

**RGN 380 of 1964**

**Rules of the Supreme Court, 1964**

*RGN's and SIs 380/1964, 9/1997; 738/1969, 172/1974, 421/1975, 449/1975, 472/1975, 141/1977, 504/1979, 796/1979, 278/1981, 215/1983, 396/1984, 290/1991, 170/1991, 1419/92, 99/1992, 98/1994, 78/2000.*

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**IT is hereby notified that His Excellency the Governor has been pleased, in terms of subsection (5) of section 51 of the High Court Act, 1964, to approve the following rules of court for regulating the**

**proceedings of the Appellate Division which have been made by the Chief Justice and the Judge President in terms of subsection (1) of that section: —**

**PART I**

PRELIMINARY

**1. Title**

These rules may be cited as the Rules of the Supreme Court, 1964.

[Rule amended by s.i 215 of 83]

**2. Interpretation**

(1) In these rules —  
“counsel”

[Definition repealed by s.i 278 of 81]

“court” means the Supreme Court;

“judge” means the Chief Justice, a judge of the Supreme Court and an acting judge of the Supreme Court;

[Definition amended by s.i 78 of 2000]

“judgment”

[Definition repealed by s.i 78 of 2000]

“legal practitioner” means a legal practitioner registered in terms of the Legal Practitioners Act [*Chapter 27:07*];

[Definition inserted by s.i 278 of 81 and amended by s.i 78 of 2000]

(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;

[Paragraph amended by s.i 78 of 2000]

(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 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 an advocate or to counsel or to an attorney shall be read and construed as a reference to a legal practitioner.

[Subrule inserted by s.i 278 of 81]

**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.

[Rule substituted by s.i 14 of 1992]

**4. Departure from rules**

Subject to the provisions of subsection (3) of section 19 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.

[Rule amended by RGN 421 of 1975 and by s.i 78 of 2000]

**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 43, 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 so to do 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 43 shall apply mutatis mutandis.

### **7. Report**

A judge may in any appeal or application request any judge of the High Court or any magistrate to furnish a report on any matter which arises in, or is relevant to, such appeal or application. Copies of such request and of such report shall be given to such persons as the judge may direct.

[Rule amended by RGN 421 of 1975]

### **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 appeal shall be pronounced in such manner as may be determined by a judge of the court which gives it, whether or not he 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 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 should 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 action being or being likely to be settled, or affecting the estimated length of trial, and, if the appeal is settled or is withdrawn, to notify a registrar of the fact without delay.

### **10. Address for service**

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

(3) An attorney may at any time renounce his agency by giving notice to his client and to a registrar but, until the client furnishes the registrar with, and notifies the opposite party of a new address for service, any process served on the retiring attorney at his address for service shall be considered good service and the retiring attorney shall notify his 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 an attorney in terms of subrule (2) and the person concerned changes such address, he shall notify a registrar and other parties to the proceedings of the new address. Should he fail to make such notification his address for service shall be deemed to be the address given in terms of subrule (1).

### **11. Service**

(1) 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 an address for service with an attorney, by delivery at the office of that attorney or by sending the document by registered post to that attorney;
- (b) if the person to be served has given an address other than that of his attorney for service, service may be effected personally by any person authorized thereto by a registrar or by the Sheriff or by sending the document by registered post;
- (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, by delivery to his office or by posting the document by registered post to him;
- (e) if the person to be served is the Registrar or a registrar of the Supreme Court or High Court, by delivery to, or posting the document by registered post to, the registrar concerned. For the purposes of this paragraph service of the document shall be deemed to have been effected at the time it was received by the registrar.

(2) Proof of service in terms of subrule (1) shall be effected by —

- (a) where service is effected at the office of a attorney, by production of a receipt signed by the attorney or his agent accompanied by a certificate by the person effecting service to the effect that the document delivered is the document to which the receipt is alleged to relate;

- (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 is alleged to relate;
- (c) where service is effected personally, by a certificate by the person effecting service that the document concerned was served by him on the person concerned;
- (d) where service is effected by the Sheriff, by means of a return of service;
- (e) 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 is alleged to relate.

(3) Proof of service of a document on the Attorney General shall not be necessary but the court shall, by inquiry, ascertain whether there has been service.

(4) If a document has to be served by a person who is in custody and who is not legally represented, it shall be given to the officer in charge of the place of custody who shall forward it to a registrar or the registrar of the High Court, as the case may be. 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 given to the officer in charge of the place of custody.

(5) 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.

(6) 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 prescribed in section 40 of the Interpretation Act [*Chapter 1:01*].

[Subrule amended by s.i 78 of 2000]

## ***12. Orders of Registrar***

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. Such application shall be by notice of motion 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. The registrar shall report on the application and shall serve copies of his report on the applicant and any person cited as co-respondent. On receipt of a copy of such report the applicant and co-respondent may file submissions in relation to any matter arising therefrom. Thereafter a judge shall hear the application and may make such order in the matter as he may think fit.

### ***12A. Renunciation of agency by legal practitioner***

(1) Subject to this rule, an appellant's legal practitioner may for good cause renounce his 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 has been notified of the date of hearing of the appeal in terms of rule 24, 44 or 55, as the case may be:

Provided that, where he has agreed to less than six weeks' notice of the date of hearing, he may not renounce his 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 agency in terms of subrule (1), he shall without delay file a notice with the registrar substantially in form 7 and, as soon as possible thereafter, serve copies of the notice upon the appellant and upon every other party to the appeal, and shall 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 agency after the period prescribed in subrule (1), he 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, 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 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 in relation to the appeal shall be considered good service; and
- (b) he shall appeal on behalf of the appellant at the hearing of the appeal.

