



## FALKLAND ISLANDS

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### Court of Appeal Rules 1997

(S.R. & O. No. 11 OF 1997)

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## FALKLAND ISLANDS

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### Court of Appeal Rules 1997

[DATE OF COMMENCEMENT: 25TH JULY 1997]  
(Unless otherwise indicated)

## PART I GENERAL

### *Introductory*

#### 1 Citation

These Rules may be cited as the Falkland Islands Court of Appeal Rules 1997.

#### 2 Application of Rules

These Rules shall regulate the practice and procedure of the Court in connection with all appeals and intended appeals from decisions of the Supreme Court of the Falkland Islands and the practice and procedure of that court in connection with appeals and intended appeals to the Court.

#### 3 Interpretation

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

"**advocate**" means a person who, under rule 15, has the right of audience before the Court;

"**Court**" means the Court of Appeal for the Falkland Islands, constituted by section 89 of the Falkland Islands Constitution;

[Revision w.e.f. 31/07/2017]

"**Judge**", in relation to the Court, means the President or a Justice of the Court of Appeal, and in relation to the Supreme Court means the Chief Justice of the Falkland Islands or, as the case may

be, an acting judge appointed under section 80(1) of Schedule 1 to the Falkland Islands Constitution Order 1985;

"**Registrar**" means the Registrar of the Court;

"**Supreme Court**", means the Supreme Court for the Falkland Islands constituted by section 86 of the Falkland Islands Constitution.

*[Revision w.e.f. 31/07/2017]*

(2) In these Rules, any reference to "**the Registrar of the Supreme Court**" is a reference to the Registrar of the Supreme Court of the Falkland Islands.

#### **4 Computation of time**

Any period of time fixed by these Rules or by any decision of the Court for doing any act shall be reckoned in accordance with the following provisions-

- (a) a period of days from the happening of an event or the doing of any act or thing shall be deemed to be exclusive of the day on which the event happens or that act or thing is done;
- (b) if the last day of the period is a Saturday or Sunday, or a public holiday in the place where the act is to be done (which days are in this rule referred to as "excluded days") the period shall include the next following day, not being an excluded day;
- (c) where any act or proceeding is directed or allowed to be done or taken on a certain day, then, if that day happens to be an excluded day, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, not being an excluded day.

#### *Administration*

#### **5 The Registrar**

The Governor may from time to time appoint a Registrar of the Court and such other officers as may from time to time appear to be necessary for the administration of the Court.

#### **6 The Registry**

(1) The Registry of the Court shall be situate in London.

(2) The President may from time to time direct during what hours the Registry shall be open for the receipt of documents lodged under the provisions of these Rules.

#### **7 Service, etc., on Registrar of Supreme Court**

(1) Where under these Rules any notice is to be given to or any document is to be lodged with the Registrar, it may be given to or lodged with the Registrar of the Supreme Court with a request that it be transmitted to the Registrar.

(2) On receipt of any notice or document given to or lodged with him, the Registrar of the Supreme Court shall immediately endorse it with the date and time when it was received by him and shall as soon as practicable thereafter transmit it to the Registrar.

(3) A notice given to or lodged with the Registrar of the Supreme Court under sub-rule (1) shall be deemed to have been given to or lodged with the Registrar at the time when it was given or lodged with the Registrar of the Supreme Court.

## **8 Use of facsimile transmission**

A copy of a notice or other document sent to the Registrar by facsimile transmission by telephone and duly received by him shall be as effective for all purposes as if it were the original.

## **9 Endorsement of documents**

Whenever any document is lodged with or transmitted to the Registrar under or in accordance with these Rules, he shall forthwith cause it to be endorsed to show the date and time when it was so lodged with or received by him.

## **10 Acceptance of documents lodged out of time**

The Registrar shall not, nor shall the Registrar of the Supreme Court, refuse to accept any document on the ground that it was lodged out of time but shall mark it "Lodged out of time" and shall inform the person lodging it that he has done so.

## **11 Numbers of applications and appeals**

(1) Every application to the Court, whether lodged before or after the institution of an appeal, other than an application made orally in the course of a hearing, and every appeal shall be given a serial number.

(2) There shall be maintained separate series of numbers for civil applications, civil appeals, criminal applications and criminal appeals.

(3) A serial number shall be allotted-

- (a) in the case of an originating application, as soon as it is received;
- (b) in the case of a civil appeal, as soon as the memorandum of appeal is received; and
- (c) in the case of a criminal appeal, as soon as the notice of appeal is received.

## **12 Maintenance of registers**

(1) The Registrar shall maintain-

- (a) a register of civil applications, in which shall be entered particulars of every originating application relating to a civil appeal lodged with the Registrar or sent to the Registrar by the Registrar of the Supreme Court;

- (b) a register of criminal applications, in which shall be entered particulars of every application relating to a criminal appeal lodged with the Registrar or sent to the Registrar by the Registrar of the Supreme Court;
- (c) a register of civil appeals, in which shall be entered particulars of every memorandum of appeal lodged in any civil matter and of the subsequent proceedings; and
- (d) a register of criminal appeals, in which shall be entered particulars of every notice of appeal lodged in any criminal matter and of the subsequent proceedings.

(2) The Registrar of the Supreme Court shall maintain-

- (a) a register of civil applications, in which shall be entered particulars of every application lodged with him relating to a civil appeal;
- (b) a register of criminal applications, in which shall be entered particulars of every application lodged with him relating to a criminal appeal.

(3) The registers to be maintained under this rule shall show the number of each application or appeal, the number of the proceedings in the Supreme Court, the names of the parties, the dates when the essential steps in the proceedings were taken and the result of the application or appeal.

