- (b) if leave to appeal or condonation and extension of time to appeal was granted, the date of such grant;
- (c) whether the whole or part only, and if so which part, of the judgment is appealed against;
- (d) the grounds of appeal in accordance with the provisions of [rule 44](#);
- (e) the exact relief sought;
- (f) the address for service of the appellant or his or her legal practitioner.

(2) The notice of appeal shall be filed and served on a registrar, a registrar of the High Court and the respondent in accordance with [rule 38](#).

(3) If the appellant does not serve the notice of appeal in compliance with [subrule \(2\)](#) as read with [rule 38](#), the appeal shall be regarded as abandoned and shall be deemed to have been dismissed.

### **38. Time for entry of appeal**

(1) An appellant shall institute an appeal within the following times-

- (a) by filing and serving a notice of appeal in compliance with [rule 37 \(2\)](#) within 15 days of the date of the judgment appealed against;
- (b) if leave to appeal is necessary and has been granted, by filing and serving a notice of appeal in compliance with [rule 37 \(2\)](#) within ten days of the granting of leave to appeal or within 15 days of the date of the judgment appealed against, whichever is the later.

(2) If leave to appeal is necessary and has been refused by the High Court, the appellant shall apply for leave to appeal within ten days of the refusal.

### **39. Applications generally**

(1) Subject to the provisions of rules 43, 48, 49, 53 and 55, applications shall be by court application signed by the applicant or his or her legal practitioner and accompanied by an affidavit setting out any facts which are relied upon.

(2) The court application and any affidavits or other documents referred to in [subrule \(1\)](#) shall be filed with a registrar and thereafter served on the opposite party within three days, failing which the application shall be regarded as abandoned and deemed to have been dismissed.

(3) The respondent shall have the right to file opposing affidavits within five days of receipt of the application in terms of this rule and, thereafter, the applicant shall have the right of filing answering affidavits within a further period of five days calculated from the date of receipt of the respondent's opposing affidavits.

(4) Applications referred to in rules 43, 48, 49, 53 and 55 shall be by way of chamber application as regulated, *mutatis mutandis*, by the High Court Rules.

### **40. Applications to lead further evidence on appeal**

An application to lead further evidence on appeal shall be accompanied by that evidence in the form of an affidavit and also by an affidavit, or a statement from counsel, showing why the evidence was not led at the trial, together with a copy of the judgment appealed from and a statement indicating in what manner it is alleged the evidence sought to be adduced affects the matters at issue.

### **41. Power to allow amendment**

The court may upon application by notice or upon oral application by counsel during the course of any hearing allow, upon such terms as it may think fit to impose, amendment of the grounds of appeal or of any pleadings or other document and may similarly permit a party to appear or be represented notwithstanding any declaration in terms of [rule 50](#) to the effect that the party does not intend to appear or be represented.

### **42. Any other application**

If in the course of the hearing of an appeal any party wishes to make any other application, he or she may do so verbally on such terms as the court may allow.

### **43. Applications for leave to appeal or extension of time to appeal**

(1) An application for leave to appeal or for condonation of non-compliance with the rules and for extension of time in which to appeal shall be signed by the applicant or his or her legal practitioner and shall be accompanied by a copy of the judgment against which it is sought to appeal.

(2) An application for leave to appeal shall set out the date on which the High Court refused leave to appeal and shall have attached to it-

- (a) a notice of appeal containing the matters required in terms of [rule 37 \(1\) \(a\)](#) to [\(f\)](#);

(b) a copy of the proceedings before the High Court when leave to appeal was refused, together with the judgment, if any;

(c) an affidavit setting out any facts which are relied upon as affecting the granting of leave to appeal.

(3) An application for condonation of non-compliance with the rules and for extension of time in which to appeal shall have attached to it a notice of appeal containing the matters required in terms of [rule 37 \(1\)](#) and an affidavit setting out the reasons why the appeal was not entered in time or leave to appeal was not applied for in time. Counsel may set out any relevant facts in a statement. Where such application is in relation to a matter in which leave to appeal is necessary the application shall, in addition, comply with the requirements of [subrule \(2\)](#).

(4) An application in terms of this rule and accompanying documents shall be filed with a registrar and thereafter served on the respondent within three days, failing which the application shall be regarded as abandoned and deemed to have been dismissed.

(5) The respondent shall be entitled, within three days of service, to file with the registrar his or her opposing affidavits, which shall also be served on the applicant and the applicant shall thereafter be entitled, within three days, to file with the registrar his or her answering affidavits.

(6) The registrar shall give notice of the date of hearing to the parties.

(7) A judge may make such order on the application as he or she thinks fit and shall, if an extension of time is granted, deal also with any question of leave to appeal which may be involved.

(8) If leave to appeal or condonation and extension of time to appeal is granted, the appeal shall be deemed to have been instituted in accordance with the notice of appeal filed in the application on the date on which leave is granted, unless the judge otherwise orders.

(9) Where an order is granted in terms of [subrule \(8\)](#), the appellant shall attach a copy of the order to the notice of appeal.

(10) The registrar shall notify a registrar of the High Court of the date of the judgment or determination in the matter and shall at the same time deliver to the registrar a copy of the order and judgment, if any.

#### **44. Grounds of appeal**

(1) The grounds of appeal shall be set forth clearly and concisely and in separate numbered paragraphs.

(2) The appellant, whether on appeal or on cross-appeal, shall not without leave of the court urge or be heard in support of any ground of appeal not set out when the appeal is entered, but the court in deciding the appeal shall not be confined to the grounds so stated:

Provided that the court shall not rest its decision on any other ground unless the parties have had sufficient opportunity to contest the case on that ground.

(3) Application to amend the grounds of appeal may be made before the hearing of the appeal to a judge or at the hearing of the appeal by notice of amendment duly served on the respondent.

#### **45. Cross-appeal and abandonment of judgment**

(1) When an appeal has been instituted the respondent shall be entitled, within ten days of the entry of appeal in terms of [rule 37](#), to enter a cross-appeal.

(2) Notice of cross-appeal shall be signed by the respondent or his or her legal practitioner and shall state in respect of which appeal the cross-appeal is made and shall, *mutatis mutandis*, comply with rules 37 and 38.

(3) The respondent in an appeal or in a cross-appeal may, at any time, by notice given to a registrar and the opposite party, abandon the whole or any part of the judgment appealed against.