[Rule inserted by s.i 170 of 1991]

### ***12B. Special orders as to costs***

(1) If the court 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 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 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 may make any one or more of the following orders —
- (a) ordering him 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 to refund to his client all or any of the fees his client may have paid him in respect of the appeal and additionally, or alternatively, in the trial court;
  - (c) ordering him not to charge his client any fee in respect of all or part of the work done by him in respect of the appeal or application and additionally, or alternatively, the proceedings in the trial court;
  - (d) ordering him 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 shall give the party or legal practitioner concerned an opportunity to make representations as to whether or not the order should be made.
- (4) This rule shall not derogate from the court's power 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.

[Rule inserted by s.i 170 of 1991]

### PART III

#### APPEALS FROM THE HIGH COURT

##### **13. Application**

The provisions of this Part shall apply to all appeals from the High Court.

##### **14. Written proceedings**

(1) All written proceedings shall be on A4-size paper of good quality, unless the nature of the document renders this impracticable, and shall be clear and easily legible, and may be printed, cyclostyled, typewritten or reproduced in photostat or in any combination of these media. The typewriting or printing shall be double-spaced 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.

[Subrule amended by s.i 78 of 2000]

(2) Notwithstanding the provisions of subrule (1), any particulars on or attached to a notice of appeal lodged in terms of rule 17 or on or attached to an application for leave to appeal made in terms of rule 19, lodged or made by a person who is in prison may be set out in legible handwriting.

##### **15. Record**

(1) The record shall be printed, cyclostyled, typewritten or reproduced in photostat or in any combination of these media. The typewriting or printing shall be double-spaced 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.

[Subrule amended by s.i 78 of 2000]

(2) The record shall be paged continuously throughout but in criminal cases notices of appeal or applications for leave to appeal and other document 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 divided into separate conveniently sized volumes.

(8) A registrar of the High Court as well as the parties and their legal representatives shall endeavour to exclude from the record all documents, more particularly such as are purely formal, that are not relevant to the appeal. They shall also endeavour to 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 and also the inclusion of evidence of witnesses which is not relevant to the appeal.

(8a) 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; and
- (b) any unnecessary documents are omitted from the record; and
- (c) the record has been compiled in accordance with subrules (1) to (5); and
- (d) the papers are all properly paginated; and
- (e) the record is legible.

[Subrule inserted by s.i 78 of 2000]

(8b) If the appellant or his legal representative does not inspect the record as provided in subsection (8a) 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 appeal;
- (b) the notification in terms of this subrule shall be treated as notice by the appellant in terms of rule 37 that he has abandoned his appeal.

[Subrule inserted by s.i 78 of 2000]

(9) The preparation of a record under the provisions of rules 22 and 34 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.

(10) After completion of the record a registrar of the High Court shall certify that is correct.

## PART IV

### CRIMINAL APPEALS FROM THE HIGH COURT

#### **16. Application**

The provisions of this Part shall apply to criminal appeals from the High Court.

#### **17. 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 appeal by lodging a notice of appeal with a registrar and a registrar of the High Court. Such notice shall be in Form 1 and shall be signed by the appellant or his legal representative and shall be accompanied by grounds of appeal in the form prescribed in rule 18.

(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.

[Subrule amended by s.i 14 of 1992]

(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 appeal is noted, whichever is the later.

[Subrule amended by s.i 14 of 1992]

(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)

[Subrule repealed by RGN 421 of 1975]

(6) 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 to deliver a copy of the notice of appeal and the accompanying grounds of appeal where it is not reasonably possible for him to do so.

(7) A registrar of the High Court shall forward one copy of the notice of appeal delivered under subrules (2) and (3) to the Attorney General. If by reason of the provisions of subrule (6) there are not copies of the notice of appeal it shall be the responsibility of a registrar of the High Court to make them.

(8) 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 thinks fit.

[Subrule amended by RGN 421 of 1975]

#### **18. Grounds of Appeal**

(1) The grounds of appeal shall set out clearly and specifically the grounds on which the appeal is made and shall be set forth in separate numbered paragraphs. 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 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.

[Subrule amended by s.i 14 of 1992]

(3) The appellant shall not, without leave of the supreme 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) of this rule, but the court in deciding the appeal shall not be confined to the grounds so stated:

Provided that the court shall not —

- (a) rest its decision on any other ground unless the parties have had sufficient opportunity of contesting the case on that ground;
- (b) rest its decision on any ground for which leave to appeal is necessary, if leave to appeal on such ground has not been granted.

### ***19. 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.

[Subrule amended by RGN 421 of 1975 and s.i 14 of 1992]

(2) An application for leave to appeal in terms of this rule shall be in Form 2 and shall be signed by the appellant or his legal representative and shall be accompanied by grounds of appeal in the form prescribed in rule 18. The application form, together with two copies thereof, shall be delivered to a registrar and a copy thereof shall be delivered to a registrar of the High Court. The application for leave to appeal may be accompanied by a written argument in support thereof.

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

(4) 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 may require.

(5) On receipt of the documents requested in terms of subrule (4), the registrar shall forward a copy of the application for leave to appeal, together with the grounds of appeal and any written arguments submitted by the applicant and a notification as to whether or not the applicant has applied for leave to appear in person or is legally represented, to the Attorney General.

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

[Subrule amended by RGN 421 of 1975 and s.i 78 of 2000]

(7) If the judge decides to hear the applicant in terms of subrule (6), the Attorney General may also appear and the applicant and the Attorney 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 Attorney General may, within four days of receipt of the documents referred to in subrule (5), submit written representations as to why the application should not be granted and, if he does so, opportunity shall be given the applicant to reply thereto.

[Subrule amended by RGN 421 of 1975]

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

[Subrule amended by RGN 421 of 1975]

### ***20. Application for extension of time***

(1) A person who wishes to apply for an extension of time in which to institute an appeal in terms of rule 17 or to apply to a judge for leave to appeal in terms of rule 19 shall do so in Form 3 signed by himself or his legal representative. Such form shall be accompanied either by the documents required in terms of subrule (1) of rule 17 or the documents required in terms of subrule (2) of rule 19, whichever rule is applicable, together with an affidavit setting out why the applicant did not institute his appeal or apply for leave to appeal within the time prescribed. These documents, together with one copy thereof, unless the applicant is not legally represented and is in custody and cannot reasonably provide copies, shall be delivered to a registrar.