### *Appearances and representation*

## **13 Appearances**

(1) A party to any proceedings in the Court may appear in person or by advocate.

(2) A corporation may appear either by advocate or by a director, manager or secretary, appointed by a resolution of the corporation, a sealed copy of which resolution has been lodged with the Registrar.

## **14 Statement in lieu of appearance**

(1) Any party to an application or appeal who does not intend to appear in person or by advocate at the hearing may lodge with the Registrar a statement in writing of his argument in support of or in opposition to the application or appeal, as the case may be.

(2) Every such statement shall be signed by or on behalf of the party lodging it and shall be lodged in quintuplicate with the Registrar at the time when he lodges the application or the memorandum of appeal or within fourteen days thereafter or within fourteen days of the service on him of the application or memorandum of appeal, as the case may be.

(3) On receipt of a statement under this rule, the Registrar shall send one copy of it to the other party, or to each other party, as the case may be.

(4) The arguments contained in any statement lodged under this rule shall receive the same consideration as if they had been advanced orally at the hearing of the application or appeal.

(5) A person who has lodged a statement under this rule shall not, except with the leave of the Court, address the Court at the hearing.

## **15 Right of audience**

The following persons shall be entitled to appear and be heard as advocates before the Court of Appeal:

- (a) members of the Bar of England, Scotland, or Northern Ireland;
- (b) solicitors of the Supreme Court in England or Northern Ireland and law agents admitted to practice in Scotland;
- (c) lawyers qualified to practise in any member state of the European Communities who enjoy the right to appear before the High Court in England or the Court of Session in Scotland or to practise as solicitors in England or Scotland; and
- (d) any other persons entitled to appear and be heard before the Supreme Court.

## **16 Change of advocate**

Where a party to an application or appeal changes his advocate or, having been represented by an advocate, decides to act in person or, having acted in person, engages an advocate, he shall, as soon as practicable, lodge with the Registrar notice of the change and shall serve a copy of such notice on the other party or on each other party appearing in person or separately represented, as the case may be.

### *Signature and service of documents, amendments, etc.*

## **17 Signature of documents**

(1) Any document may be signed on behalf of the person making it by any person appointed under rule 13 to appear on his behalf.

(2) In or in relation to a criminal appeal, a document may be signed on behalf of an appellant who is alleged to be of unsound mind by a person appointed under rule 13 to appear on his behalf or by any person in whose care he may be for the time being, including a medical officer, police officer or prison officer.

## **18 Service of documents, etc.**

(1) Where by these Rules any document is required to be served on any person, service may be effected in such way as the Court may in any case direct, which shall normally be a way in which a comparable process of the Supreme Court could be served, and in the absence of any special direction shall be made personally on the person to be served or any person appointed to appear on his behalf:

Provided that where the person to be served is not in the Falkland Islands and there is no person in the Falkland Islands appointed to appear on his behalf, the document may be served by facsimile

transmission by telephone or by registered air mail to the last known address of that person or any person appointed to appear on his behalf.

(2) Where any document is required to be served on the appellant or the respondent and two or more appellants or respondents, as the case may be, are represented by one advocate, it shall be sufficient if one copy of that document is served on that advocate.

(3) For the purpose of this rule, service on the partner or a clerk of an advocate at the office of the advocate shall be deemed to be service on the advocate.

(4) Proof of service may be given where necessary by affidavit, unless in any case the Court shall require proof by oral evidence:

Provided that, in the case of a person in custody, a letter purporting to be signed by the person in charge of the place to which that person was committed, certifying that the document was delivered to that person on a specified date, may be accepted as sufficient proof of service.

(5) Where any document is required to be sent to any person, the document may be sent by hand or by registered post to that person or to any person appointed to appear on his behalf and notice of the date fixed for the hearing of an application or appeal or for the delivery of judgment or the reasons for any decision may be given by telephone or telegram.

## **19 Change of address for service**

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

## **20 Amendment of documents**

(1) Whenever application is made to the Court for leave to amend any document, otherwise than orally in the course of a hearing, the amendment for which leave is sought shall be set out in writing and, if practicable, lodged with the Registrar and served on each other party appearing in person or separately represented, as the case may be, before the hearing of the application or, if that is not practicable, handed to the Court and to the other party or parties at the time of the hearing.

(2) Where the Court gives leave for the amendment of any document, whether on a written or an informal application, the amendment shall be made or an amended version of the document be lodged within such time as the Court when giving leave may specify and if no time is so specified then within two days of the giving of leave and on failure to comply with the requirements of this sub-rule the leave so given shall determine.

## **21 Form of amendments**

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

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

- (a) any words or figures deleted from the original, by including those words or figures and striking them through with red ink, so that what was written remains legible;

- (b) any words or figures added to the original, by writing them in red ink or underlining them in red ink.

(3) Sub-rule (2) shall apply to subsequent amendments and re-amendments mutatis mutandis and so that each subsequent set of amendments or re-amendments shall appear in a different coloured ink and be readily distinguishable from previous amendments or re-amendments.

(4) Where any record of appeal includes any amended document, the amendments shall similarly be shown in each copy of the record of appeal.

### ***Hearings***

#### **22 Arrangement of business**

The sittings of the Court and the arrangement of business shall be decided by the President and shall be notified in such manner as he may direct.

#### **23 Places and notice of hearing**

- (1) The Court shall sit in such places as the President may from time to time designate.
- (2) Every appeal shall be heard and every judgment therein delivered in open court:

Provided that the Court may decide to conduct the whole or any part of an appeal otherwise than in open court if it considers, in the circumstances of that appeal, that the public interest (including the prompt and efficient administration of justice) so requires.
- (3) Public notice of the place where and the date when an appeal is to be heard or a judgment delivered shall be given in such manner as the President may direct.
- (4) An application may be made informally by letter where all parties consent to the order sought and the Court may in its discretion dispense with the appearance of the parties or direct that they appear.