#### **46. Preparation and service of record**

(1) The appellant, unless he or she has been granted leave to appeal *in forma pauperis*, shall at the time of the noting of an appeal in terms of [rule 37](#) or within such period therefrom not exceeding fifteen days as a registrar of the High Court may allow, deposit with the said registrar the estimated cost of the preparation of the record in the case concerned:

Provided that the registrar of the High Court may, in lieu of such deposit, accept a written undertaking by the appellant or his or her legal representative for the payment of such cost immediately after it has been determined.

(2) The registrar of the High Court shall be responsible for the preparation of the record which shall be prepared in accordance with the provisions of [rule 17](#).

(3) The record shall incorporate the notice of appeal and notice of cross-appeal, if any.

(4) After certification of the record, the registrar of the High Court shall deliver the certified copy and three other copies, or more if a registrar so requires, to that registrar. If the respondent has been granted leave to oppose the appeal *in forma pauperis*, the registrar of the High Court shall deliver two copies of the record to the respondent.

(5) If the appellant fails to comply with the provisions of [subrule \(1\)](#), or any written undertaking made in terms of the proviso to that subrule, the appeal shall be deemed to have lapsed.

#### **47. Stated case**

(1) Either of the parties to an appeal may ask a judge to request that a question be stated for determination by the Supreme Court in terms of section 23 of the Act.

(2) If on the request of a party in terms of [subrule \(1\)](#) or of his or her own motion the judge requests that a case be stated under section 23 of the Act, the appellant shall, with the agreement, if possible, of the respondent, prepare a draft stated case and submit it to the court whose judgment is appealed against.

(3) The stated case shall set out in numbered paragraphs-

- (a) the relevant facts found proved by the court whose judgment is appealed against;
- (b) the relevant portions of the judgment appealed against;
- (c) the respective contentions of the parties in regard to that decision; and
- (d) the question of law which arises for decision on appeal.

(4) On consideration of the draft stated case the court which gave the judgment may suggest amendments to the draft to the party or parties who have prepared the stated case. If the parties thereafter agree to the statement of case, the case shall be regarded as being so stated.

(5) If the draft stated case has been prepared by the appellant and the respondent has not agreed to the draft, the appellant shall, after submitting the draft stated case to the court whose judgment has been appealed against and amending the draft, if he or she considers it desirable, in the light of any suggestions made by that court, serve notice on the respondent stating that the draft may be inspected at a place specified and that unless he or she objects to the draft within seven days the case will be so stated.

(6) If no objection is made in terms of [subrule \(5\)](#) or if the parties can, within the period specified, agree to the terms of an amended draft, the case shall be regarded as being stated in terms of the draft or amended draft, as the case may be.

(7) If objection is made in terms of [subrule \(5\)](#) and no agreement can be reached within the period specified as to the terms of an amended draft, the parties shall be deemed to have failed to agree upon the terms of the stated case and the matter shall thereafter be dealt with in the manner specified in section 23 (3) of the Act.

(8) After a statement of the case has been agreed upon, the appellant shall prepare a record consisting of the notice of appeal, the cross-appeal, if any, the stated case and a copy of the judgment appealed against.

#### **48. Abandonment**

(1) An appellant may at any time abandon an appeal by giving notice to that effect to a registrar and to the respondent.

(2) A respondent may, upon receipt of a notice in terms of [subrule \(1\)](#), make application to a judge for an order in respect of any costs incurred by him or her, including the costs of any cross-appeal:

Provided that where a respondent claims the costs of a cross-appeal in terms of this subrule, the cross-appeal shall, thereby, be deemed to have been abandoned.

(3) An appellant in a cross-appeal may at any time abandon a cross-appeal and, except in the case where a cross-appeal is deemed to have been abandoned by virtue of the provisions of [subrule \(2\)](#), the respondent in the cross-appeal may thereupon claim his or her costs by making an application to a judge for an order in respect of any costs incurred by him or her by virtue of such cross-appeal.

(4) If on the abandonment of an appeal by an appellant the respondent who has noted a cross-appeal wishes to persist in his or her cross-appeal, such respondent shall be regarded as the appellant for the purposes of the preparation of the record and the prosecution of the appeal.

(5) The registrar shall notify a registrar of the court appealed from of any abandonment of an appeal or cross-appeal in terms of this rule.



#### **49. In forma pauperis proceedings**

(1) Any person without means may apply for leave to prosecute or defend a civil appeal *in forma pauperis*.

(2) Where the opposite party consents to the applicant proceeding *in forma pauperis* an application for leave to proceed as aforesaid may be made either to a registrar or orally from the bar at the hearing of the appeal and where an application is so made the registrar or court, as the case may be, may forthwith grant the application.

(3) Where the opposite party after having been consulted does not consent to the applicant proceeding *in forma pauperis*, an application shall be made to a judge.

(4) An application in terms of [subrule \(3\)](#) shall set forth fully the financial position of the applicant and, in particular, shall state that the applicant is unable to provide sureties and that, excepting household goods, wearing apparel, tools of trade and his or her interest in the subject matter of the appeal, he or she is not possessed of property to the amount of ten thousand dollars (USD 10 000), Such particulars shall be supported by a verifying affidavit and shall be accompanied by a certificate of a legal practitioner that he or she has considered the case of the applicant and that *prima facie* he or she has reasonable grounds to prosecute or defend the appeal.

(5) If leave to prosecute or defend an appeal *in forma pauperis* is granted, the court shall give such directions as to the cost of preparation of the record as it deems fit and may assign to the applicant such legal assistance as may appear to be necessary.

(6) Whenever a person obtains leave to prosecute or defend an appeal *in forma pauperis* he or she shall not be required to lodge security for the costs of the opposite party or to pay any court fees.

(7) If a person to whom leave has been granted as aforesaid does not succeed in the appeal, no fees shall be taken from him by the legal practitioner or counsel assigned to him under the provisions of [subrule \(5\)](#).

(8) If such person is successful in the appeal and is awarded costs against the opposite party, he or she shall, subject to taxation, be entitled to include and recover in such costs the fees of his or her legal practitioner or counsel and all other fees, including the cost of the record, exempted by reason of leave to prosecute or defend an appeal *in forma pauperis* having been granted.

(9) On good cause shown to the court, leave to prosecute or defend an appeal *in forma pauperis* may be reviewed, rescinded or varied by the court and the leave to proceed *in forma pauperis* shall not exempt the applicant from liability to be adjudged to pay costs.

(10) All pleadings, process and documents filed of record by a party proceeding *in forma pauperis* shall be headed accordingly.

#### **50. Written arguments**

A party to a civil appeal may, not less than five days before the date on which the appeal has been set down for hearing, file with a registrar a declaration in writing that he or she does not intend to be present in person or to be represented by counsel at the hearing of the appeal, together with four copies of such argument as he or she wishes to submit to the court. Such argument shall be in numbered paragraphs under distinct heads. A copy of such declaration and argument shall be served on the other parties to the appeal as soon as possible after service on the registrar.