[Subrule amended by RGN 421 of 1975]

(2) On receipt of the application for extension of time and the accompanying documents in terms of subrule (1), 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 may require.

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

(4) Subject to the provisions of section 29 of the Act, the applicant shall have the right either to be represented or to appear to the hearing of the application and, if he does so appear or is so represented, the Attorney General may also appear. If the applicant is not to be represented or to appear, the Attorney General may, within four days of the receipt of the documents in terms of subrule (3) and, if affidavits are to be filed, at the time of lodging his affidavits, submit written representations as to why the application should not be granted and, if the application is for the purpose of obtaining an extension of time for making an application for leave to appeal, the Attorney General may also submit written representations why such leave should not be granted. The applicant shall be given an opportunity of replying to any such representations.

[Subrule amended by RGN 421 of 1975 and s.i 78 of 2000]

(5) After hearing the applicant and the Attorney General or, if they do not appear, on consideration of the papers, a judge may, subject to the provisions of subsection (3) of section 19 of the Act, grant or refuse the application. If the application is granted, 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.

[Subrule amended by RGN 421 of 1975 and s.i 78 of 2000]

(6) 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.

### **21. Legal aid**

(1) A person who wishes to apply for legal aid in terms of the Legal Assistance and Representation Act [*Chapter 66*] 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 is a party may apply to the registrar by submitting Form 4 —

(a) with his notice of appeal in terms of rule 17; or

(b) if he has applied for leave to appeal in terms of rule 19, 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 poverty 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 Assistance and Representation Act [*Chapter 66*] and rules made thereunder.

[Rule substituted by RGN 421 of 1975]

### **22. Record**

(1) Subject to the provisions of subrules (4) and (5) of rule 23, the record shall include particulars of trial in Form 6, 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 Attorney General shall, within ten days of instituting the appeal or, if he has applied for legal aid and it has been refused, without ten days of notification of such refusal, make arrangements with a registrar of the High Court for the preparation of the record.

[Subrule amended by s.i 14 of 1992]

(3) The registrar of the High Court may, in his 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 thinks fit. 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.

(4) 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 15.

(5) When the record has been prepared, a registrar of the High Court shall certify its correctness and shall send to the Attorney General two copies of the record and to a registrar the certified record together with three copies of it, or, if further copies have been requested, such further copies. 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.

(6) An appellant who has not been granted legal aid shall obtain any copy of the record which he may require from the registrar of the High Court upon payment of the fees due for the preparation of such record.

(7)

[Subrule repealed by RGN 421 of 1975]

### **23. Stated Case**

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

[Subrule amended by RGN 421 of 1975 and s.i 78 of 2000]

(2)

[Subrule repealed by RGN 421 of 1975]

(3) 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.

[Subrule amended by RGN 421 of 1975]

(4) When the case has been stated, the record shall be prepared in the manner prescribed in rules 15 and 22 save, however, that the record shall consist only of Form 6, 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.

[Subrule amended by RGN 421 of 1975]

(5) 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 and the judgment of the court and any other matters which, in the opinion of the court reserving the question are relevant.

[Subrule amended by s.i 78 of 2000]

### **24. Set Down**

(1) The registrar of the High Court shall notify the appellant or his legal practitioner of the date that the record was sent record was sent to a registrar in terms of subrule (5) of rule 22 and, where the appellant is legally represented, shall call upon his legal practitioner to file heads of argument within fifteen days after the date of such notification. Such notification shall be given to the appellant or his legal practitioner personally or sent by registered post to the address for service supplied in terms of rule 10. If such notification was not given personally, it shall be deemed to have been received four days after it was posted by registered letter to the appellant's address for service.

[Subrule amended by s.i 14 of 1992]

(2) As soon as possible after sending notification to an appellant or his legal practitioner in terms of subrule (1), the Registrar of the High Court shall send a copy of the notification to a Registrar of the Supreme Court.

[Subrule substituted by s.i 14 of 1992]

(2a) 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 main heads of his argument together with a list of authorities to be cited in support of each head, and immediately thereafter shall deliver a copy to the Attorney-General.

[Subrule inserted by s.i 14 of 1992]

(2b) After receiving notification in terms of subrule (1) and, where appropriate, after filing heads of argument in terms of subrule (2a), an appellant or his legal practitioner shall apply to a registrar in writing for a date of hearing, and shall provide the Registrar with an estimate of the time it is envisaged the hearing of the appeal will take.

[Subrule inserted by s.i 14 of 1992]

(3) On receipt of an application in terms of subrule (2), the registrar shall, subject to subrule (1) of rule 25, set down the appeal for hearing on a day selected by him and shall forthwith give notice thereof to the applicant or his legal practitioner and to the Attorney 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.

[Proviso amended by s.i 170 of 1991 and s.i 14 of 1992]

(4) Notice of set down shall either be given to the appellant or his legal practitioner personally or sent by registered post to the address for service supplied in terms of rule 10:

Provided that in an appeal by the Attorney General where the person who was accused in the case has indicated that he will not appear or be represented or has failed to return Form 5, no notice need be served on such person.

(4a) Within fifteen days after receiving the appellant's heads of argument or notice of set down, whichever is the earlier, the Attorney-General shall file a document setting out the main heads of his argument together with a

list of authorities to be cited in support of each head, 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 Attorney-General receives the appellant's heads of argument, the Attorney-General shall file his heads of argument as soon as possible and in any event not later than four days before the hearing of the appeal.

[Subrule inserted by s.i 14 of 1992 and amended by s.i 1999 of 1992]

(5) 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 counsel.

### **25. 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 subrule (2) of rule 22; or

(b) no heads of argument have been filed in terms of subrule (2a) of rule 24 within the period prescribed in that rule; or

(c) no application for a date of hearing has been made in terms of subrule (2b) of rule 24 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.

