

COURT OF APPEAL RULES, 1997

(C.I 19)

IN exercise of the powers conferred on the Rules of Court Committee by Article 157(2) of the Constitution these Rules are made this 24th day of July, 1997.

PART I-GENERAL PROVISIONS

1. Sessions of the Court

The sessions of the Court of Appeal referred to in these Rules as "the Court" shall be held during term and at such other times and places as the Chief Justice may direct.

2. Notice of cause lists

(1) Notice of a cause list shall be published by the Registrar of the Court in the *Gazette* from time to time but at least fourteen days before the date appointed for the hearing of the first of the matters on the list.

(2) The publication shall be notice to all parties of the listing before the Court of any cause or matter mentioned in the list.

(3) Notwithstanding sub rules (1) and (2) of this rule the Court may hear all criminal or civil appeal which has not been included in the cause list as published, but in respect of which notice of hearing has been served on the parties or their counsel.

(4) The publication under sub rule (1) does not apply to the hearing of any matter by a single judge.

3. Right of audience

A person who is a party to any cause or a matter before the Court may appear in person or may be represented by counsel of his choice.

4. Delivery of judgment

Every judgment of the Court shall be delivered in open Court.

5. Register of appeals

The Registrar shall keep separate registers of civil and criminal appeals brought before the Court.

6. Forms to be used

The forms set out in the Schedule to these Rules or such forms as the circumstances permit shall be used in cases to which the forms are applicable.

7. Matters not expressly provided for

Where no provision is expressly made by these Rules regarding the practice and procedure which shall apply to any cause or matter before the Court, the Court shall prescribe such practice and procedure as in the opinion of the Court the justice of the cause or matter requires.

PART II CIVIL APPEALS

8. Notice and grounds of appeal

(1) Any appeal to the Court shall be by way of re-hearing and shall be brought by a notice referred to in these Rules as "the notice of appeal".

(2) The notice of appeal shall be filed in the Registry of the court below and shall-

(a) set out the grounds of appeal;

(b) state whether the whole or part only of the decision of the court below is complained of and in the latter case specify the part;

(c) state the nature of the relief sought ; and

(d) state the names and addresses of all parties directly affected by the appeal.

(3) The notice of appeal shall be as in Form I provided in Part I of the Schedule to these Rules and shall be accompanied with sufficient number of copies for service on all parties.

(4) Where the grounds of an appeal allege misdirection or error in law, particulars of the misdirection or error shall be clearly stated.

(5) The grounds of appeal shall set out concisely and under distinct heads the grounds upon which the appellant intends to rely at the hearing of the appeal without any argument or narrative and shall be numbered consecutively.

(6) No ground which is vague or general in terms or which discloses no reasonable ground of appeal shall be permitted, except the general ground that the judgment is against the weight of the evidence; and any ground of appeal or any part of the appeal which is not permitted under this rule may be struck out by the Court of its own motion or on application by the respondent.

(7) The appellant shall not, without the leave of the Court, urge or be heard in support of any ground of objection not mentioned in the notice of appeal, but the Court may allow the appellant to amend the grounds of appeal upon such terms as the Court may think just.

(8) Notwithstanding sub rules (4) to (7) of this rule, the Court in deciding the appeal shall not be confined to the grounds set out by the appellant but the Court shall not rest its decision on any ground not set out by the appellant unless the respondent has had sufficient opportunity of contesting the case on that ground.

9. Time limits for appealing

(1) Subject to any other enactment for the time being in force, no appeal shall be brought after the expiration of-

(a) twenty-one days in the case of an appeal against an interlocutory decision; .or

(b) three months in the case of an appeal against a final decision unless the court below or the Court extends the time.

(2) The prescribed period within which an appeal may be brought shall be calculated from the date of the decision appealed against.

(3) An appeal is brought when the notice of appeal has been filed in the Registry of the court below.

(4) No application for extension of time in which to appeal shall be made after the expiration of three months from the expiration of the time prescribed by this rule within which an appeal may be brought.

(5) An application for extension of time must be supported by an affidavit setting out good and substantial reasons for the application and grounds of appeal which prima facie, show good cause for the extension of time to be granted.

(6) Where the extension of time is granted a copy of the order granting the extension shall be attached to the notice of appeal.

(7) Notwithstanding rule 28 of these Rules, no application shall be made to the Court for extension of time within which to appeal after six months from the date of the decision appealed against.

(8) For the purposes of sub rule (4) of this rule and rule 28, where a person has applied to the court below for extension of time within which to appeal and after a period of not less than one month the court below fails or refuses to grant the application, the applicant may subject to sub-rule (5) of this rule move the Court to determine the application.

10. Service of notice of appeal

(1) The Registrar of the court below shall, after the notice of appeal has been filed, cause to be served a true copy of it on each of the parties mentioned in the notice of appeal.