#### **51. Preliminary objections**

A party to an appeal who intends to rely on a preliminary objection to any proceeding or to the use of any document shall give notice in writing of the objection to a registrar and to the opposite party and where the objection is to be taken at the hearing of an appeal three additional copies of the notice shall be given to the registrar.

#### **52. Setting down of appeal and heads of argument**

(1) Where the appellant will be represented by a legal practitioner at the hearing of the appeal, a registrar shall send written notification to that legal practitioner as soon as he or she has received the record in terms of [rule 46](#), and shall call upon the legal practitioner to file heads of argument within fifteen days after the date of such notification.

(2) Within fifteen days after being called upon to file heads of argument in terms of [subrule \(1\)](#), or within such longer period as a judge may for good cause allow, the appellant's legal practitioner shall file with the registrar a document setting out the heads of his or her argument together with a list of authorities to be cited in support thereof, and immediately thereafter shall deliver a copy to the respondent.

(3) Where the respondent is to be represented by a legal practitioner at the hearing of the appeal, that legal practitioner shall, within ten days after receiving the appellant's heads of argument in terms of [subrule \(2\)](#), file with the registrar a document setting out the heads of his or her argument together with a list of authorities cited in



support thereof, and immediately thereafter shall deliver a copy to the appellant:

Provided that where-

- (i) the respondent's legal practitioner has not received the appellant's heads of argument in terms of [subrule \(2\)](#), whether because the appellant will not be legally represented at the hearing of the appeal or for any other cause, or
- (ii) the appeal is set down for hearing less than fifteen days after the respondent's legal practitioner receives the appellant's heads of argument in terms of [subrule \(2\)](#),

the respondent's legal practitioner shall file his or her heads of argument as soon as possible and in any event not less than four days before the hearing of the appeal.

(4) Upon receiving the appellant's heads of argument in terms of [subrule \(2\)](#), the registrar shall set the appeal down for hearing:

Provided that, unless the parties agree otherwise, at least four weeks' notice shall be given to the appellant and the respondent.

(5) Where a respondent who is legally represented fails to file his or her heads of argument in terms of [subrule \(3\)](#), he or she shall be automatically barred.

### **53. Dismissal of appeal in the absence of heads of argument or appearance**

(1) If, within the period specified in [rule 52 \(2\)](#), a registrar does not receive heads of argument from an appellant who is legally represented, the appeal shall be regarded as abandoned and shall be deemed to have been dismissed.

(2) Where an appeal is deemed to have been dismissed in terms of [subrule \(1\)](#), the registrar shall forthwith notify the parties and a registrar of the High Court of that fact.

(3) Where, at the time of the hearing of an appeal, there is no appearance for the appellant or no heads of argument have been filed by him, the court may, at its discretion, determine or dismiss the appeal and make such order as to costs as it may think fit.

(4) The registrar shall notify a registrar of the court whose judgment is appealed against of the dismissal of any appeal under this rule.

### **54. Third parties**

(1) If prior to the hearing of an appeal it appears to a judge, or at the hearing it appears to the court, that a person who is not a party to the appeal may be so affected by an order made in it that he or she must be heard, notice may be given to that person to enable him to apply to intervene in the appeal if he or she so wishes.

(2) If notice is given in terms of [subrule \(1\)](#) the person to whom notice is given may apply to the judge or to the court, as the case may be, for permission to enable him or her to intervene in the appeal.

(3) The judge or the court hearing an application in terms of [subrule \(2\)](#) may refuse the application or grant it upon such terms and conditions as may seem just.

### **55. Security**

(1) If the judgment appealed from is carried into execution by direction of the court appealed from, security for the costs of appeal shall be as determined by that court and shall not be required under this rule.

(2) Where the execution of a judgment is suspended pending an appeal and the respondent has not waived his or her right to security, the appellant shall, before lodging copies of the record with a registrar, enter into good and sufficient security for the respondent's costs of appeal:

Provided that where the parties are unable to agree on the amount or nature of the security to be furnished-

- (i) the matter shall be determined by the registrar upon application by the appellant, and
- (ii) the registrar shall specify the period within which the security shall be furnished.

(3) A judge may, on application at the cost of the appellant and for good cause shown, exempt the appellant wholly or in part from the giving of security under [subrule \(2\)](#).

(4) No security for costs in terms of [subrule \(2\)](#) need be furnished by the Government of Zimbabwe or by a municipal or city council or by a town management board.

(5) Subject to the proviso to [subrule \(2\)](#), where an appellant is required by this rule to furnish security for the

respondent's costs of appeal, such security shall be furnished within one month of the date of filing of the notice of his or her appeal in terms of [rule 37](#) or, where applicable, within the period specified by the registrar in terms of the proviso to [subrule \(2\)](#).

(6) If an appellant who is required to furnish security for the respondent's costs of appeal fails to furnish such security with the period specified in [subrule \(5\)](#), the appeal shall be regarded as abandoned and shall be deemed to have been dismissed.

## 56. Taxation

(1) Where costs are allowed they shall be taxed by a registrar and legal practitioners' fees shall be charged and taxed in accordance with the relevant provisions of the tariff for the time being used by the High Court of Zimbabwe.

(2) Any party aggrieved by the taxation shall give notice of review to the registrar and to the opposite party within 15 days of the taxation, setting out his or her grounds of objection.

(3) The registrar shall make a report in writing setting forth any relevant facts found by him and stating his or her reasons for any decision. A copy of such report shall be given to a judge and shall be served on the parties to the taxation.

(4) Thereafter the registrar shall fix a date for hearing of the review by the judge.

(5) The judge may make such order on the review as to him or her seems just.

## PART VII

### *Miscellaneous Appeals and References*

## 57. Application

(1) Subject to the provisions of [subrule \(2\)](#), this Part shall apply to any appeal to the court or a judge which is provided for in any enactment having the force of law in Zimbabwe.

(2) This Part shall not apply to-

(a) an appeal or reference in terms of the High Court Act [*Chapter 7:06*]; or

(b) an appeal in relation to which the enactment concerned itself expressly specifies the whole procedure to be followed or provides for the making of rules or regulations regulating such procedure.

(3) In relation to an appeal to which this Part applies, the provisions of this Part shall be read subject to those provisions of the enactment concerned which specify aspects of the procedure for the appeal or reference, as the case may be, but shall be applied to the fullest extent consistent therewith.