[Subrule substituted by s.i 14 of 1992]

(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. The provisions of rule 20 shall, mutatis mutandis, apply to an application in terms of this subrule.

[Subrule amended by RGN 421 of 1975]

(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 thinks fit.

[Subrule amended by RGN 421 of 1975]

(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 Attorney 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 written argument on behalf, 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 thinks fit, any appeal dismissed in terms of this subrule.

[Proviso amended by RGN 421 of 1975]

(7) If an appeal is deemed to have been dismissed in terms of subrule (2), a registrar shall give notice of the fact to the appellant, the Attorney General and a registrar of the High Court.

(8) If an appeal is deemed to have been dismissed in terms of subrule (4), the registrar of the Supreme Court shall give notice of the fact to the Attorney General and to a registrar of the High Court.

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

[Subrule substituted by s.i 14 of 1992]

### **26. Applications**

(1) All applications, 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.

[Subrule amended by s.i 78 of 2000]

(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 Attorney 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.

[Subrule amended by s.i 78 of 2000]

(4) The respondent shall be entitled to file affidavits or statements as the case may be, in reply to the applicant 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.

[Subrule amended by s.i 78 of 2000]

(6) If in any application there are written arguments filed by the applicant, the Attorney 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.

(7) An application to adduce further evidence on appeal shall be accompanied by an affidavit, by the witness whose evidence it is sought to lead and 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.

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

### **27. Written arguments**

(1) In the event of arguments in writing being presented in accordance with the provisions of subsection (4) of section 29 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.

[Subrule amended by s.i 78 of 2000]

(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 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;  
[Paragraph amended by s.i 14 of 92]
- (b) in an appeal by the Attorney General where the respondent wishes to present argument, five days after service of Form 5;  
[Paragraph amended by s.i 14 of 92]
- (c) in an application for leave to appeal or for an extension of time, at the time when Form 2 or Form 3 is delivered;
- (d) any other application, one day prior to 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 legal practitioner.

## **PART IVA**

### **APPEALS BY ATTORNEY-GENERAL FROM HIGH COURT**

#### **27A. Noting of appeals where no leave required**

(1) Where the Attorney-General wishes to appeal —

- (a) against the judgment of the High Court in any case in terms of subsection (6) of section 44 of the High Court Act [*Chapter 7:06*], notice of such appeal shall be lodged with a registrar of the High Court and a duplicate notice with a registrar;

[Paragraph amended by s.i 78 of 2000]

- (b) against the sentence imposed by the High Court in any case in terms of paragraph (a) of subsection (7) of section 44 of the High Court Act [*Chapter 7:06*], notice of such appeal shall be lodged with a registrar of the High Court and a duplicate notice with a registrar within ten days of the passing of sentence.

[Paragraph amended by s.i 14 of 92 and s.i 78 of 2000]

(2) A notice of appeal referred to in subrule (1) shall —

- (a) in the case of a notice in terms of paragraph (a) of subrule (1) —
  - (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; and
- (b) in the case of a notice in terms of paragraph (b) of subrule (1), specify the sentence against which the appeal is brought and the grounds of the appeal.

#### **27B. Preparation of record and service thereof on respondent**

(1) The Attorney-General shall, within ten days of noting an appeal in terms of rule 27A, make arrangements with a registrar of the High Court for the preparation of the record.

[Subrule amended by s.i 14 of 1992]

(2) The provisions of rule 15 and subrule (1) of rule 22 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 subrules (3) and (4) of rule 23 shall, mutatis mutandis, apply.

[Proviso amended by s.i 78 of 2000]

(3) When the record has been prepared, the registrar of the High Court shall certify its correctness and shall send to the Attorney-General two copies of the record and to a registrar the certified record together with three copies thereof, or, if further copies have been requested, such further copies.

(4) The Attorney-General shall, as soon as possible after he 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 paragraph (a) of subrule (1) of rule 27A, a notice in Form 5 with particulars inserted;
- (b) in the case of an appeal referred to in paragraph (b) of subrule (1) of rule 27A, a notice in Form 5A with particulars inserted.

#### **27C. Set down**

(1) The Attorney-General shall, as soon as possible after receiving the copies of the record sent in terms of subrule (2) of rule 27B, 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 Attorney-General and the respondent or his attorney so as to give them at least five days' notice:

Provided that where the respondent has indicated that he will not appear or has failed to return Form 5 or 5A, as the case may be, no notice need be served on him.

[Subrule amended by s.i 14 of 1992]

#### **27D. Application for leave to appeal**

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

[Subrule amended by s.i 78 of 2000]

(2) The Attorney-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 may require.

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

(5) ...

[Subrule repealed by s.i 215 of 83]

(6) ...

[Subrule repealed by s.i 213 of 83]

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

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

(9) ...

[Subrule repealed by s.i 215 of 83]

(10) After hearing the Attorney-General or, if he does not appear, on consideration of the written argument submitted in terms of paragraph (b) of subrule (2), the judge may grant or refuse the application.

(11) If the application is granted, a registrar shall notify a registrar of the High Court sending 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 27B and 27C shall, mutatis mutandis, apply.

#### **27E. Applications out of time**

(1) Where the Attorney-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, application for an extension of time in which to note an appeal or apply for leave to appeal, as the case may be, shall be lodged with a registrar and a duplicate notice with a registrar of the High Court.

(2) The provisions of subrules (2) to (7) of rule 27D shall, *mutatis mutandis*, apply in respect of an application referred to in subrule (1):

Provided that the Attorney-General shall, together with the written argument referred to in paragraph (b) of subrule (2) of rule 27D, 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, sending 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 27B and 27C shall, *mutatis mutandis*, apply.