(2) The Court may also direct the notice to be served on all or any of the parties to the action or other proceedings or on any person not a party, and may adjourn the hearing of the appeal upon such terms as may be just, and also make any order as if the person served with the notice had originally been a party to the appeal.

11. Settling record of appeal

(1) When an appeal is brought in the court below, the Registrar of the court shall issue summons in Form 2 in Part I of the Schedule directing the parties to appear before him to

settle the record of appeal and shall whether or not any of the parties attend the appointment, settle and sign the record and in due course file it.

(2) The Registrar of the court below, and the parties shall exclude from the record documents that are not relevant to the subject matter of the appeal and shall generally reduce the bulk of the record as far as practicable, taking special care to avoid duplication of documents; but the title of the documents not copied with the record shall be enumerated in a list at the end of the record.

(3) Where the Registrar of the court below or any party objects to the inclusion of a document on the ground that it is unnecessary or irrelevant and the other party insists upon its inclusion, the document shall be included and the record shall, with a view to the subsequent adjustment of the costs of and incidental to the inclusion of the document, indicate in the index of papers or otherwise that fact, and the party who objected to the inclusion of the document.

(4) The appellant shall within such time as the Registrar of the court below directs; deposit with him a sum fixed to cover the estimated expense of making up and forwarding the record of appeal calculated at the full cost of one copy for the appellant and one-quarter cost for each of the five copies for the use of the Court.

12. Security for costs

The appellant shall within such time as the Registrar of the court below shall fix

- (a) deposit such sum as shall be determined by the Registrar of the court below; or
- (b) give security by bond as specified in Form 3 in Part 1 of the Schedule with one or more sureties to the satisfaction of the Registrar for the due prosecution of the appeal and for the payment of any costs which may be ordered to be paid by the appellant.

13. Additional security for costs

The Court may, where necessary, require security for costs or for performance of the orders to be made on appeal, in addition to the sum determined under rule 12(a).

14. Transmission of record

(I) The Registrar of the court below shall transmit the record when ready together with-

- (a) a certificate of service of the notice of appeal;
- (b) a certificate as in Form 5 in Part I of the Schedule that the conditions imposed under rules 11(4) and 12 have been fulfilled;
- (c) five copies of the record for the use of the Judges;
- (d) the docket or file of the case in the court below containing all papers or documents filed by the parties concerned; and

(e) the exhibits, documents or other things received by the court below in respect of the appeal.

(2) The Registrar of the court below shall also cause to be served on all parties mentioned in the notice of appeal, a notice as in Form 4 in Part I of the Schedule that the record has been forwarded to the Registrar, and the Registrar shall in due course enter the appeal in the cause list mentioned in rule 2(1).

15. Notice by respondent of contention that judgement should be varied

(1) It shall not be necessary for the respondent to give notice by way of cross- appeal; but if a respondent intends upon the hearing of the appeal to contend that the decision of the court below should be varied, he shall within one month after service upon him of the notice of appeal cause written notice as in Form 7 in Part I of the Schedule of his intention to be given to every party who may be affected by the contention.

(2) The respondent shall clearly state in his written notice the grounds on which he intends to rely and within the same period shall file with the Registrar of the court below five copies of the notice, one of which shall be included in the record.

(3) Omission give the written notice shall not affect any powers of the Court, but the Court may consider it a ground for adjournment of the appeal upon such terms as to costs or otherwise as the Court considers just.

16. Notice of preliminary objection to be filed

(1) A respondent who intends to rely upon a preliminary objection to the hearing of the appeal shall give the appellant three clear days notice before the hearing of the preliminary objection, setting out the grounds of objection, and shall file tile notice specified in Form 8 in Part I of the Schedule together with five copies of the appeal with the Registrar within the same time.

(2) If the respondent fails to comply with this rule, tile Court may refuse to entertain the objection or may adjourn the hearing at tile cost of tile respondent or may make such other order as it thinks fit.

17. Withdrawal of appeal

(1) Subject to rule 15, if the appellant files with tile Registrar a notice of withdrawal of his appeal, the Registrar shall certify that fact to the Court, which may there- upon order that the appeal be dismissed with or witllOut costs.

(2) Copies of the notice of withdrawal shall at the expense of the appellant be served on any of the parties with regard to whom tile appellant wishes to withdraw his appeal, and any party

served shall be precluded from laying claim to any costs incurred by him after the service unless the Court otherwise orders.

(3) A party served with a notice of withdrawal, may on notice to the appellant apply to the Court for an order to recover any costs that he may necessarily or reasonably have incurred prior to the service on him of the notice of withdrawal together with his costs incurred for purposes of obtaining the order and for attendance in Court.

(4) Forms 9 and 10 in Part I of the Schedule shall apply for the purposes of this rule.