## 58. Interpretation of terms

In this Part-

"**officer**" includes an officer, referee, arbitrator or umpire acting in terms of the Arbitration Act [*Chapter 7:02*];

"**tribunal**" means any court, tribunal, council, board or other body against whose decision an appeal lies to a judge or the court.

## 59. Notice of appeal

(1) Every appeal under this Part shall be instituted by a notice of appeal signed by the appellant or his or her legal representative.

(2) The notice of appeal referred to in [subrule \(1\)](#) shall be directed and delivered by the appellant to the registrar or administrative officer of the tribunal, or to the officer whose decision is appealed against, and to all other parties affected, and shall also be filed with a registrar in accordance with [rule 60](#).

(3) The notice of appeal shall state-

(a) the date on which the decision was given;

(b) the tribunal or officer whose decision is appealed against;

- (c) the grounds of appeal in accordance with [rule 44](#);
- (d) the exact nature of the relief sought;
- (e) the address of the appellant or his or her legal representative; and
- (f) if leave to appeal was granted, the date of such grant.

(4) If the appellant does not serve the notice of appeal in compliance with [subrule \(2\)](#) as read with [rule 60](#), the appeal shall be regarded as abandoned and shall be deemed to have been dismissed.

## **60. Time within which notice to be given**

(1) Subject to the provisions of [rule 61](#) and the enactment under which the appeal is lodged, a notice of appeal shall be delivered and filed in accordance with the provisions of [rule 59](#) within 15 days of the date of the decision appealed against.

(2) An appeal from a decision of the Labour Court in terms of section 92F of the Labour Act [*Chapter 28:01*] shall be delivered, and filed with a registrar, within 15 days from the grant of leave to appeal by the Labour Court or, where such leave is refused, within 15 days from the grant of leave by a judge:

Provided that where leave to appeal is refused by the Labour Court, the applicant shall apply for leave to appeal to a judge within ten days of the refusal to grant leave.

## **61. Applications for extension of time to appeal**

Save where it is expressly or by necessary implication prohibited by the enactment concerned, a judge may, if special circumstances are shown by way of an application in writing, condone the late noting of the appeal and extend the time laid down, whether by [rule 60](#) or by the enactment concerned, for instituting an appeal.

## **62. Record**

(1) Within 15 days of receipt of a notice of appeal, the tribunal or officer concerned shall lodge the record of proceedings with a registrar.

(2) The provisions of rules 16 and 17 shall apply, *mutatis mutandis*, to every record of proceedings lodged in terms of [subrule \(1\)](#) including, without derogation from the generality of this subrule, records from the Labour Court, Administrative Court, Fiscal Appeals Court, Special Court for Income Tax Appeals, Intellectual Property Tribunal, Courts Martial, Electoral Court and Magistrates Court.

## **63. Special cases referred or reserved to the court**

(1) In any reference of a special case or question to the court or a judge, it shall be the duty of the court, judge, tribunal or officer concerned to prepare, in consultation with the parties, a special case setting out, in accordance with the provisions of this rule, the question to be determined together with all the circumstances under which that question has arisen.

(2) Where any question is either reserved by a subordinate court for determination by the court, or referred to the court for its determination in terms of [subrule \(1\)](#), the registrar or clerk of the subordinate court or tribunal shall transmit the question so stated by the presiding officer to a registrar of the court within 15 days after the decision to reserve the question or referral of the question is made.

(3) The case referred to in [subrule \(1\)](#) shall be in Form 11.

(4) Where the referral or reservation of the question is made at the instance of a court or presiding officer the registrar shall, upon receipt of the case referred to in [subrule \(1\)](#), call for heads of argument from both parties, which heads shall be filed within 15 days of receipt by either party of the notification by the registrar:

Provided that where a party or both parties do not file heads of argument within the specified time, the registrar shall nevertheless set the matter down for hearing.

(5) Where the referral or reservation in terms of [subrule \(1\)](#) is at the instance of a party, [rule 6](#) shall apply, *mutatis mutandis*:

Provided that the party which requested the referral or reservation shall be deemed to be the appellant for the purposes of this subrule.

(6) The court or judge may request such further information as may be required for the purposes of securing a just and expedient resolution of the matter.

(7) Where the enactment under which the referral or reservation is made specifies any procedure for the determination of the matter, this rule shall apply to such referral or reservation in a manner that is consistent with that enactment.

#### 64. Casus omissus

In the event of any *casus omissus* in this Part, the provisions of [Part VI](#) shall apply, *mutatis mutandis*.

### PART VIII

#### *Bail Applications and Appeals*

#### 65. Bail applications pending appeal or leave to appeal

(1) An application to a judge in terms of section 123 (1) (a) of the Criminal Procedure and Evidence Act [Chapter 9:07] for bail or for the alteration of conditions of bail pending appeal in terms of section 126 of the said Act shall be filed with a registrar and shall consist of a written statement setting out-

- (a) the name of the applicant;
- (b) the applicant's residential address;
- (c) if the applicant is employed, his or her employer's name and address and the nature of his or her employment;
- (d) the details of the applicant's conviction which include-
  - (i) the offence of which the applicant has been convicted and the sentence that was imposed on him or her,
  - (ii) the court or courts which convicted the applicant and imposed sentence upon him or her,
  - (iii) the court criminal record book number, if that number is known to the applicant, and
  - (iv) the date or dates on which the applicant was convicted and sentenced;
- (e) whether or not bail has previously been refused by a judge and, if it has been refused-
  - (i) the grounds on which it was refused, if the grounds are known to the applicant, and
  - (ii) the date on which it was refused;
- (f) where the applicant seeks an alteration of the conditions of his or her bail, the conditions which he or she seeks to have altered;
- (g) the grounds on which the applicant seeks release on bail or, as the case may be, the grounds on which he or she seeks to have the conditions of bail altered; and
- (h) where appropriate, the amount of bail which the applicant is prepared to give and the names of any persons who are prepared to stand as sureties for his or her attendance and appearance.

(2) As soon as possible after an application has been filed in terms of [subrule \(1\)](#)-

- (a) the applicant's legal practitioner, where the applicant is legally represented; or
- (b) the registrar, where the applicant is not legally represented, shall-
  - (i) cause a copy of the written statement referred to in [subrule \(1\)](#) to be served on the Prosecutor-General or his or her representative, and
  - (ii) obtain a copy of the judgment of the court which convicted and, additionally or alternatively, sentenced the applicant, and cause the copy to be filed with the registrar or, where the registrar has secured a copy, cause it to be filed together with the written statement referred to in [subrule \(1\)](#), at least one day before the hearing of the application:

Provided that a judge may permit an application to be heard without a copy of the judgment having been so filed, if he or she is satisfied that to obtain such a copy would unreasonably delay the bearing of the application.