#### ***27F. Abandonment of appeal***

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

#### ***27G. Legal aid***

(1) A person who wishes to apply for legal aid in terms of the Legal Assistance and Representation Act [*Chapter 66*] to have counsel assigned to appear on his behalf at the hearing of an appeal or application in terms of this Part may apply to the registrar —

(a) in the case of an appeal referred to in paragraph (b) of subrule (1) of rule 27A, by submitting to the registrar his application of Form 5A; and

(b) in the case of an application referred to in subrule (1) of rule 27D or subrule (1) of rule 27E, by submitting to the registrar his application on Form 5B with his notification that he intends to oppose the application.

(2) On receipt of an application referred to in subrule (1), the registrar shall inquire into the question of the poverty 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 Assistance and Representation Act [*Chapter 66*] and rules made thereunder.

[Part IVA inserted by RGN 421 of 1975]

### **PART V**

#### **CIVIL APPEALS FROM THE HIGH COURT**

#### ***28. Application***

The provisions of this Part shall apply to civil appeals from the High Court.

#### ***29. Entry of appeal***

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

(a) the date on which, and the court by which, the judgment appealed against was given;

(b) if leave to appeal was granted, the date of such grant;

(c) whether the whole or part only of the judgment is appealed against;

(d) the grounds of appeal in accordance with the provisions of rule 32;

(e) the exact nature of the relief which is sought;

(f) the address for service of the appellant or his attorney.

(2) The notice of appeal shall be served on the registrar, the registrar of the High Court, and the respondent.

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

An appellant shall institute an appeal within the following times —

(a) if leave to appeal is not necessary, by serving notice of appeal within fifteen days of the date of the judgment appealed against;

- (b) if leave to appeal is necessary and has been granted, by serving notice of appeal within ten days of the granting of leave to appeal or within fifteen days of the date of the judgment appealed against, whichever is the later;
- (c) if leave to appeal is necessary and has been refused, by the High Court, by making application for leave to appeal within ten days of the refusal of leave to appeal.

[Rule amended by s.i 14 of 1992]

### **31. Application for leave to appeal and extension of time to appeal**

(1) An application that leave to appeal be granted or for an extension of time in which to appeal shall be by notice of motion signed by the applicant or his legal representative and shall be accompanied by a copy of the judgment against which it is sought to appeal.

(2) An application that leave to appeal be granted 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 paragraphs (c) to (f) of subrule (1) of rule 29;

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

(c) a document setting out any information which is relied upon as affecting the granting of leave to appeal, with any facts alleged therein certified by affidavit.

(3) An application for extension of time in which to appeal shall have attached to it a notice of appeal containing the matters required in terms of subrule (1) of rule 29 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) A notice of motion in terms of this rule and accompanying documents shall be served on a registrar and copies thereof shall be served on the respondent.

(5) The respondent shall be entitled within three days of service to file with the registrar replying affidavits, copies of which shall also be served on the applicant, and the applicant shall thereafter be entitled within three days to file with the registrar his replying 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 thinks fit and shall, if an extension of time be granted, deal also with any question of leave to appeal which may be involved.

[Subrule amended by RGN 421 of 1975 and s.i 78 of 2000]

(8) If leave to appeal or leave to appeal out of time be 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 was granted.

(9) The registrar shall notify a registrar of the High Court of the date and effect of the judgment and shall deliver a copy of the order and judgment to him.

### **32. Grounds of appeal**

(1) The grounds of appeal shall be set forth 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 was 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.

[Subrule amended by RGN 421 of 1975]

### **33. 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 29 to enter a cross-appeal.

(2) Notice of cross-appeal shall be signed by the respondent or his legal representative and shall state in respect of which appeal the cross-appeal is made and shall contain the particulars set out in paragraphs (c) to (f) of subrule (1) of rule 29.

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

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

(1) The appellant, unless he has been granted leave to appeal *in forma pauperis* shall, at the time of the noting of an appeal in terms of rule 29 or within such period therefrom, not exceeding five days, as the 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 legal representative for the payment of such cost immediately after it has been determined.

[Subrule amended by s.i 14 of 1992]

(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 15.

(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 unless a judge grants relief on cause shown.

[Rule substituted by s.i 796 of 1979]

### **35. Stated case**

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

[Subrule amended by RGN 421 of 1975 and s.i 78 of 2000]

(2) If on the request of a party in terms of subrule (1) or of his 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.

[Subrule amended by RGN 421 of 1975 and s.i 78 of 2000]

(3) The stated case shall set out in numbered paragraphs the relevant facts found proved by the court whose judgment is appealed against, the relevant portions of the judgment appealed against, the respective contentions of the parties in regard to that decision and 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 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 objects to the draft within seven days the case will be so stated. If no such objection is made 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 as being stated in terms of the draft, or amended draft, as the case may be. If objection is made and no agreement can be made 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 prescribed in subsection (3) of section 23 of the Act.

[Subrule amended by s.i 78 of 2000]

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

### **36. Dismissal of appeal without hearing**

(1) If an appellant who is required to furnish security for the respondent's costs of appeal fails to furnish such security within the period prescribed in subrule (5) of rule 46, the respondent may forthwith give notice to the appellant that, on the date specified in the notice, being not less than five days after service of the notice, he will apply to a judge for dismissal of the appeal by reason of such failure, and for such other order specified in the notice as he may require.

[Subrule amended by s.i 14 of 1992]

(2) The date specified in the notice given in terms of subrule (1) shall be a date which a registrar has previously signified to the respondent as being a suitable date.

(3) The judge, on an application for dismissal by the respondent brought in terms of subrule (1), may dismiss the appeal and, additionally or alternatively, may make such other order as he thinks fit, including any order as to costs, whether or not one or other or both the parties to the appeal appear at the hearing.

(4) Where, at the time of the hearing of an appeal, there is no appearance for the appellant, and no written arguments have been filed by him, the court may dismiss the appeal and make such order as to costs as it may think fit:

Provided that an appeal dismissed in terms of this subrule may thereafter, on application by the appellant, be reinstated.

(5) A registrar shall notify the Registrar of the court whose judgment is appealed against of the dismissal of any appeal under this rule.