18. Non-compliance with conditions of appeal

(1) Where the appellant has not complied with any of the requirements of rules 1.1 (4), 12 or 1.3 the Registrar of the court below shall certify these facts to the Court, which may then order that the appeal be dismissed with or without costs.

(2) If the respondent alleges that the appellant has failed to comply with a part of the requirements of rules 11(4), 12 or 13 and the Court is satisfied that the appellant has so failed, it may dismiss the appeal for want of prosecution or make such other order as the justice of the case may require.

(3) An appellant whose appeal has been dismissed under this rule may apply by motion on notice that his appeal be restored, and the Court may order that the appeal be restored upon such terms as it may think fit.

(4) A certificate of non-compliance of conditions imposed upon a would be appellant shall be in Form 11 in Part I of the Schedule.

19. Exhibits

(1) Subject to these Rules, each party shall, immediately after an appeal becomes pending before the Court, deliver to the court below all documents and things (being exhibits in the case or which were tendered as exhibits and rejected) which are in his custody or were produced or put in by him at the trial.

(2) Subject to these Rules each party to an appeal shall be prepared to produce at the hearing of the appeal exhibits, other than documents, which are in his custody or were produced or put in by him at the trial.

(3) Where a party finds it difficult to comply with sub rules (1) and (2) of this rule owing to the nature of the document or other exhibit owing to its being in the possession of a third party or any other reason, he may apply to the Registrar of the court below for directions.

(4) The Registrar of the court below may, either of his own motion or upon application, give any direction he considers fit, whether dispensing with the provisions of this rule or modifying its application in any way or for securing compliance with it.

(5) Any original document delivered to the court below under this rule shall remain in the custody of the court below until the record of appeal has been prepared, and shall then be forwarded with the record to the Registrar of the Court and shall remain in the custody of the Court until the determination of the appeal; except that the Court or the Registrar may allow the return of any document to any party pending the hearing of the appeal and subject to such conditions as it or he may impose.

20. Written submission

(1) An appellant shall within three weeks of being notified in Form 6 set out in Part I of the Schedule, that the record is ready, file with the Registrar a written submission of his case based on the grounds of appeal as set out in the notice of appeal.

(2) Where the appellant does not file the written submission of his case in accordance with sub-rule (1), the appeal shall be considered to have been struck out and the Registrar shall inform the parties accordingly.

(3) The Registrar shall as soon as practicable after the filing of the appellant's written submission, cause copies of the submission to be served on the respondent and on any other party to the appeal.

(4) A party upon whom an appellant's written submission is served shall, if he wishes to contest the appeal, file tile written submission of his case in answer to the appellant's written submission within three weeks of the service, or within such time as the Court may upon terms direct.

(5) The appellant may, within fourteen days of the service on him of tile respondent's written submission, file with the Registrar a reply to the respondent's written submission.

(6) The written submission of each party to the appeal shall set out-

(a) the full case and arguments to be advanced by the party including relevant authorities, references to any relevant decided cases and statute law upon which the party intends to rely; and

(b) in the case of a respondent may include a contention that the decision of the court below be varied.

(7) Notwithstanding anything to the contrary contained in this rule, counsel may agree to submit a joint submission for the determination of the appeal before the Court.

(8) Where a respondent does not file a written submission of his case and does not agree to make a joint written submission under the provisions of this rule, he shall not be heard at the hearing of the appeal except as to question of costs.

(9) Notwithstanding anything to the contrary contained in these Rules, a party to a civil appeal may at any time before judgment apply to the Court to amend any part of the written submission and the Court may, having regard to the interest of justice and to a proper

determination of the issues between the parties, allow the amendment on such terms as it may consider fit.

21. Control of proceedings during pendency of appeal

After an appeal has been entered and until it has finally been disposed of, the Court shall be seised of the whole of the proceedings as between the parties and every application shall be made to the Court and not to the court below, but any application may be filed in the court below for transmission to the Court.

22. Submission by party not appearing

At any time before the hearing of an appeal any party to the appeal may file a declaration in writing as specified in Form 12 in Part I of the Schedule that he does not wish to be present in person or by counsel at the hearing of the appeal and in such a case, the party shall file five copies of the arguments he desires to submit to the Court, a copy of which shall be supplied to the other party at the appropriate stage of the hearing, and the appeal shall be dealt with as if the party had appeared.

23. Non-appearance of appellant

(1) Where the appellant fails to appear when his appeal is called for hearing and he has not taken action under rule 22, the appeal may be struck out or dismissed with or without costs.

(2) When an appeal has been struck out or dismissed owing to the non-appearance of the appellant the Court may, direct the appeal to be re-entered for hearing on such terms as to costs or otherwise as it may think just.