(3) At least one day before the hearing of the application, the Prosecutor-General shall cause the following documents to be filed with the registrar-

- (a) his or her written response to the application;
- (b) a copy of any comments which he or she has been able to elicit from the judge or magistrate who presided over the applicant's trial,

and, where possible, he or she shall cause a copy of his or her response to be served on the applicant or the applicant's legal practitioner.

(4) The registrar shall set down an application for bail, after consultation with a representative of the Prosecutor-General, for hearing by a judge within four days of filing in terms of [subrule \(1\)](#):

Provided that the four-day period may be extended by agreement between the applicant and the Prosecutor-General or by order of a judge in terms of [rule 4](#).

## **66. Appeals by Prosecutor-General against grant of bail**

(1) An appeal by the Prosecutor-General in terms of section 121 (1) (a) of the Criminal Procedure and Evidence Act [*Chapter 9:07*] shall be noted, within 48 hours after the grant of bail by the judge of the High Court, by filing with a registrar a written statement indicating-

- (a) the grounds on which he or she seeks the revocation or alteration of bail;
- (b) where he or she seeks the alteration of bail, the proposed terms thereof; and
- (c) whether or not bail has previously been refused by a judge or magistrate and, if it has been refused-
  - (i) the grounds on which it was refused, and
  - (ii) the date on which it was refused.

(2) In addition to the statement in [subrule \(1\)](#), the Prosecutor-General shall simultaneously lodge with the registrar a record of the bail proceedings which are the subject of the appeal.

(3) As soon as possible after filing an appeal in terms of [subrule \(1\)](#), the Prosecutor-General shall-

- (a) cause a copy of the statement and record referred to in subrules (1) and (2) to be served on-
  - (i) the respondent and, if he or she is legally represented, on his or her legal practitioner, and
  - (ii) the judge whose decision is the subject of the appeal; and
- (b) obtain a copy of the judgment of the court which convicted and, additionally or alternatively, sentenced the respondent, and cause the copy to be filed with the registrar at least one day before the hearing of the application:

Provided that a judge may permit an application to be heard without a copy of the judgment having been so filed, if he or she is satisfied that to obtain such a copy would unreasonably delay the hearing of the appeal.

(4) Where practicable, a judge on whom a statement has been served in terms of [subrule \(3\) \(a\)](#) shall file with the registrar his or her written comments on the appeal at least one day before the hearing of the appeal.

(5) Where the respondent is legally represented, his or her legal practitioner shall cause his or her written response to the appeal to be filed with the registrar at least a day before the hearing of the appeal and, where practicable, shall cause a copy of his or her response to be served on the Prosecutor-General or his or her representative:

Provided that where the respondent is not legally represented, he or she may file such response at least three hours before the appeal is heard.

(6) The registrar shall set down an appeal referred to in [subrule \(1\)](#), after consultation with a representative of the Prosecutor-General and any legal practitioner representing the respondent, for hearing by a judge within four days after the appeal is filed and served on the respondent or his or her legal practitioner:

Provided that the four-day period may be extended by agreement between the Prosecutor-General and the respondent or by order of a judge in terms of [rule 4](#).

## **67. Appeals against refusal of bail**

(1) An appeal against the refusal of bail in terms of section 121 (1) (b) of the Criminal Procedure and Evidence Act [*Chapter 9:07*] may be noted, at any time after the refusal of bail by the judge of the High Court, by filing with a registrar a written statement indicating-

- (a) the reasons why bail should be granted;
- (b) the proposed terms thereof; and
- (c) whether or not bail has previously been refused by a judge or magistrate and, if it has been refused-
  - (i) the grounds on which it was refused, if the grounds are known to the appellant, and
  - (ii) the date on which it was refused.

(2) In addition to the statement in [subrule \(1\)](#), the appellant shall simultaneously lodge with the registrar a record of the bail proceedings which are the subject of the appeal:

Provided that where the appellant is not legally represented, the registrar shall obtain copies of the record from a registrar of the High Court.

(3) Where the appellant has been convicted and sentenced, he or she shall include in the statement referred to in [subrule \(1\)](#) the details of the conviction and the sentence setting out-

- (a) the offence for which the appellant was convicted and the sentence that was imposed;
- (b) the court or courts which convicted the appellant and imposed sentence upon him or her;
- (c) the court criminal record book number, if that number is known to the appellant;
- (d) the date or dates on which the appellant was convicted and sentenced; and
- (e) where appropriate, the names of any persons who are prepared to stand as sureties for his or her attendance and appearance.

(4) Where [subrule \(3\)](#) is applicable, the appellant shall ensure that the notice and grounds of appeal against-

- (a) conviction or sentence; or
- (b) both conviction and sentence,

are attached to the record referred to in [subrule \(2\)](#).

(5) As soon as possible after filing an appeal in terms of [subrule \(1\)](#), the appellant's legal practitioner, where the appellant is legally represented, or the registrar, where the appellant is not legally represented, shall-

- (a) cause a copy of the statement and the record referred to in subrules (1) and (2) to be served on the Prosecutor-General and the judge whose decision is the subject of the appeal; and
- (b) where applicable, obtain a copy of the judgment of the court which convicted and, additionally or alternatively, sentenced the appellant and cause the copy to be filed with the registrar at least one day before the hearing of the application:

Provided that a judge may permit an application to be heard without a copy of the judgment having been so filed, if he or she is satisfied that to obtain such a copy would unreasonably delay the hearing of the appeal.

(6) Where practicable, a judge on whom a statement and the record has been served in terms of [subrule \(5\)](#) shall file with the registrar his or her written comments on the appeal at least one day before the hearing of the appeal.

(7) The Prosecutor-General shall, at least one day before the hearing, file with the registrar and serve on the appellant a statement detailing his or her response to the appeal.

(8) The registrar shall set down an appeal referred to in [subrule \(1\)](#), after consultation with a representative of the Prosecutor-General and any legal practitioner representing the appellant, for hearing by a judge within four days after the appeal is filed:

Provided that the four-day period may be extended by agreement between the Prosecutor-General and the appellant or by order of a judge in terms of [rule 4](#).

## **68. Urgency of bail applications and appeals**

(1) A registrar shall ensure that every application or appeal referred to in these rules is set down for hearing with the utmost urgency.