#### **24 Skeleton arguments**

- (1) The advocate for an appellant shall, not less than seven days before the date fixed for the hearing of the appeal, or such shorter period as the Registrar may allow, lodge with the Registrar in quadruplicate a skeleton argument and shall serve a copy of it on the other party or on each other party appearing in person or separately represented, as the case may be.
- (2) The advocate for a respondent in a civil appeal who has given notice of cross-appeal under rule 67 or notice of grounds for affirming the decision under rule 68, shall, not less than three days before the day fixed for the hearing of the appeal, or such shorter period as the Registrar may allow, lodge with the Registrar in quadruplicate a skeleton argument and shall serve a copy of it on the appellant or his advocate.

(3) Either side may lodge with the Registrar in quadruplicate a supplementary skeleton argument if exceptional circumstances give rise to the need for one and shall immediately send a copy of it to the other side.

(4) "Skeleton argument" means a concise statement setting out succinctly and without elaboration, numbered serially, the arguments which an advocate intends to advance before the Court at the hearing of the appeal.

## **25 Lists of authorities, etc.**

(1) An advocate who intends at the hearing of any application or appeal to rely on the judgment in any reported case or to quote from any book shall lodge with the Registrar at least twenty-four hours before the application or appeal is due to be heard a list containing the titles of such cases with their citations and the names, authors and editions of any such books and shall serve a copy of any such list on the other party or on each other party appearing in person or separately represented, as the case may be:

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

(2) Such list shall be in quadruplicate, except in the case of an application to be heard by a single Judge, when it shall be in duplicate.

(3) An advocate who intends at the hearing of any application or appeal to rely on the judgment in any unreported case shall, at or before the hearing, produce a certified or photographic copy of such judgment and, except in the case of an application to be heard by a single Judge, two other copies thereof, for use of the Court and, in every case, one copy for the use of the other party, or each other party appearing in person or separately represented, as the case may be.

## **26 Order of addresses**

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

(2) At the hearing of an appeal where notice of cross-appeal has been given, the Court will ordinarily hear the appellant first on the appeal, then the respondent on the appeal and on the cross-appeal, then the appellant in reply on the appeal and the cross-appeal and finally the respondent in reply on the cross-appeal.

(3) The Court may dismiss but shall not allow any preliminary objection, application, appeal or cross-appeal without calling on the opposing party.

(4) After hearing the opposing party, the Court may allow but shall not dismiss any preliminary objection, application, appeal or cross-appeal without giving the objector, applicant, appellant or cross-appellant an opportunity to reply.

(5) The provisions of this rule shall apply where notice of grounds for affirming the decision has been given, in the same way in all respects as where notice of cross-appeal has been given.

## *Powers of Court and Supreme Court*

### **27 Power to order security for costs in civil appeals**

(1) The Court may order that such security shall be given for the costs of a civil appeal as may be just.

(2) Where an appeal has been withdrawn under rule 70 after notice of cross-appeal has been given, the Court may order that such security shall be given for costs of the cross-appeal as may be just.

(3) The Court may at any time, if it thinks fit, direct that further security for costs be given and may direct that security be given for past costs relating to the matters in question in the appeal.

### **28 Power to order stay of execution and suspension of sentence**

(1) The institution of an appeal shall not operate to stay execution or to suspend any sentence but the Court or the Supreme Court may-

- (a) in any civil proceedings, where a notice of appeal has been lodged in accordance with rule 52, order a stay of execution;
- (b) in any criminal proceedings, where notice of appeal has been given in accordance with rule 79, order that the appellant be released on bail, subject to such conditions as to the furnishing of security, or otherwise, as the court may think fit, or that the execution of any warrant of distress be suspended pending the determination of the appeal.

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

### **29 Power to extend time**

(1) The Court may for sufficient reason extend the time limited by these Rules or by any decision of the Court or of the Supreme Court for the doing of any act authorized or required by these Rules, whether before or after the expiration of such time and whether before or after the doing of the act, and reference in these Rules to any such time shall be construed as a reference to such time as so extended:

Provided that the power to extend the time for giving notice of appeal or notice of application for leave to appeal shall not be exercisable in the case of a conviction involving sentence of death.

(2) An order extending the time for doing any act shall specify the time within which such act shall be done.

### **30 Power to allow amendments**

The Court may, on the application of any party, which may be made orally during the course of a hearing, allow the amendment of any document, on such terms as it may think fit.

### **31 Power to re-appraise evidence and to take additional evidence**

(1) On any appeal from a decision of the Supreme Court acting in the exercise of its original jurisdiction, the Court shall have power-

- (a) to re-appraise the evidence and to draw inferences of fact; and
- (b) in its discretion, for sufficient reason, to take additional evidence or to direct that additional evidence be taken by the Supreme Court or by a commissioner.

(2) When additional evidence is taken by the Court, it may be oral or by affidavit and the Court may allow the cross-examination of any deponent.

(3) When additional evidence is taken by the trial court, it shall certify such evidence to the Court, with a statement of its opinion on the credibility of the witness or witnesses giving the additional evidence; when evidence is taken by a commissioner, he shall certify the evidence to the Court, without any such statement of opinion.

(4) The parties to an appeal shall be entitled to be present when such additional evidence is taken.

### **32 Power to call for report**

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

### **33 General powers**

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

### *Judgments and orders*

#### **34 Judgment**

(1) Judgment may be given at the close of the hearing of an application or appeal or reserved for delivery on some future day which may be appointed at the hearing or subsequently notified to the parties.