[Rule substituted by s.i 796 of 1979]

### **37. Abandonment**

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

[Subrule amended by RGN 421 of 1975]

(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 costs by making an application to a judge for an order in respect of any costs incurred by him by virtue of such cross-appeal.

[Subrule amended by RGN 421 of 1975]

(4) If on the abandonment of an appeal by an appellant the respondent who has noted a cross-appeal wishes to persist in his 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) A registrar shall notify the registrar of the court appealed from an abandonment of an appeal or cross-appeal in terms of this rule.

### **38. In forma pauperis**

(1) Any poor person 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 the 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 does not consent to the applicant proceedings *in forma pauperis* application shall be made on notice of motion to a judge:

Provided that no such application shall be made unless the other party has been asked for, and has refused, his consent to the applicant proceeding *in forma pauperis*.

[Subrule amended by RGN 421 of 1975]

(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 interest in the subject matter of the appeal, he is not possessed of property to the amount of five thousand dollars. Such particulars shall be supported by a verifying affidavit and shall be accompanied by a certificate of a legal practitioner that he has considered the case of the applicant and that prima facie he has reasonable grounds to prosecute or defend the appeal.

[Subrule amended by s.i 78 of 2000]

(5) If leave to prosecute or defend an appeal *in forma pauperis* is granted the court shall give such directions as to the cost and 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 form pauperis* he shall not be required to lodge security for the costs of the opposite party or to pay any fees of court.

(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 advocate or attorney 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 shall, subject to taxation, be entitled to include and recover in such costs the fees of his advocate and attorney and all other fees, including the cost of the record, remitted by 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 as a pauper may be reviewed, rescinded or varied by the court and the leave to proceed as a pauper shall not exempt him from liability to be adjudged to pay costs.

### **39. Applications**

(1) Subject to the provisions of rules 31, 36, 37 and 38, applications shall by court application signed by the applicant or his legal representative and accompanied by an affidavit setting out any facts which are relied upon.

[Subrule amended by s.i 78 of 2000]

(2) The respondent shall have the right to serve replying affidavits within three days of receipt of the application in terms of this rule and, thereafter, the applicant shall have the right of filing replying affidavits within a further period of three days calculated from the date of receipt of the respondent's replying affidavits.

[Subrule amended by s.i 78 of 2000]

(3) The court application and any affidavits or other documents served in terms of subrules (1) and (2) shall be served both on a registrar and on the opposite party.

[Subrule amended by s.i 78 of 2000]

(4) 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, as also 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.

(5) When making an application the applicant shall, if he wishes to state the date of hearing in his court application, arrange a suitable date with a registrar prior to serving the application. Where no such date has been arranged the registrar shall appoint a date of hearing and notify the parties of the date:

Provided that no less than five days' notice of the date of hearing shall be given by the applicant or by the registrar, as the case may be.

[Proviso amended by s.i 14 of 1992]

[Subrule amended by s.i 78 of 2000]

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

#### **40. *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 the registrar a declaration in writing that he 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 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 may be after service on the registrar.

[Rule amended by s.i 14 of 1992]

#### **41. *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 the registrar and to the opposite party. If the objection is to be taken at the hearing of an appeal three copies of the notice shall be given to the registrar.

#### **42. *Power to allow amendment***

The court may upon application by notice of motion 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 person to appear or be represented notwithstanding any declaration in terms of rule 40 to the effect that the person concerned does not intend to appear or be represented.

#### **43. *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 has received the record in terms of rule 41, 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 a registrar a document setting out the main heads of his argument together with a list of authorities to be cited in support of each head, and immediately thereafter shall deliver a copy to the respondent.

(3) Where the respondent will 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 a registrar a document setting out the main heads of his argument together with a list of authorities cited in support of each head, and immediately thereafter shall deliver a copy to the appellant:

Provided that, where —

(a) the respondent's legal practitioner has not received 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

(b) the appeal is set down for hearing less than fifteen days after respondent's legal practitioner receives appellant's heads of argument in terms of subrule (2);

the respondent's legal practitioner shall file his 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.

[Proviso amended by s.i 1998 of 1994]

[Rule substituted by s.i 14 of 1992]

#### **44. Dismissal of appeal in absence of heads of argument**

(1) If, within the period prescribed in subrule (2) of rule 50, 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), a registrar shall forthwith notify the respondent and the registrar of the High Court of that fact.

[Rule substituted by s.i 14 of 1992]

#### **45. 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 should be heard, notice may be given to that person to enable him to apply to intervene in the appeal if he so wishes.

[Subrule amended by RGN 421 of 1975]

(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 to intervene in the appeal.

[Subrule amended by RGN 421 of 1975]

(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 seem just.

[Subrule amended by RGN 421 of 1975]

#### **46. 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 right to security, the appellant shall, before lodging with a registrar copies of the record, enter into good and sufficient security for the respondent's cost of appeal:

Provided that where the parties are unable to agree on the amounts or nature of the security to be provided, the matter shall be determined by the registrar.

(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).

[Subrule amended by RGN 421 of 1975]

(4) No security need be furnished by the Government of Southern Rhodesia or by a municipal or city council or by a town management board.

(5) 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 appeal in terms of rule 29.

[Subrule inserted by s.i 796 of 1979]

#### **47. Fees**

[Rule repealed by RGN 172 of 1974]

#### **48. Taxation**

(1) Where costs are allowed they shall be taxed by a registrar and attorneys fees shall be charged and taxed in accordance with the relevant provisions of the tariff set out in Annexure 2 of the Rules of the High Court published in the Schedule to the High Court Practice and Procedure Act [*Chapter 9 of 1939*].

[Subrule amended by RGN 172 of 1974]

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

[Subrule amended by s.i 14 of 1992]

(3) The registrar shall make a report in writing setting forth any relevant facts found by him and stating his 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.

[Subrule amended by RGN 421 of 1975]

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

[Subrule amended by RGN 421 of 1975]

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

[Subrule amended by RGN 421 of 1975]

## PART VI

### GENERAL FOR CIVIL APPEALS FROM MAGISTRATES' COURTS

#### **49. Application**

The provisions of this Part shall apply to appeals in civil cases from magistrates' courts.