(2) Whenever it comes to the attention of a prison officer in charge of a prison that a prisoner lodged therein wishes to apply for bail or appeal against the refusal of bail in terms of these rules, the prison officer shall ensure that-

- (a) the prisoner is provided with appropriate forms and adequate facilities with which to make the application or appeal; and
- (b) any forms or documents completed by the prisoner in connection with his or her application or appeal are forwarded to the registrar without any delay for filing in terms of these rules.

## **69. Judge may call for judgment or record**

When dealing with any appeal or application under this Part, the judge seized with the matter may, where he or she deems it necessary or expedient to do so, call for the judgment or record of the trial proceedings of the court a quo or both such judgment and record.

## **70. Reinstatement of appeals generally**

(1) Where an appeal is-

- (a) deemed to have lapsed; or
- (b) regarded as abandoned; or
- (c) deemed to have been dismissed in terms of any provision of these rules,

the registrar shall notify the parties accordingly.

(2) The appellant may, within 15 days of receiving any notification by the registrar in terms of [subrule \(1\)](#), apply for the reinstatement of the appeal on good cause shown.

## **71. Referrals in terms of section 175 (4) of the Constitution**

(1) Where the court or a judge wishes to refer a matter to the Constitutional Court *mero motu* in terms of section 175 (4) of the Constitution, the Court or judge shall-

- (a) request the parties to make submissions on the constitutional issue or question to be referred for determination; and
- (b) state the specific constitutional issue or question which the Court or judge considers must be resolved by the Constitutional Court.

(2) Where the court or a judge is requested by a party to the proceedings to refer the matter to the Constitutional Court and it or he or she is satisfied that the request is not frivolous or vexatious, the Court or judge shall refer the matter to the Constitutional Court.

(3) A referral under [subrule \(1\)](#) or [\(2\)](#) shall be in Form 12 and shall be accompanied by a copy of the record of proceedings and statements from the parties setting out the arguments they seek to make before the Constitutional Court.

(4) Where there are factual issues involved, the court shall resolve or cause to be resolved any factual disputes:

Provided that where there are no disputes of fact, the parties shall prepare a statement of agreed facts.

(5) The record of proceedings referred to in [subrule \(3\)](#) shall contain the specific findings of fact by the court and the issue or question for determination by the Constitutional Court:

Provided that where there is a statement of agreed facts in terms of the proviso to [subrule \(4\)](#), it shall suffice for the statement to be incorporated in the record in place of the specific findings of fact.

(6) The court or judge shall direct a registrar to prepare and transmit the record to the Constitutional Court within 14 days of the date of such direction:

Provided that, before transmission, the registrar shall ensure and certify that the record is correct and accurate and, in the case of a referral in terms of [subrule \(2\)](#), that it contains an appropriate draft order.

## **72. Forms**

The forms set out in the First Schedule shall be used in all proceedings to which they are applicable with such variations as the circumstances may require.

## **73. Application of High Court rules**

In any matter not dealt with in these rules, the practice and procedure of the Supreme Court [*Chapter 7:06*] shall, subject to any direction to the contrary by the court or a judge, follow, as closely as may be, the practice and procedure of the High Court in terms of the High Court Act and the High Court Rules.

#### **74. Custody of exhibits used at trial**

(1) The exhibits in a case in respect of which an appeal has been noted or in respect of which leave to appeal has been granted shall not ordinarily be forwarded with the record but any judge may give any direction he or she may think fit for the production of such exhibits or any of them.

(2) A registrar of the High Court shall retain the custody of such exhibits for 30 days and, if notice of appeal is given or if leave to appeal is granted, until such appeal is finally determined, unless a judge otherwise directs:

Provided that the trial court upon being satisfied that there will be no appeal may order the return of any such exhibits to the person entitled thereto.

#### **75. Conduct and dress of persons appearing and attending court**

The Chief Justice may, through a Practice Direction, regulate the conduct and dress of persons appearing before or attending the court.

#### **76. Repeals and savings**

The rules set out in the Second Schedule are repealed:

Provided that anything validly commenced or done in terms of any provision of the repealed rules prior to the coming into force of these rules shall be deemed to have been validly commenced or done, as the case may be, in accordance with the equivalent provision of these rules.

#### **First Schedule FORMS**

*(Rule 72)*

<i>Form No.</i>	<i>Rule</i>	<i>Title</i>
Form 1	11 (2) (c)	Affidavit of service by litigant in person
Form 2	14 (2) (a)	Renunciation of agency by a legal practitioner
Form 3	18 (1)	Notice of appeal
Form 4	20 (2) (a)	Application for leave to appeal
Form 5	21 (1)	Application for extension of time or leave to appeal out of time
Form 6	22 (1)	Application for legal aid
Form 7	23 (1)	Particulars of trial
Form 8	31 (4) (a)	Notice to respondent of appeal by Prosecutor-General against judgment
Form 9	31 (4) (b)	Notice to respondent of appeal by Prosecutor-General against sentence
Form 10	36 (1) (b)	Application for legal aid
Form 11	63 (3)	Special case referred or reserved to the court
Form 12	71 (3)	Referral in terms of section 175 (4) of the Constitution

#### **Second Schedule REPEALED RULES**

*(Rule 76)*

1. Rules of the Supreme Court (R.G.N. No. 380 of 1964).
2. Supreme Court (Miscellaneous Appeals and References) Rules (R.G.N. No. 449 of 1975).
3. Supreme Court (Bail) Rules (S.I. No. 290 of 1991).

#### **FORM 1 AFFIDAVIT OF SERVICE BY LITIGANT IN PERSON**

*(Rule 11 (2) (c))*



**IN THE SUPREME COURT OF ZIMBABWE**

In the matter between

APPELLANT

and

RESPONDENT

**IN TERMS OF OFFIDAVIT OF**

- I, \_\_\_\_\_, do hereby make oath and swear that:
1. I am the Appellant/Respondent\* in this matter and the facts deposed to herein are within my personal knowledge and to the best of my belief true and correct.
  2. I served a copy of \_\_\_\_\_ on the Appellant/Respondent/registrar/presiding officer/administrative officer etc.\*
  3. I served it on dd/mm/yy and by \_\_\_\_\_ at hh:mm in the morning/afternoon/evening.\*
  4. I affirm that the manner of service I effected is in regular and it is terms of the law.

Thus sworn to at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 20

Signed

(Deponent's name)

Before me,

Commissioner of Oaths

**FORM 2  
NOTICE OF RENUNCIATION OF AGENCY**

*(Rule 14 (2) (a))*

CASE No. SC

IN THE SUPREME COURT OF ZIMBABWE

HELD AT

IN THE MATTER BETWEEN

APPLICANT/APPELLANT

and

RESPONDENT

I/We\* the undersigned \_\_\_\_\_ have renounced agency for the Applicant/Respondent/Appellant\* in the above matter.