24. Non-appearance of respondent

Where the respondent fails to appear when the appeal is called for hearing and he has not taken action under rule 22, the Court may proceed to hear the appeal in his absence.

25. Application to set aside ex parte judgment

(1) Where an appeal has been heard under rule 24 and judgment has been given against the respondent, he may apply to *the* Court to set aside the judgment and to re-hear the appeal.

(2) No application to set aside and re-hear a judgment under this rule shall be made after the expiration of twenty-one days from the date of the judgment sought to be set aside; except that, a respondent who has failed within the period of twenty-one days to make an application under this rule may at any time within a further period of three months after the twenty-one day period apply to the Court on notice to the appellant to set aside the judgment,

and the Court may, grant the application and make such order in relation to the application or as to costs as it may consider fit in the circumstances.

(3) An application to set aside a judgment shall be by motion accompanied with an affidavit stating the reasons and grounds for the application, and the Court may set aside the judgment and order that the appeal be re-heard at such time and upon such other conditions as to costs or otherwise as it may consider fit.

26. New evidence on appeal

(1) It is not open as of right to any party to an appeal to adduce new evidence in support of his original case but, in the interest of justice, the Court may allow or require new evidence to be adduced; such evidence shall be in the form of oral examination in Court, an affidavit or a deposition taken before an examiner or commissioner as the Court may direct.

(2) A party may, by leave of the Court, allege any facts essential to the issue that has come to his knowledge after the decision of the court below and adduce evidence in support of the allegations.

27. Effect of appeal

(1) An appeal shall not operate as a stay of execution or of proceedings under the judgment or decision appealed against except where the court below or the Court otherwise orders-

(a) in the case of the court below, upon application made orally or by motion on notice to it; and

(b) in the case of the Court, upon application made to it by motion on notice, and except as provided in this rule no intermediate act or proceedings shall be invalidated.

(2) When an application is pending for determination under sub-rule (1) of this rule any proceedings for execution of the judgment or decision to which the application relates shall be stayed.

(3) There shall, in any case, be a stay of execution of the judgment or decision, or of proceedings under the judgment or decision appealed from-

(a) for a period of seven days immediately following the giving of the judgment or decision; and

(b) for a period of seven days immediately following the determination by the court below or any application under sub-rule (1)(a) of this rule where the application is refused by the court below.

28. Court to which application should be made

Subject to these Rules and to any other enactment, where under any enactment an application may be made either to the court below or to the Court, it shall be made in the first

instance to the court below, but if the court below refuses to grant the application, the applicant shall be entitled to have the application determined by the Court.

29. Determination of doubts as to finality of judgment

Whenever any doubt arises as to whether any judgment or order is final or interlocutory, the question may be determined summarily by the court below or by the Court and any determination by the court below shall, notwithstanding rule 28, be final and binding on all parties for the purpose of determining the time within which an appeal may be brought.

30. Interlocutory judgement not to prejudice appeal

No interlocutory judgment or order from which there has been no appeal shall operate so as to bar or prejudice the Court from giving a decision upon the appeal as may seem just.

31. General powers of the Court

The Court may-

- (a) make any order necessary for determining the real question in controversy;
- (b) amend any defect or error in the record of appeal;
- (c) direct the court below to enquire into and certify its finding on any question which the Court considers fit to determine before final judgment;
- (d) make any interim order or grant any injunction which the court below is authorised to make or grant; and
- (e) direct any necessary enquiries or accounts to be made or taken and shall generally have full jurisdiction over the whole proceedings as if the proceedings had been instituted and prosecuted in the Court as a court of first instance.

32. Power of Court to give judgment and make an order

(1) The Court shall have power to give any judgment and make any order that ought to have been made, and to take such further or other order as the case may require including any order as to costs.

(2) These powers of the Court may be exercised notwithstanding that the applicant may have asked that part only of a decision be reversed or varied, and may also be exercised in favour of all or any of the respondents or parties, although the respondents or parties may not have appealed from or complained of the decision.

33. Time limit for delivery of judgments

(1) At the close of a case before it the Court shall fix a date, which shall not be later than eight weeks after close of the case, for the delivery of judgment.

(2) It shall be the duty of the Court to deliver judgment as soon as possible after the close of each case before it, and in any event not later than eight weeks after the close of any case.

(3) For the purposes of this rule a case shall be considered closed when the final arguments have been concluded.

(4) The times of vacation in any year shall not be reckoned in the computation of the period of eight weeks referred to in this rule.

(5) Where for any reason judgment has not been delivered within the period of eight weeks referred to in this rule the Court shall forthwith inform the Chief Justice in writing of that fact and shall state the reasons for the delay and the date upon which it is proposed to deliver judgment.