(2) In any proceedings separate judgments may be delivered by the members of the Court, but where two or more members agree they may sign a single judgment.

(3) In a criminal matter a dissenting Judge shall not be obliged to deliver a separate judgment.

(4) Where the decision is not unanimous then the decision of the majority of the members of the Court shall constitute the decision of the Court.

(5) Notwithstanding the provisions of sub-rule (1), the Court may at the close of an application or appeal, give its decision but reserve its reasons and in such a case the reasons may be delivered at a date which shall be notified to the parties. The reasons shall in every case be read aloud in open court, unless the Court directs that they be read while the Court is sitting in camera.

(6) Where judgment is given at the close of the hearing as the judgment of the Court, it shall be delivered by such member of the Court, other than a Judge who dissents, as the presiding Judge may direct.

(7) Where the Court has reserved judgment or indicated that it will give reasons later, any judgment or reasons, being in writing and signed by the Judge who sat at the hearing, may be delivered by any other Judge, whether or not he sat at the hearing, or by the Registrar.

(8) A judgment shall be dated as of the day when it is delivered.

### **35 Correction of errors**

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

(2) An order of the Court may at any time be corrected by the Court, either of its own motion or on the application of any interested person, if it does not correspond with the judgment it purports to embody or, where the judgment has been corrected under sub-rule (1), with the judgment as so corrected.

### **36 Decisions to be embodied in orders**

(1) Every decision of the Court on an application or appeal, other than on an application made orally in the course of a hearing, shall be embodied in an order.

(2) Every such order shall be dated as of the date when the decision was delivered and shall in addition show the date on which the order was extracted.

### **37 Preparation of orders**

(1) Where a decision of the Court was given in a civil application or appeal-

- (a) the party who has been substantially successful shall, as soon as practicable, prepare a draft of the order and shall submit it for approval of the other parties;
- (b) if the parties are unable to agree which party was substantially successful, the Registrar, on the application of either party, which application may be made informally, and after giving all parties an opportunity of being heard, shall direct by which party the draft is to be prepared, and such direction shall be final;
- (c) if all parties approve the draft, the order shall, unless the presiding Judge otherwise directs, be in accordance with it;

- (d) if the parties do not agree on the form of the order, or if there is unreasonable delay in the preparation or approval of a draft, the form of the order shall be settled by the presiding Judge or by such Judge who sat at the hearing as the presiding Judge shall direct, after giving all the parties an opportunity of being heard.

(2) Where a decision of the Court was given in a criminal application or appeal, the order shall be drawn up by the Registrar who, in drawing up the order, shall not be required to consult the parties or their advocates.

### **38 Notification of decisions**

- (1) The Registrar shall send to the Registrar of the Supreme Court a sealed copy of the order embodying the decision of the Court in any civil or criminal appeal from that court.
- (2) The Registrar shall, so far as is practicable, inform any party to any proceeding in the Court who was not present or represented at the hearing of such proceeding of the decision of the Court therein.

## **PART II** **APPLICATIONS**

### **39 Application for leave to appeal in civil and criminal matters**

In civil and criminal matters-

- (a) where an appeal lies to the Court with leave of the Supreme Court, application for such leave may be made orally at the time when the decision is given against which it is desired to appeal or within twenty-eight days thereafter;
- (b) where leave to appeal has been refused by the Supreme Court and an appeal lies to the Court by leave of the Court, application for such leave shall be made within twenty-eight days of the refusal of leave by the Supreme Court.

### **40 Form of applications**

- (1) Subject to the provisions of sub-rule (3) and to any other rule allowing oral application, all applications to the Court shall be in writing and shall state the grounds of the application.
- (2) An application shall be substantially in the Form CA1 in the First Schedule and shall be signed by or on behalf of the applicant.
- (3) The provisions of this rule shall not apply-
  - (a) to applications made in the course of a hearing, which may be made orally; or
  - (b) to applications made by consent of all parties, which may be made informally by letter.

## **41 Supporting documents**

(1) Every application to the Court, other than an application made orally in the course of a hearing or an application made informally by letter with the consent of all parties, shall if necessary be supported by one or more affidavits of the applicant or of some other person or persons having knowledge of the facts.

(2) An applicant may, with the leave of a Judge of the Court or with the consent of the other party, lodge one or more supplementary affidavits; application for such leave may be made informally.

(3) Every application to the Court for leave to appeal shall be accompanied by a copy of the decision against which it is desired to appeal and, where an application has been made to the Supreme Court for leave to appeal and such application has been refused, by a copy of the order refusing the application.

## **42 Number of copies of applications**

When an application is to be heard by a single Judge of the Court, the application and other documents relating thereto shall be filed in duplicate; in all other cases, they shall be filed in quadruplicate.

## **43 Service of application**

(1) The application and copies of all affidavits shall be served on all necessary parties not less than seven clear days before the hearing:

Provided that in case of urgency, an application, other than an application under rule 96, may be made ex parte, but in any such case, if the applicant is represented by an advocate, the advocate shall sign a certificate of urgency, which shall be filed with the proceedings.

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

## **44 Affidavits in reply**

(1) Any person served with an application under rule 43 may lodge one or more affidavits in reply and shall as soon as practicable serve a copy or copies thereof on the applicant.

(2) Any such person may, with the leave of a Judge of the Court or with the consent of the applicant, lodge one or more supplementary affidavits; application for such leave may be made informally.

## **45 Death of parties**

(1) A civil application shall not abate on the death of the applicant or the respondent but the Court shall, on the application of any interested person, cause the legal personal representative of the deceased to be made a party in place of the deceased.