[Rule amended by s.i 504 of 1979]

#### **50. Record**

(1) The clerk of the court whose proceedings are being brought on appeal shall, within twenty days of the date of noting the appeal, lodge with a registrar the original record, together with four typed copies which copies shall be certified as true and correct copies. The parties to the appeal shall uplift from the registrar such copies of the records as may be required for each of the parties and their counsel against payment of such fees as may be required by the clerk of the court:

Provided that —

- (i) in the event of a dispute as to the correctness of the fees so required to be paid the fees shall be determined by a registrar whose decision shall be final;
- (ii) in the case where an appellant in a criminal appeal from a magistrate's court has been granted leave to prosecute his appeal in person, no fees in respect of the record shall be payable.

[Subrule amended by s.i 14 of 1992]

(2) Every tenth line on each page of the copies of the record shall be numbered in the left-hand margin.

(3) The evidence in the original record shall be paginated from the first to the last page.

(4) All records shall contain a complete and correct index of the evidence and of all documents and exhibits in the case, the nature of the exhibits being briefly stated in the index.

(5) All records shall be securely bound in stout covers disclosing the names of the parties, the court appealed from and the names of the attorneys of the parties.

(6) Bulky records shall be divided into separate conveniently sized volumes numbered consecutively.

(7) Merely formal documents shall be omitted, and no document shall be set forth more than once.

(8) The fees payable under subrule (1) shall form part of the appeal.

(9) The registrar may refuse to accept copies of the record which do not in his opinion comply with the provisions of this rule.

## PART VII

### CRIMINAL APPEALS FROM MAGISTRATES' COURTS

#### **51.**

#### **52.**

#### **53.**

[Part repealed by s.i 504 of 1979]

## PART VIII

### CIVIL APPEAL FROM MAGISTRATES' COURT

#### **54. Application**

The provisions of this Part shall apply to civil appeals from the magistrates' courts.

#### **55. Application for set-down and lapsing of appeal**

(1) A registrar shall send written notification to the appellant as soon as he has received the record and copies thereof referred to in subrule (1) of rule 50 and, where the appellant is legally represented, shall call upon his legal practitioner to file heads of argument within fifteen days after the date of such notification.

[Subrule substituted by s.i 14 of 1992]

(1a) 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 a registrar a document setting out the main heads of his argument together with a list of authorities to be cited in support of each head, and immediately thereafter shall deliver a copy to the respondent.

[Subrule inserted by s.i 14 of 1992]

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

[Subrule inserted by s.i 14 of 1992]

(1c) Within ten days after receiving the appellant's heads of argument the respondent, if he is to be represented by a legal practitioner at the hearing of the appeal, shall file with a registrar a document setting out the main heads of his argument together with a list of authorities to be cited in support of each head, and immediately thereafter shall deliver a copy to the appellant:

Provided that, where the appeal is set down for hearing less than fifteen days after the respondent receives appellant's heads of argument, his legal practitioner shall file his heads of argument as soon as possible and in any event not later than four days before the hearing of the appeal.

[Subrule inserted by s.i 14 of 1992]

(2) If a cross-appeal has been noted and the appeal lapses or is withdrawn, the cross-appeal shall lapse unless an application for a date of hearing is made in writing within two weeks from the date of the lapse or withdrawal of the appeal unless a judge grants relief on cause shown.

[Subrule amended by RGN 421 of 1975]

(3) On receipt of an application for a date of hearing a registrar shall set down the appeal or cross-appeal for hearing on a day by him, and shall forthwith give notice in writing to the appellant or cross-appellant or his attorney who shall, forthwith cause a copy of the said notice to be served on the respondent or his attorney:

Provided that the day selected by the registrar shall be such as to permit of all parties being given not less than four week's notice of the date of set-down, unless they agree to a shorter period.

[Proviso amended by s.i 170 of 1991 and s.i 1998 of 1994]

(4) If, within the period prescribed in subrule (1a), 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.

[Subrule inserted by s.i 14 of 1992]

(5) Where an appeal is deemed to have been dismissed in terms of subrule (4), a registrar shall forthwith notify the respondent and the clerk of the trial court of that fact.

[Subrule inserted by s.i 14 of 1992]

#### ***55A. Application for extension of time within which to note appeal***

(1) If any party fails to note an appeal against the judgment of a magistrate within the time prescribed in Order XXX of the Magistrates Courts (Civil) Rules, 1966, he may apply to a judge for an extension of time within which to note his appeal.

(2) Any such application shall be accompanied by a notice of appeal complying with the provisions of Order XXX of the Magistrates Courts (Civil) Rules, 1966, together with an adequate statement explaining why the appeal was not noted within the proper time.

(3) On receipt of such application, the registrar shall forthwith give notice thereof to the respondent or his attorney who shall, within ten days of receiving notice of such application, inform the registrar whether or not he wishes to oppose the application.

[Subrule amended by s.i 14 of 1992]

(4) Where the respondent wishes to oppose the application he shall, within fifteen days of receiving notice of the application, submit to the registrar and to the applicant his written arguments in opposition and may, at the same time, submit a request that the matter be set down for oral argument.

[Subrule amended by s.i 14 of 1992]

(5) The applicant may, within five days of his receipt of such written argument, submit to the registrar and to the respondent or his legal practitioner written arguments in reply and may, at the same time, submit a request that the matter be set down for oral argument.

[Subrule amended by s.i 14 of 1992]

(6) The registrar shall forthwith lay the papers before a judge in chambers who may, in his discretion, grant or refuse the application or order that the matter be set down for oral argument.

(7) If the judge orders that the matter be set down for oral argument, the registrar shall notify the applicant and the respondent or his legal practitioner of the date of or, if they do not appear, on consideration of the papers, the judge may, in his discretion, grant or refuse the application.