(6) Subject to sub-rule (4) of this rule where judgment has not been delivered within the period of eight weeks referred to in this rule, any party to the proceedings may notify the Chief Justice in writing of that fact and request that a date be fixed for the delivery of judgment.

(7) Upon receiving a notification from the Court or a party under sub-rule (5) or (6) the Chief Justice may fix a date for the delivery of judgment by the Court and notify the Court accordingly, and it shall be the duty of the Court to ensure that judgment is delivered upon the date so fixed by the Chief Justice.

34. Review of the decision of the Court in exceptional cases

The Court shall not review any judgment after it has been delivered unless it is satisfied that the circumstances of the case are exceptional and that in the interest of justice there should be a review.

35. Costs

(1) Where the costs of an appeal are allowed they may either be fixed by the Court at the time when the judgment is given or may be ordered to be taxed.

(2) The Registrar shall be the Taxing Officer and all such costs shall be taxed by him according to the rules in force in the High Court.

(3) Any person aggrieved by an order, decision or ruling of the Taxing Officer may apply to the Court to set aside that order, decision or ruling and to make such further order as it may consider fit.

(4) Any application to the Court under sub-rule (3) shall be by motion supported by an affidavit, and notice of such motion shall be served upon the Taxing Officer and upon any party who has an interest in the matter.

(5) The form of a notice of taxation and a bill of costs shall be as specified in Forms 13 and 14 in Part I of the Schedule.

36. Enforcement of judgments

Any judgment given by the Court may be enforced by the Court, the court below or any other court which has been seised of the matter or as the Court may direct.

37. Execution of judgment by court below

Where the Court directs any judgment to be enforced by any other court, a certificate under the seal of the Court and the hand of the presiding Judge setting out the judgment as specified in Form 15 in Part I of the Schedule shall be transmitted by the Registrar to that other court, and the latter shall enforce the judgment in terms of the certificate.

PART III-CRIMINAL APPEALS

38. Conditions of appeal

A person desiring to appeal to the Court against his conviction or sentence shall commence his appeal by sending to the Registrar of the court below, a notice of appeal in Form I or 2 set out in Part II of the Schedule as is relevant to his appeal.

39. Notices of appeal

(1) A notice of appeal or notice of application for extension of time within which the notice shall be given, shall except under sub-rule (5) of this rule be signed by the appellant or his counsel.

(2) Any notice required or authorised to be given shall be addressed to the Registrar of the court below to be forwarded by him to the Registrar of the Court.

(3) Any notice or other document which is required or authorised to be given or sent shall be deemed to be duly given or sent if forwarded by registered post addressed to the person to whom the notice or other document is required or authorised to be given or sent.

(4) When an appellant or any other person authorised or required to give or send any notice of appeal or notice of an application for extension of time within which notice of appeal may be given is unable to write, he may affix his mark in the presence of a witness who shall attest the mark, and upon that act the notice shall be taken as duly signed by the appellant.

(5) In the case of a body corporate where any notice or other document is required to be signed by the appellant himself it shall be sufficient compliance if the notice or other document is signed by the secretary, manager or legal representative of the body corporate.

40. Notice of application for extension of time for appealing

(1) An application to the Court for an extension of time within which notice may be given, shall be as specified in Form 3 in Part II of Schedule.

(2) Any person making an application for an extension of time shall send to the Registrar, together with the proper form of the application a notice of appeal duly completed.

41. Forwarding of proceedings in court below to Registrar

(1) Where the Registrar of the court below receives a notice of appeal or a notice of application for extension of the time within which the notice shall be given, he shall forward to the Registrar five copies of the proceedings in the court below and five copies of the summing up or direction of the Judge.

(2) The Registrar of the court below shall also forward the original exhibits in the case as far as practicable and any original deposition, information, inquisition, plea, or other documents or thing usually kept by him forming part of the record of the court below to the Registrar of the Court.

(3) The Court or Registrar may allow the return of any document or thing to any party pending the hearing of the appeal and subject to such conditions as it or he may impose.

42. Copies of record, for appellant

The appellant may obtain from the Registrar of the court below free of charge, copies of the record and any document or exhibit in his possession for the purpose of the appeal.

43. Notice to appellant of decision by single Judge

(1) Where any application has been dealt with by a single Judge the Registrar shall notify the appellant of the decision in the form specified in Form 4 in Part II of the Schedule.

(2) Where the Judge refuses any application, the Registrar shall notify the refusal to the appellant and forward to the applicant Form 5 of Part II of the Schedule; which the appellant shall complete and return to the Registrar.

(3) Where the appellant does not desire to have the application determined by the Court as duly constituted for the hearing of appeals or does not return within five days to the Registrar Form 5 duly completed by him, the refusal of his application by the Judge shall be final.