The effect of this renunciation is that I/my\* firm will no longer be representing you in the appeal/application.

The courses of action open to you are as follows:

- \* You may engage another legal practitioner.
- \* You may apply to a Registrar of the Supreme Court for leave to proceed in forma pauperis in terms of [rule 49](#) of the Rules of the Supreme Court, 2016. To find out the procedure for this, you will need to contact the Registrar.
- \* You may apply to a judge of the Supreme Court for a certificate to prosecute your appeal in person.
- \* You may apply to the Registrar of the Supreme Court for legal aid.

*\*(Omit whichever of the above does not apply)*

The Applicant/Respondent/Appellant's last known address is:

The Application/Appeal is set down for the \_\_\_\_\_ day of \_\_\_\_\_

The Application/Appeal is yet to be set down (delete the inapplicable)

The notice takes effect from the date of filing this notice with the Registrar.

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 20

(Signature of the retiring legal practitioner)

TO: The Registrar  
Supreme Court of Zimbabwe  
Harare

And TO: The Client  
Client's address

And TO: The other party  
Address

**FORM 3**  
**NOTICE OF APPEAL**  
(Rule 18 (1))

SUPREME COURT

To the Registrars of the High Court and the Supreme Court of Zimbabwe.

Name of appellant:

Details of conviction-

Court of conviction:

Date of conviction:

Offence:

Sentence:

Leave to appeal:

? (a) Unnecessary (when sentence of death has been passed or the appeal is on questions of law only).

? (b) Granted by the High Court on (date)

\* (Tick the applicable box)

The appellant wishes to appeal against-

? Conviction,

? Sentence.

? Other order (specify)

\* (Tick the applicable box)

FOUNDATIONS OF APPEAL. (These must be set out clearly and specifically on the back hereof or in a separate document bearing the name of the appellant. Foundations of appeal against conviction and against sentence must be set out separately. Foundations must be set out in numbered paragraphs in compliance with [rule 19](#). If a ground of appeal is that there was no evidence on which the trial court could convict, or that conviction was not justified on the evidence, the reasons why this is said must be set forth shortly.)

The appellant \* is/is not in custody.

\* (Delete whichever is inapplicable)

Signed by the appellant or his or her legal representative.

Date:

Date of delivery to Registrars of the High Court and Supreme Court or officer in charge of place of custody:

(to be filled in by that official).

Address for service-

? (a) of appellant's legal practitioner;

? (b) of appellant.

\* (Tick the appropriate box)

Notes

(a) If the appellant desires legal aid in the preparation of the record, he or she must complete Form 5 and deliver it with this notice.

(b) If legal aid is not applied for, the appellant must, within ten days of delivery of this notice make arrangements with the Registrar of the High Court for preparation of the record.

(c) Any change of personal address must be notified to the Registrar of the Supreme Court.

**FORM 4**  
**APPLICATION FOR LEAVE TO APPEAL**  
(Rule 20 (2) (a))

SUPREME COURT

Note: This form is to be used only when-

(a) leave to appeal has been refused by the High Court; and

(b) leave to appeal is necessary (when sentence of death has not been passed or the grounds of appeal are not on questions of law only).

To the Registrars of the High Court and the Supreme Court of Zimbabwe.

Name of appellant:

Details of conviction-

Court of conviction:

Date of conviction:

Offence:

Sentence:

Date of refusal of leave to appeal by the High Court:

The appellant wishes to appeal against conviction.

\*In addition he or she wishes to appeal against sentence.

\* (Delete if inapplicable)

#### GROUNDS OF APPEAL

(These must be set out clearly and specifically on the back hereof or in separate document bearing the name of the appellant. Grounds of appeal against conviction and against sentence must be set out separately. Grounds must be set out in numbered paragraphs in compliance with [rule 19](#). If a ground of appeal is that there was no evidence on which the trial court could convict, or that conviction was not justified on the evidence, the reasons why this is said must be set forth shortly.)

The applicant \* is/is not in custody.

\* (Delete whichever is inapplicable)

The applicant-

- ? (a) submits herewith written argument;
- ? (b) applies to be present personally at the hearing;
- ? (c) does not apply to be present personally at the hearing;
- ? (d) applies to be legally represented at the hearing;
- ? (e) does not apply to be legally represented at the hearing.

\* (Tick the appropriate box or boxes)

Signed by the appellant or his or her legal representative.

Date:

Address for service-

- ? (a) of appellant's legal practitioner;
- ? (b) of appellant.

\* (Tick the appropriate box)

Notes

- (a) The applicant will be notified whether or not leave to appeal is granted.
- (b) Any change of personal address must be notified to the Registrar of the Supreme Court.

### **FORM 5** **APPLICATION FOR EXTENSION OF TIME** (Rule 21 (1))

#### SUPREME COURT

To the Registrars of the High Court and the Supreme Court of Zimbabwe.

Name of applicant:

The Applicant wishes to-

- ? (a) note an appeal out of time. Form 1, duly completed, is attached.
- ? (b) apply for leave to appeal out of time. Form 2, duly completed, is attached.

\* (Tick the appropriate box)

An affidavit setting out the reasons why action was not taken in time is attached.

The applicant-

- ? (a) is to be legally represented at the hearing of the application;
- ? (b) wishes to appear personally;
- ? (c) submits herewith written argument.

\* (Tick any appropriate box or boxes. For persons in custody, see Note below.)

Signed by the applicant or his or her legal representative:

Date of delivery to Registrar or Officer in Charge of place of custody (to be filled in by that official):

Note: The applicant of in custody is not entitled to be present at the hearing of this application, unless a special order in that regard is made; but he or she may, if not legally represented, submit written argument in support of the application with his or her application.

### **FORM 6** **APPLICATION FOR LEGAL AID** (Rule 22 (1))

SUPREME COURT

Name of appellant

I, the above-named appellant, having given notice of appeal/having applied to the Supreme Court for leave to appeal do hereby request the Supreme Court to grant me legal aid in respect of the preparation of the record on appeal and/or in respect of a legal practitioner to appear for me at the hearing of the appeal.

*Appellant*

You are required to complete the following-

Questions

Answers

1. What is your present income, salary or wage?
2. Are you in receipt of any allowances? If so, give particulars.
3. What other property or means have you?
4. State the number of dependants supported by you.
5. What are your monthly living expenses, including dependants?

*Appellant*

Date:

Address:

(N.B. This form is only to be used in the case of an appeal from the High Court.)