(8) If the application is granted, the applicant shall, within two days, deliver a copy of the notice of appeal to the clerk of the court and such notice shall thereupon be deemed to have been delivered in terms of Order XXX of the Magistrates Court (Civil) Rules, 1966.

[Rule inserted by RGN 141 of 1977]

## **PART IX**

### **MISCELLANEOUS**

#### ***56. Appeals from other tribunals***

**57. Forms**

The forms prescribed in the First Schedule or forms of like effect shall be used in all proceedings to which they are applicable with such variations as the circumstances may require.

**58. Application of High Court rules**

(1) In any matter not dealt with in these rules the practice and procedure of the Supreme Court shall, subject to any direction to the contrary by the court or a judge, follow, as near as may be, the practice and procedure of the High Court.

- (2) The rules of the High Court and any amendments to such rules shall apply, mutatis mutandis —
  - (a) to the authentication of documents in the Supreme Court;
  - (b) to the hearing of evidence generally and commissions *de bene esse*;
  - (c) to the issue, service, and penalties for non-compliance with a subpoena;
  - (d) in respect of contempt of court proceedings;
  - (e) to the taking down, transcription and certification of evidence in shorthand;
  - (f) where the services of an interpreter are necessary.

**59. 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 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 thirty 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.

**First Schedule (Rule 57)**

**FORMS**

**ARRANGEMENT OF FORMS**

- Form No. 1 Notice of appeal
- Form No 2 Application for leave to appeal
- Form No 3 Application for extension of time in which to appeal
- Form No 4 Application for legal aid
- Form No 5 Notice to respondent of appeal by Attorney-General
- Form No 5A Notice to respondent of appeal by Attorney-General against sentence
- Form No 5B Application for legal aid

[Inserted by RGN 421 of 75]

- Form No 6 Particulars of trial
- Form No 7 Notice of renunciation of agency

[Inserted by s.i 170 of 1991]

**FORM 1  
(Rule 17)**

(For Official Use  
CR/APP No .....)

**SUPREME COURT**

**NOTICE OF APPEAL**

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) .....  
\* (Delete whichever is inapplicable)

The appellant wishes to appeal against —

\* Conviction.

\* Sentence.

\* Other order (specify).

\* (Delete any inapplicable)

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. Grounds of appeal against conviction and against sentence must be set out separately. Grounds must be set Out fully in numbered paragraphs.)

The appellant \*is/is not in custody.

\* (Delete whichever is inapplicable)

Signed by the appellant or his 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.

\* (Delete whichever is inapplicable)

*Notes*

- (a) If the appellant desires legal aid in the preparation of the record, he must complete Form 4 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 2  
(Rule 19)

APPLICATION FOR LEAVE TO APPEAL

(For Official Use  
CR/LEAVE No. ...  
CR/APP No .....

SUPREME COURT

APPLICATION FOR LEAVE TO APPEAL

*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 wishes to appeal against sentence.

\* (Delete if inapplicable)

GROUND 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. 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.

\* (Delete those which are not applicable)

Signed by the appellant or his legal representative.

Date.....

Date of delivery to Registrar of High 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.

\* (Delete whichever is inapplicable)

*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 3  
(Rule 20)

For Official Use  
CR/APPLICATION No. ...  
CR/APP No .....

SUPREME COURT

APPLICATION FOR EXTENSION OF TIME IN WHICH TO APPEAL

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.  
\* (Delete whichever is inapplicable)

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.  
\* (Delete any or all not applicable. For persons in custody, see Note below.)

Signed by the applicant or his 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 if 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 may, if not legally represented, submit written argument in support of the application with his application.

FORM 4  
(Rule 21)

SUPREME COURT  
APPLICATION FOR LEGAL AID

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 receive 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 5  
(Rule 278)

SUPREME COURT

NOTICE TO RESPONDENT OF APPEAL BY ATTORNEY-GENERAL

On (1) .....you were \* acquitted/convicted on a charge of (2) ..... by (3).....

\* (Delete whichever is inapplicable.)  
(1) Date (2) Offence (3) Court

The Attorney-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 Attorney-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.

\* suggest that the appeal should be argued on my behalf for the following reasons (give reasons) .....

\* I shall send written arguments within seven days.  
\* (Delete those inapplicable and complete any one applicable.)

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, P.O. Box ....., it will be taken that you are not interested in the appeal, and no further communication will be sent.

FORM 5A  
(Rule 27B)

SUPREME COURT

NOTICE TO RESPONDENT OF APPEAL BY ATTORNEY-GENERAL AGAINST SENTENCE

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

1. The Attorney-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 should be given.
4. You may, in terms of the Legal Assistance and Representation Act [*Chapter 66*], 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

.....

\* Delete what is inapplicable and complete what is applicable.

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

FORM 5B  
(Rule 27G)

APPLICATION FOR LEGAL AID

SUPREME COURT

APPLICATION FOR LEGAL AID

I .....having received notice that  
the Attorney-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.

\* Delete the inapplicable.

.....

Appellant

You are required to complete the following —

*Questions*

*Answers*

1. What is your present income, salary or wages?
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 6  
(Rule 22)

SUPREME COURT  
PARTICULARS OF TRIAL

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 7  
(Rule 12A)

NOTICE OF RENUNCIATION OF AGENCY

To: .....  
.....  
(Name and address of appellant)

RENUNCIATION OF AGENCY

I hereby notify you that I am/my firm is renouncing agency in the appeal you have instituted against the judgment of the magistrate/High Court in the case of .....  
..... (set out names of parties), which was delivered  
on the ..... (date).

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

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 38 of the Rules of the Supreme Court, 1964. To find out the procedure for this, you will need to contact the Registrar.
- \* You may apply to the Registrar 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)

You must take action without delay because, if you fail to take any of these courses immediately, the appeal will lapse and be struck from the roll and the judgment appealed against will become final.

Dated at..... this .....day of.....19 .....

.....  
(Signature of legal practitioner)

(Omit whichever does not apply)