(2) A criminal application shall abate, where the applicant is the Crown, on the death of the respondent, and in any case, on the death of the applicant.

#### **46 Hearing of applications**

(1) Every application to the Court, other than an application included in sub-rule (2), shall be heard by a single Judge:

Provided that any such application may be adjourned by the Judge for determination by the Court.

(2) This rule shall not apply-

- (a) to an application for leave to appeal; or
- (b) to an application for a stay of execution; or
- (c) to an application to strike out a notice of appeal or an appeal; or
- (d) to an application made as ancillary to an application under paragraph (a) or (b) or made orally in the course of a hearing by the Court.

#### **47 Hearing in court or chambers**

(1) An application to be heard by a single Judge of the Court shall be heard in chambers unless the Judge otherwise directs.

(2) Any other application shall be heard in court, unless the President or the presiding Judge shall otherwise direct.

#### **48 Procedure on non-appearance**

(1) If on the day fixed for the hearing of an application the applicant does not appear and has not lodged a statement under rule 14, the application may be dismissed, unless the Court sees fit to adjourn the hearing.

(2) If the applicant appears and the respondent, or a respondent, as the case may be, fails to appear, the application shall proceed in the absence of the respondent, unless the Court sees fit to adjourn the hearing.

(3) Where an application has been dismissed under sub-rule (1) or allowed under sub-rule (2), the party in whose absence the application was determined may apply to the Court to restore the application for the hearing or to re-hear it, as the case may be, if he can show that he was prevented by any sufficient cause from appearing when the application was called on for hearing.

(4) An application made under sub-rule (3) shall be made within twenty-eight days of the decision of the Court, or in the case of a party who should have been served with notice of the hearing but was not so served, within twenty-eight days of his first hearing of that decision.

(5) The provisions of sub-rule (1) shall not apply to any criminal application if the applicant is in custody and is not represented by an advocate; in any such case, the application shall be heard notwithstanding the absence of the applicant, unless the Court shall otherwise order.

## **49 Reference from decision of single Judge**

(1) Where any party, being dissatisfied with the decision of a single Judge on an application heard by him, wishes to have that decision, and any order consequent upon it, varied, discharged or reversed by the Court, he may give notice thereof orally to the Judge at the time when the decision is given or by writing to the Registrar within twenty-one days thereafter.

(2) At the hearing by the Court of an application previously decided by a single Judge, no additional evidence shall be adduced except with leave of the Court.

## **50 Rescinding of orders**

(1) An order made on an application heard by a single Judge may be varied or rescinded by that Judge or by any other Judge or by the Court on the application of any person affected thereby, if-

- (a) the order was one extending the time for doing any act, otherwise than to a specific date; or
- (b) the order was one permitting the doing of some act, without specifying the date by which the act was to be done,

and the person on whose application the order was made has failed to show reasonable diligence in the matter.

(2) An order made on an application to the Court may similarly be varied or rescinded by the Court.

## **PART III**

## **CIVIL APPEALS**

### **51 Application of Part III**

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

### **52 Notice of appeal**

(1) Any person who desires to appeal to the Court shall give notice in writing, which shall be lodged in duplicate with the Registrar of the Supreme Court.

(2) Every such notice shall be so lodged within twenty-eight days of the date of the decision against which it is intended to appeal.

(3) Every notice of appeal shall state whether it is intended to appeal against the whole or part only of the decision, shall specify the part complained of, shall state the address for service of the appellant and shall state the names and addresses of all persons intended to be served with copies of the notice.

(4) When an appeal lies only with leave, it shall not be necessary to obtain such leave before lodging the notice of appeal.

(5) Where it is intended to appeal against a decree or order, it shall not be necessary that the decree or order be extracted before lodging the notice of appeal.

(6) A notice of appeal shall be substantially in Form CA2 in the First Schedule and shall be signed by or on behalf of the appellant.

### **53 Transmission of notice of appeal**

On receipt of a notice of appeal, the Registrar of the Supreme Court shall forthwith send one copy thereof to the Registrar.

### **54 Service of notice of appeal**

(1) An intended appellant shall, before or within twenty-eight days after lodging notice of appeal, serve copies thereof on all persons affected by the appeal:

Provided that the Court may on application, which may be made ex parte, direct that service need not be effected on any person who took no part in the proceedings in the Supreme Court.

(2) Where any person required to be served with a copy of a notice of appeal gave any address for service in or in connection with the proceedings in the Supreme Court, and has not subsequently given any other address for service, the copy of the notice of appeal may be served on him at that address, notwithstanding that it may be that of an advocate who has not been retained for the purpose of an appeal.

### **55 Death of respondent before service**

A notice of appeal shall not be incompetent by reason only that the person on whom it is required to be served was dead at the time when the notice was lodged but a copy of the notice shall be served as soon as practicable on the legal representative of the deceased.

### **56 Respondent to give address for service**

(1) Every person on whom a notice of appeal is served shall-

- (a) within twenty-one days after service on him of the notice of appeal lodged with the Registrar serve on the intended appellant notice of a full and sufficient address for service; and
- (b) within a further fourteen days serve a copy of such address for service on every other person named in the notice of appeal as a person intended to be served:

Provided that a person whose address for service is unchanged from his address of record in the proceedings in the Supreme Court shall not be required to comply with this rule.

(2) A notice of address for service shall be substantially in the Form CA3 in the First Schedule and shall be signed by or on behalf of the person lodging it.

(3) The lodging and service of an address for service shall not operate or be construed as an admission that the appeal is competent or as a waiver of any irregularity.

## **57 Separate notices of appeal from the same decision**

(1) Where two or more parties have given notice of appeal from the same decision, the second and all subsequent notices to be lodged shall be deemed to be notices of address for service within the meaning of rule 56 and the party or parties giving those notices shall be respondents in the appeal.