44. Abandonment of appeal

(1) An appellant may at any time after he has duly served notice of appeal or of application for extension of time within which the notice shall be given, abandon his appeal by giving notice of abandonment specified in Form 6 in Part II of the Schedule to the Registrar, and upon such notice the appeal shall be deemed to have been dismissed by the Court.

(2) Upon receipt of a notice of abandonment duly completed and signed or marked by the appellant or the party authorised to sign notices under sub-rule (5) of rule 39, the Registrar shall -

(a) give notice of the abandonment as specified in Form 7 in Part II of the Schedule to the respondent, the Prison authority and the Registrar of the court below, and in the case of an appeal against a conviction involving a sentence of death shall in the same manner give notice to the Minister for Justice; and

(b) return to the Registrar of the court below original documents and exhibits received from him.

45. Withdrawal of notice of abandonment

An appellant, other than one convicted of an offence punishable by death who has abandoned his appeal may, with the leave of the Court, withdraw his notice of abandonment by completing Forms 2 and 8 in Part II of the Schedule and shall send the Forms to the Registrar.

46. Person in custody in default of payment of fine

(1) Where a person has, on his conviction, been sentenced to payment of a fine, and in default of payment, to imprisonment, and the person remains in custody in default of payment of the fine, he shall for purposes of an appeal be considered to be a person sentenced to imprisonment.

(2) Where any person has been convicted and is sentenced to the payment of a fine, and in default of the payment, to imprisonment and he intimates to the Judge of the court below that he desires to appeal against his conviction, the Judge may order the person to enter into recognisance with or without sureties as the Judge may think right to prosecute his appeal.

(3) The Judge may order that payment of the fine be made to the Registrar of the court below at the final determination of the appeal, if the appeal is dismissed.

(4) The recognisance under this rule shall be as specified in Forms 9 and 10 in Part 2 of the Schedule.

(5) The Registrar of the court below shall forward the recognisance of the appellant and his surety to the Registrar.

(6) If an appellant to whom sub-rule (2) of this rule applies, does not in accordance with these Rules serve a notice of appeal or of abandonment of his appeal within ten days from the date of his conviction or sentence, the Registrar of the court below shall report the omission to the Court which may, after notice in Forms 11 and 12 in Part II of the Schedule has been given to the appellant and his sureties, if any-

(a) order an estreat of the recognisance of the appellant and his sureties;

(b) issue a warrant for the apprehension of the appellant;

(c) commit the appellant to prison in default of payment of his fine; or

(d) make such other order as it considers fit.

(7) An appellant who has been sentenced to the payment of a fine and has paid the fine or part of the fine in accordance *with* the sentence, shall where his appeal succeeds, be entitled, subject to any order of the Court, to the return of the fine or any part of it paid by him.

47. Varying order of restitution of property

Where an order of restitution of any property to any person has been made by the Judge of the court below, the person in whose favour or against whom the order of restitution has been made, and, with the leave of the Court, any other person, shall on the final hearing by the Court of an appeal against his conviction on which such order of restitution was made, be entitled to be heard by the Court before any order annulling or varying the order of restitution is made.

48. Temporary suspension of orders made on conviction as to money, rewards, costs

(1) Where on conviction of a person, the Judge of the court below-

(a) orders a reward to any person who appears to have been active in the apprehension of the convicted person; or

(b) makes an order awarding to any person aggrieved, any sum of money to be paid by the convicted person; or

(c) makes an order for payment of money by the convicted person or by any other person; or

(d) makes an order affecting the rights or property of the convicted person the operation of the order shall be suspended when notice of appeal is given until the determination of the appeal against the conviction in relation to which the order was made or until abandonment of the appeal under sub-rule (1) of rule 44.

(2) The Court may by order annul any order to which this rule refers on the determination of any appeal or may vary the order, as it considers fit.

(3) Where upon conviction of a person of an offence, a disqualification, forfeiture, or disability attaches to that person because of the conviction, the disqualification, forfeiture or disability shall be suspended, until the determination of the appeal; and this rule shall not affect the provisions under any enactment prohibiting the alienation or charging of any property or the making of any contract in respect of the property by the convicted person.

(4) Where on a conviction, any property, matter or thing which is the subject of the prosecution or connected to the prosecution, is ordered to be destroyed or forfeited under any law, the destruction or forfeiture shall be suspended when notice of appeal is given until the determination of the appeal by the Court.

(5) Where upon conviction of a person of an offence, a claim may be made or any proceedings may be taken under any law against the person or any other person in

consequence of the conviction, the proceedings shall not be taken when notice of appeal is given until the determination of the appeal.

(6) A person affected by an order which is suspended under this rule may, with the leave of the Court, be heard on the final determination of the appeal before any order is varied or annulled by the Court.

49. Records of summing up

(1) Where a trial is held with a jury or assessors, and, by direction of the trial Judge, a record is made by some mechanical or electrical device of any summing up or direction of the Judge, the record shall be accepted by the Court as accurate unless the Court has reason to doubt its accuracy.