**FORM 7**  
**PARTICULARS OF TRIAL**  
*(Rule 23 (1))*

SUPREME COURT

CRIMINAL APPEAL OF:

PARTICULARS OF TRIAL

1. Age and occupation of appellant:
2. Court before which convicted:
3. Date of conviction:
4. Charge:
5. Plea:
6. Verdict:
7. Sentence:
8. Other orders:
9. Was bail granted pending appeal to the Supreme Court:

REGISTRAR OF THE HIGH  
COURT OF ZIMBABWE

Date:

**FORM 8**  
**NOTICE TO RESPONDENT OF APPEAL BY PROSECUTOR-GENERAL AGAINST JUDGMENT**  
*(Rule 31 (4) (a))*

SUPREME COURT

On (1)  
convicted on a charge  
of (2)

you were \* acquitted/

by (3)

\* (Delete whichever is inapplicable.)

*(1) Date (2) Offence (3) Court*

The Prosecutor-General is appealing against the judgment on the ground that it is wrong in law.

There is sent with this notice a copy of the record and of the notice of appeal of the Prosecutor-General.

The appeal will not affect the result of the judgment as far as you are concerned.

You are entitled at your own expense to appear personally or to be legally represented at the appeal.

If you do not, a judge of the Court may order that you be represented at the expense of the Government.

You are requested to state whether you intend to appear yourself or to be represented at the hearing of the appeal. If you do, the address of your legal practitioner or your own address should be given.

? I intend to appear personally, and my address is:

? Intend to be legally represented, and my legal practitioner's address is:

? I do not intend to appear personally or to be represented.

? I suggest that the appeal should be argued on my behalf for the following reasons (give reasons):

? I shall send written arguments within seven days.

\* (Tick the applicable box and complete section.)

If you intend to appear personally or by legal representative notice of the date of hearing will be sent to you at the address you give.

If you do not intend to appear personally or to be represented no further communication will be sent.

If this form is not returned within seven days to the Registrar, Supreme Court of Zimbabwe; it will be taken that you are not interested in the appeal, and no further communication will be sent.

**FORM 9**  
**NOTICE TO RESPONDENT OF APPEAL BY PROSECUTOR-GENERAL AGAINST SENTENCE**  
(Rule 31 (4) (b))

SUPREME COURT

On \_\_\_\_\_ you were convicted on a charge of \_\_\_\_\_  
by \_\_\_\_\_ and sentenced to \_\_\_\_\_

1. The Prosecutor-General is appealing against this sentence on the grounds set out in the notice of appeal included in the accompanying record.
2. You are entitled to appear either in person or by legal practitioner at the hearing of the appeal. If you do not appear either in person or by legal practitioner, the sentence may nevertheless be increased.
3. You are required to state whether you intend to appear in person or by legal practitioner at the hearing of the appeal. If you do intend to appear either in person or by legal practitioner, your address or that of your legal practitioner must be given.
4. You may, in terms of the Legal Aid Act [*Chapter 7:16*], apply for legal aid for your representation at the hearing of this appeal.

(Reverse side)

? I intend to appear personally and my address is:

? I intend to appear by legal practitioner and my legal practitioner's address is:

? I do not intend to appear or be represented.

? I wish to apply for legal aid and provide the following information in respect of the last 12 months-

1. Income, salary or wages:
2. Allowances received by me:
3. Other property:
4. Number of dependants supported by me:
5. Monthly living expenses in respect of myself and my dependants:

\* (Tick the applicable box and complete section).

You are required to return this form, duly completed, within seven days to the Supreme Court of Zimbabwe. If you do not, it will be taken that you do not wish to appear at the hearing of the appeal.

**FORM 10**  
**APPLICATION FOR LEGAL AID**  
(Rule 36 (1) (b))

APPLICATION FOR LEGAL AID

SUPREME COURT

I, \_\_\_\_\_, having received notice that the  
Prosecutor-General intends-  
? (a) to apply for leave to appeal;  
? (b) to apply For leave to appeal out of time;  
? (c) to note an appeal Out of time;  
hereby request the Supreme Court to grant to me legal aid in order to oppose the  
application.

\*(Tick the applicable box).

Appellant

You are required to complete the following-  
Questions

Answers

1. What is your present income, salary or wage?
2. Are you in receipt of any allowances?
3. What other property or means have you?
4. State the number of dependants supported by you.
5. What are your monthly living expenses, including dependants?

Appellant

Date:  
Address:

**FORM 11**  
**SPECIAL CASE REFERRED OR RESERVED TO THE COURT**  
*(Rule 63 (3))*

CASE No. SC

IN THE SUPREME COURT OF ZIMBABWE  
HELD AT  
IN THE MATTER BETWEEN:

APPELLANT

and

RESPONDENT

---

SPECIAL CASE REFERRED OR RESERVED TO THE COURT

---

This is a special case in terms of \_\_\_\_\_ (state the law under  
which the referral or reservation is made)  
Court from which the referral or reservation is made:  
QUESTION FOR DETERMINATION BY THE COURT

BACKGROUND TO THE DISPUTE  
(the circumstances under which the question has arisen)

ADMISSIONS MADE BY PARTIES (if any):

SIGNED BY THE PARTIES AND THE REGISTRAR

Given under my hand on this \_\_\_\_\_ day of \_\_\_\_\_ 20

Presiding Judicial Officer/Registrar/Clerk of Court

**FORM 12**  
**REFERRAL IN TERMS OF SECTION 175 (4) OF THE CONSTITUTION**  
*(Rule 71 (3))*

CASE No. SC

IN THE CONSTITUTIONAL COURT OF ZIMBABWE

HELD AT

A REFERRAL FROM

in terms of section 175 (4) of the Constitution

in the matter between:

Applicant

and

Respondent

Date of referral:

Constitutional question referred

I, \_\_\_\_\_, do hereby certify that the record attached hereto is correct and accurate.

This record contains \_\_\_\_\_ pages and the following items:

Signed

Presiding Judicial Officer/Registrar/Clerk of Court

COURT STAMP
-------------

**Second Schedule**  
**REPEALED RULES**  
*(Section 76)*

TITLE OF RULES	RHODESIA GOVERNMENT NOTICE NUMBER	STATUTORY INSTRUMENT NUMBER
Rules of the Supreme Court, 1964	380 of 1964	
Supreme Court (Magistrates Court) (Criminal Appeals) Rules, 1979	504 of 1979	
Supreme Court (Miscellaneous Appeals and References) Rules, 1975	449 of 1975	
Supreme Court of Zimbabwe (Bail) Rules, 1991		290 of 1991