(2) A party whose notice of appeal is deemed to be a notice of address for service shall not be required to comply with rule 56 if he has served copies of his notice of appeal on all persons on whom under that rule he would have been required to serve notice of his address for service.

## **58 Application to strike out notice of appeal or appeal**

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

## **59 Institution of appeals**

(1) Subject to the provisions of rule 95, an appeal shall be instituted by lodging with the Registrar, within sixty days of the date when the notice of appeal was lodged-

- (a) a memorandum of appeal, in quadruplicate;
- (b) the record of appeal, in quadruplicate;
- (c) the prescribed fee; and
- (d) security for the costs of the appeal, if any order for security has been made:

Provided that where an application for a copy of the proceedings in the Supreme Court has been made within thirty days of the date of the decision against which it is desired to appeal, there shall, in computing the time within which the appeal is to be instituted, be excluded such time as may be certified by the Registrar of the Supreme Court as having been required for the preparation and delivery to the appellant of such copy.

(2) An appellant shall not be entitled to rely on the proviso to sub-rule (1) unless his application for such copy was in writing and a copy of it was sent to the respondent.

## **60 Effect of default in instituting appeal**

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

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

## **61 Death of party to intended appeal**

(1) An appeal shall not be instituted in the name of a person who is dead but may be instituted in the name of his legal representative.

(2) An appeal shall not be incompetent by reason only that the respondent was dead at the time when it was instituted but the Court shall, on the application of any interested person, cause the legal representative of the deceased to be made a party in place of the deceased.

## **62 Contents of memorandum of appeal**

(1) A memorandum of appeal shall set forth concisely and under distinct heads, without argument or narrative, the grounds of objection to the decision appealed against, specifying the points which are alleged to have been wrongly decided, and the nature of the order which it is proposed to ask the Court to make.

(2) The grounds of objection shall be numbered consecutively.

(3) A memorandum of appeal shall be substantially in the Form CA4 in the First Schedule and shall be signed by or on behalf of the appellant.

## **63 Contents of record of appeal**

(1) For the purpose of an appeal from the Supreme Court in its original jurisdiction, the record of appeal shall, subject to the provisions of sub-rule (3), contain copies of the following documents in the following order:

- (a) an index of all the documents in the record with the numbers of the pages at which they appear;
- (b) a statement showing the address for service of the appellant and the address for service furnished by the respondent and, as regards any respondent who has not furnished an address for service under rule 56, his last known address and proof of service on him of the notice of appeal;
- (c) the notice of appeal;
- (d) the judgment, decree or order;
- (e) the order, if any, giving leave to appeal where it is not already included in the judgment, decree or order;
- (f) the pleadings;
- (g) such parts of the transcript of the official shorthand note or record, if any, of the evidence given in the Supreme Court as are relevant to any question at issue in the appeal, or in the absence of such a note or record, such parts of the judge's note of the evidence as are relevant to any such question;
- (h) the transcript of the official shorthand note or record, if any, of the judge's reasons for giving the judgment or making the order of the Supreme Court, or in the absence of such note or record, the trial judge's note of his reasons or, if the judge's note is not

available, the trial advocate's note of the judge's reasons approved wherever possible by the trial judge;

- (i) the affidavits read and all documents put in evidence at the hearing or, if such documents are not in the English language, certified translations thereof so far as they are relevant to any question at issue on the appeal;
- (j) such other documents, if any, as may be necessary for the proper determination of the appeal, including any interlocutory proceedings which may be directly relevant:

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

(2) For the purpose of an appeal from the Supreme Court in its appellate jurisdiction, the record of appeal shall contain documents relating to the proceedings in the trial court corresponding as nearly as may be to those set out in sub-rule (1) and shall contain also the following documents relating to the appeal to the Supreme Court (or documents corresponding thereto as nearly as may be)-

- (i) the order, if any, giving leave to appeal;
- (ii) the memorandum of appeal;
- (iii) the record of proceedings;
- (iv) the judgment or order;
- (v) the decree or order;
- (vi) the notice of appeal.

(3) The Judge or the Registrar of the Supreme Court may, on the application of any party, direct which documents or parts of documents should be excluded from the record. Application for such a direction may be made informally.

(4) Documents produced in evidence shall be put in order of the dates they bear or, where they are undated, the dates when they are believed to have been made, without regard to the order in which they were produced in evidence:

Provided that an affidavit filed in support of a chamber summons shall be bound immediately following the summons.

(5) Each copy of the record of appeal shall be certified to be correct by the appellant or by any person appointed under rule 13 to appear on his behalf.

#### **64    Contents of decrees and orders for purposes of appeal**

(1) For the purposes of an appeal to the Court against any decree or order, it shall not be necessary for the amount of any costs ordered to be paid to be stated therein, and such decree or order shall be deemed to be duly drawn up and extracted if in addition to other matters required to be embodied therein it sets out the order or orders for costs but not the result of any taxation.

(2) Where leave to appeal has been given or refused by the Supreme Court immediately following the delivery of the decision against which it is desired to appeal, a statement that leave has been given or refused shall be included in the decree or order.

## **65 Service of memorandum and record of appeal**

(1) The appellant shall, before or within fourteen days after lodging the memorandum of appeal and the record of appeal with the Registrar, serve copies thereof on each respondent who has complied with rule 56, or who is not required to comply with it.

(2) The appellant shall also serve copies of the memorandum and the record of appeal on such other parties to the original proceedings as the Court may at any time on application or of its own motion direct and within such time as the Court may appoint.