(2) Where in such a trial a record of any summing up or direction is otherwise made, by direction of the trial Judge, either in long-hand or short-hand, the record shall be accepted by the Court as accurate, subject to any corrections which the trial Judge may certify ought to be made in order to render the record accurate.

(3) Where in the trial the trial Judge does not give any directions for recording any summing up or direction given by him, his statement shall be accepted as accurate unless the Court sees reason to the contrary.

50. Report of Judge of trial Court

(1) The Registrar shall in relation to any appeal, if directed by the Court, request the trial Judge of the court below to furnish him with a report in writing, giving his opinion on any aspect of the trial in the court below and the trial Judge shall furnish the report to the Registrar.

(2) The report of the trial Judge shall be made to the Court and the Registrar shall, on request, furnish the appellant and respondent with copies of the report.

51. Furnishing trial judge with material for report

When the Registrar requests a trial Judge to furnish a report under these Rules, he shall send to the trial Judge a copy of the notice of appeal or any other document or information which he considers material, or which the Court at any time directs him to send or which the trial Judge may request the Registrar to furnish him to enable him submit his report.

52. Procedure where question of law reserved

Where a Judge of a court below reserves a question of law for the consideration of the Court, the person convicted shall for the purposes of these Rules be considered to be an appellant.

53. Appellant and surety's recognisance before whom to be taken

(1) Where the Court or the court below grants bail to an appellant pending the determination of his appeal, the Court shall specify the amounts in which the appellant or his surety shall be bound by recognisance, and may direct the person before whom the recognisance of the appellant or his surety or both may be taken.

(2) Where the Court does not make any order or give any directions under sub- rule (1),the recognisance may be taken before the Registrar of the court below.

(3) The recognisance provided for in this rule shall be drawn up as specified in Forms 13 and 14 in Part II of the Schedule.

(4) The Registrar of the court below shall forward drawn up recognisance of bail of the appellant and his surety to the Registrar.

(5) An appellant who has been granted bail shall be present in person at each and every hearing of his appeal and at the final determination of the appeal.

(6) Where the appellant is absent from any hearing of his appeal, the Court may decline to consider the appeal, and may proceed summarily to dismiss the appeal, and issue a warrant in the form specified in Form 15 in Part II of the Schedule for the apprehension of the appellant except that the Court may consider the appeal in his absence, or make such other order as is appropriate.

(7) When an appellant is present before the Court, the Court may make an order admitting the appellant to bail, revoke or vary an order previously made, enlarge the recognisance of the appellant or of his sureties, or substitute any other surety for a surety previously bound, as the Court considers right.

(8) Where the appellant has been released on bail by the Court or the court below, the Court or the court below may revoke the order admitting him to bail, and issue a warrant as specified in Form 15 in Part II of the Schedule for his apprehension, and order him to be committed to prison.

54. Notification of final determination of appeals

(1) On the final determination of any appeal or of any application to the Court, the Registrar shall give notice of the determination in Forms 16, 17, and 18 in Part II of the Schedule, to the appellant and if he is in custody, to the respondent and to the prison authority .

(2) In an appeal that relates to a conviction involving sentence of death, the Registrar shall on receipt of the notice of appeal, send copies of the notice of appeal to the Minister for Justice, and to the prison authority, and on the final determination of the appeal by the Court, the Registrar shall notify the appellant, the Minister for Justice, the respondent and the prison authority of it.

55. Notification of result of appeal

(1) The Registrar at the final determination of an appeal shall notify the Registrar of the court below in a form as set out in Form 19 in Part II of the Schedule, of the decision of the Court and also of any orders or directions made or given by the Court.

(2) The Registrar of the court below shall on receipt of the notification referred to in this rule enter the particulars in the records of the court.

56. Enforcement of orders

An order given or made by the Court may be enforced by the Court or by the court below as may be most expedient.

57. Restriction on issue of certificate on conviction

Where notice of appeal has been given the Registrar of the court below shall not issue a certificate to a person convicted in that court until after the determination or abandonment of the Appeal.

58. Return of original deposition, exhibits

The Registrar shall, where practicable, upon the final determination of an appeal, return to the Registrar of the court below any original depositions, exhibits, or other documents or things usually kept by the Registrar of the court below or which form part of the record of the court below.

59. Attendance of witness before the Court

(1) Where the Court has ordered a witness to attend and be examined before it, an order in the form specified in Form 20 in Part II of the Schedule shall be served upon that witness specifying the time and place to attend for the purpose. .

(2) The order may be made at any time on the application of the appellant or respondent, but if the appellant is in custody and not legally represented the application shall be made by him as is specified in Form 21 of Part II of the Schedule.