## **66 Supplementary records**

(1) If a respondent is of opinion that the record of appeal is defective or insufficient for the purposes of his case, he may lodge with the Registrar four copies of a supplementary record of appeal containing copies of any further documents or of any additional parts of documents which are, in his opinion, required for the proper determination of the appeal.

(2) The respondent shall as soon as practicable after lodging a supplementary record of appeal, serve copies of it on the appellant and on each other respondent who has complied with or who is not required to comply with rule 56.

(3) An appellant may, at any time, lodge with the Registrar four copies of a supplementary record of appeal and shall as soon as practicable thereafter serve a copy of it on each respondent who has complied with or who is not required to comply with rule 56.

## **67 Notice of cross-appeal**

(1) A respondent who desires to contend at the hearing of the appeal that the decision of the Supreme Court or any part thereof should be varied or reversed, either in any event or in the event of the appeal being allowed in whole or in part, shall give notice to that effect, specifying the grounds of his contention and the nature of the order which he proposes to ask the Court to make, or to make in that event, as the case may be.

(2) A notice given by a respondent under this rule shall state the names and addresses of any persons intended to be served with copies of the notice and shall be lodged in quadruplicate with the Registrar not more than forty-two days after service on the respondent of the memorandum of appeal and the record of appeal.

(3) A notice of cross-appeal shall be substantially in the Form CA5 in the First Schedule and shall be signed by or on behalf of the respondent.

## **68 Notice of grounds for affirming decision**

(1) A respondent who desires to contend on an appeal that the decision of the Supreme Court should be affirmed on grounds other than or additional to those relied upon by that court shall give notice to that effect, specifying the grounds of his contention.

(2) A notice given by a respondent under this rule shall state the names and addresses of any persons intended to be served with copies of the notice and shall be lodged in quadruplicate with the Registrar not more than forty-two days after service on the respondent of the memorandum of appeal and the record of appeal.

(3) A notice of grounds for affirming a decision shall be substantially in the Form CA6 in the First Schedule and shall be signed by or on behalf of the respondent.

(4) A respondent who desires to contend at the hearing of the appeal that part of the decision of the Supreme Court should be varied or reversed and that part of that decision should be affirmed on grounds other than or additional to those relied upon by that court may include both such contentions in a notice of cross-appeal under rule 67 and shall not be required to give notice also under this rule.

(5) The provisions of sub-rules (1), (2) and (3) of this rule and those of rule 67 shall apply mutatis mutandis to an appellant who desires to contend in opposition to a cross-appeal that the decision of the Supreme Court should be affirmed on grounds other than or additional to those relied on by that court.

## **69 Service of notice of cross-appeal or notice of grounds for affirming decision**

(1) A respondent who intends to cross-appeal or to contend that the decision of the Supreme Court should be affirmed on grounds other than or additional to those relied on by that court shall, before or within fourteen days after lodging his notice of cross-appeal or notice of grounds for affirming the decision, as the case may be, serve a copy thereof on the appellant and copies thereof on all persons directly affected by the cross-appeal or by the appeal, as the case may be.

(2) The respondent shall also serve copies of the notice of cross-appeal or notice of grounds for affirming the decision, as the case may be, on such other parties to the original proceedings as the Court may at any time on application or of its own motion direct and within such time as the Court may direct.

## **70 Withdrawal of appeal**

(1) An appellant may at any time after instituting his appeal and before the appeal is called on for hearing lodge with the Registrar notice in writing that he does not intend further to prosecute the appeal.

(2) The appellant shall, before or within fourteen days after lodging the notice of withdrawal, serve copies thereof on each respondent who has complied with or who is not required to comply with the requirements of rule 56.

(3) If all the parties to the appeal consent to the withdrawal of the appeal, the appellant may lodge with the Registrar the document or documents signifying the consent of the parties and thereupon the appeal shall be struck out of the list of pending appeals.

(4) If all the parties to the appeal do not consent to the withdrawal of the appeal, the appeal shall stand dismissed with costs, except as against any party who has consented, unless the Court, on the application of the appellant, otherwise orders. Any such application shall be made within fourteen days after the lodging of the notice of withdrawal.

## **71 Rights of respondent when appeal withdrawn**

(1) If an appeal is withdrawn under rule 70 after notice of cross-appeal has been given, the respondent who gave the notice may withdraw it within twenty-one days of the service on him of the notice of withdrawal; if it is not so withdrawn, the cross-appeal shall proceed to hearing and the provisions of these Rules shall apply as if the cross-appellant were an appellant and the appellant a respondent.

(2) If an appeal is withdrawn under rule 70 within fourteen days of the date when the appeal was instituted, any respondent who has not lodged a notice of cross-appeal shall be entitled to give notice of appeal notwithstanding that the time limited by rule 52 has expired, if he does so within twenty-one days of the date when the appellant's notice of withdrawal was served on him.

## **72 Withdrawal of notice of cross-appeal or notice of grounds for affirming decision**

(1) A respondent who has given notice of cross-appeal or notice of grounds for affirming the decision of the Supreme Court may withdraw the same at any time before the appeal is called on for hearing, by lodging with the Registrar notice in writing to that effect, signed by him or on his behalf.

(2) The respondent shall, before or as soon as practicable after lodging the notice of withdrawal, serve a copy thereof on the appellant and copies thereof on all other respondents who were served with the notice of cross-appeal or notice of grounds for affirming the decision, as the case may be.

## **73 Death of party to appeal**

An appeal shall not abate on the death of the appellant or of a respondent but the Court shall, on the application of any interested person, cause the legal representative of the deceased to be made a party in place of the deceased.