60. Examination of witness other than before the Court

(1) Where the Court orders the examination of any witness to be conducted otherwise than before the Court itself, the order shall specify the person appointed as examiner, the place of taking the examination and the witness to be examined.

(2) The Registrar shall furnish the examiner documents or exhibits and any other material relating to the appeal as and when requested to do so.

(3) The documents and exhibits and other material shall after the conclusion of the examination be returned by the examiner, together with any depositions taken by : him under this rule to the Registrar.

(4) When the examiner has appointed the day and time for the examination he shall request the Registrar to notify the appellant or respondent and their counsel and if the appellant is in prison, the prison authority concerned.

(5) The Registrar shall serve on every witness to be examined a notice as specified in Form 22 of Part II of the Schedule.

(6) Every witness examined before an examiner under this rule shall give his evidence on oath or by affirmation to be administered by the examiner.

(7) The examination of every witness shall be taken in the form of a deposition and unless otherwise ordered by the examiner, shall be taken in public, and the caption in Form 23 of Part II of the Schedule shall be attached to the deposition.

(8) Where any witness receives an order or notice to attend before the Court or an examiner, the Registrar shall pay to the witness the appropriate sum for his expenses.

(9) The appellant, the respondent and their counsel shall be entitled to be present at the examination and may examine and cross-examine any witness who appears before the examiner.

PART IV- MISCELLANEOUS PROVISIONS

61. Vacations of the Court

The following periods shall be observed in the Court as vacations-

(a) the period commencing on the Tuesday immediately following Easter Monday in each year and ending on the Friday immediately following;

(b) the period commencing on the 1st day of August in each year and ending on the last day of September in that year; and

(c) the period commencing on the 24th day of December, in each year and ending on the 6th day of January in the year immediately following

62. Proceedings on reference

(1) When an order of reference is made by the Court to a Special Commissioner, the Court shall specify in the order-

(a) the question being referred;

(b) the person to whom as Special Commissioner the question is referred;

(c) whether the appellant or respondent or any other person on their behalf may be present at any examination or investigation or at any stage of the examination as may be ordered; and

(d) which powers of the Court are delegated to the Special Commissioner.

(2) The Court may require the Special Commissioner to-

(a) make interim reports to the Court on the question referred:

(b) permit an appellant in custody to be present at any stage of the examination or investigation and give the necessary directions to the prison authority:

(c) give directions to the Registrar that copies of any report made by the Special Commissioner shall be furnished to the appellant and respondent.

63. Waiver of non-compliance Rules

When a party to any proceedings before the Court fails to comply with these rules or with the terms of any order or directions given or with any *rule* of practice or procedure directed or determined by the Court, the failure to comply shall be a bar to the further prosecution of proceedings unless the Court considers that the non-compliance should be waived.

64. Costs of appeal

The award of costs on the determination of any matter shall be at the discretion of the Court.

65. Waiver of Gazette notification

The Chief Justice may in writing under his hand upon written representation made to him, waive *Gazette* notification and direct a case to be heard as soon as practicable where delay in the hearing of the case may cause miscarriage of justice to any of the parties.

66. Pronouncement of judgment of the Court

(1) At the conclusion of any matter before the Court, each Judge shall be at liberty to express his opinion on the matter.

(2) The judgment, order or decree of the Court shall be pronounced by the presiding Judge or any other Judge of the Court hearing the matter as the presiding Judge may direct.

(3) The opinion of each Judge of the Court shall be handed over to the Registrar and copies shall be given to the parties or their counsel immediately upon the delivery of the judgment.

67. Interpretation

In these Rules unless the context otherwise requires-

"appellant" means the party appealing from a judgment, order or decree of a court below and his counsel;

"Court" means the Court of Appeal;

"court below" means the court from which the appeal is brought;

" party" means any party to the appeal and includes his counsel;

“record” means- the aggregate of papers relating to the appeal including the pleading, proceedings, evidence and judgment to be laid before the Court of Appeal on the hearing of the appeal;

"Registrar" includes the Judicial Secretary, the Deputy Judicial Secretary and the Registrar of the Court;

"respondent" means-

(a) in a civil appeal, any party other than the appellant directly affected by the appeal;

(b) in a criminal appeal, the Republic or the person who undertakes the defence of the judgment appealed against; and) counsel for a party mentioned in (a) and (b).

68. Revocation

The following instruments are hereby revoked-

Court of Appeal Rules, 1962 (L.I. 218);

Court of Appeal (Legal Vacation) (Amendment) Rules, 1967 (L.I. 547);

Court of Appeal (Amendment) Rules, 1969 (L.I.618);

Court of Appeal (Amendment) Rules, 1975 (L.I. 1002);

Court of Appeal (Amendment) Rules, 1977 (L.I. 1128).