## **74 Notice of hearing**

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

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

## **75 Appearances at hearing and procedure on non-appearance**

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

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

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

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

(3) An application for restoration under the proviso to sub-rule (1) or the proviso to sub-rule (2) shall be made within twenty-eight days of the decision of the Court, or in the case of a party who should have been served with notice of the hearing but was not so served, within twenty-eight days of his first hearing of that decision.

(4) For the purposes of this rule, a party who has lodged a statement under the provisions of rule 14 shall be deemed to have appeared.

## **76 Consolidation of appeals**

The Court may for sufficient reason order any two or more appeals to be consolidated on such terms as it thinks just or may order them to be heard at the same time or one immediately after the other or may order any of them to be stayed until after the determination of any other of them.

## **77 Arguments at hearing**

At the hearing of an appeal-

- (a) no party shall, without the leave of the Court, argue that the decision of the Supreme Court should be reversed or varied except on a ground specified in the memorandum of appeal or in a notice of cross-appeal, or support the decision of the Supreme Court on any ground not relied on by that Court or specified in a notice given under rule 67 or rule 68;
- (b) a respondent shall not, without the leave of the Court, raise any objection to the competence of the appeal which might have been raised by application under rule 58;
- (c) the Court shall not allow an appeal or cross-appeal on any ground not set forth or implicit in the memorandum of appeal or notice of cross-appeal, without affording the respondent or respondents, or any person who, in relation to that ground should have been made a respondent, or the appellant, as the case may be, an opportunity of being heard on that ground.

## **PART IV**

### **CRIMINAL APPEALS**

## **78 Application of Part IV**

This Part of these Rules shall apply only to appeals from the Supreme Court acting in its original and appellate jurisdiction in criminal cases.

## **79 Notice of appeal**

(1) A person who desires to appeal to the Court shall give notice in writing, which shall be lodged in sextuplicate with the Registrar of the Supreme Court within twenty-eight days of the date of the decision against which it is desired to appeal, and the notice of appeal shall institute the appeal.

(2) Every notice of appeal shall-

- (a) state shortly the nature of the conviction, sentence or finding against which it is desired to appeal; and
- (b) contain the address at which any documents connected with the appeal may be served on the appellant.

(3) Where two or more persons have been convicted at the same trial and any two or more of them desire to appeal to the Court, they may at their option lodge separate notices or a joint notice of appeal and where a joint notice of appeal is lodged, it may include, in addition to the grounds of appeal common to all the appellants, grounds peculiar to one or more of them.

(4) Where an appeal lies only on a certificate that the case is a fit case for appeal, or with leave, it shall not be necessary to obtain such certificate or leave before lodging the notice of appeal.

(5) Where a notice of appeal is signed by an advocate, he shall add after his signature the words "Retained only to prepare this notice", "Retained to appear at the hearing of the appeal" or "Assigned to appear at the hearing of the appeal", as the case may be.

(6) A notice of appeal shall be substantially in the Form CA7 in the First Schedule and shall be signed by or on behalf of the appellant.

## **80 Consolidation of appeals**

Where two or more appeals are brought from convictions or sentences passed at the same trial, they shall, unless the Court otherwise orders, be consolidated and shall proceed as one appeal.

## **81 Transmission of notice of appeal**

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

## **82 Preparation of record of appeal**

(1) Subject to the provisions of sub-rule (4), as soon as practicable after a notice of appeal has been lodged, the Registrar of the Supreme Court shall prepare the record of appeal.

(2) For the purpose of an appeal from the Supreme Court in its original jurisdiction, the record of appeal shall contain copies of the following documents in the following order:

- (a) an index of all documents in the record with the numbers of the pages at which they appear;
- (b) a list of all exhibits put in at the trial;

- (c) the notice of appeal;
- (d) the order, if any, giving leave to appeal or the certificate, if any, that the case is a fit case for appeal;
- (e) the information, indictment or charge;
- (f) the transcript of any shorthand notes taken or sound recording made at the trial, the trial judge's notes of the hearing, including the proceedings on and after sentence;
- (g) all documentary exhibits, photographs and plans put in at the trial and all depositions read in consequence of the absence of intended witnesses;

Provided that the Registrar of the Supreme Court may in his discretion omit copies of documents which are of great length or other exhibits which are difficult to reproduce or may include copies of the relevant parts only of any such documents;

- (h) the verdict of the jury, if any;
- (i) the judgment, if any.

(3) For the purpose of appeal from the Supreme Court in its appellate jurisdiction, the record of appeal shall contain documents relating to the proceedings in the trial court corresponding as nearly as may be to those set out in sub-rule (2) and shall contain also copies of the following documents relating to the appeal to the Supreme Court:

- (i) the petition of appeal;
- (ii) the record of proceedings;
- (iii) the judgment;
- (iv) the order, if any, and
- (v) the notice of appeal.

(4) Notwithstanding the provisions of sub-rule (1), the Registrar of the Supreme Court shall not prepare the record of appeal-

- (a) where the notice of appeal has been lodged out of time, until he has been notified that the time has been extended by order of the Court or unless the President shall otherwise direct;
- (b) where the appeal cannot be heard without leave to appeal or a certificate that the case is a fit case for appeal, until he has been notified that such leave or certificate has been given or unless the President shall otherwise direct;
- (c) where the appeal is from the Supreme Court in its appellate jurisdiction, until the prescribed fee, or such part thereof, if any, as the appellant may be liable to pay under an order made under rule 96, has been paid or a deposit on account thereof has been made to the satisfaction of the Registrar of the Supreme Court.

(5) The Registrar shall certify each copy of the record of appeal to be a true copy of the original proceedings:

Provided that where the record is produced by printing or photography, it shall suffice if one copy is so certified.

### **83 Service and transmission of record of appeal, etc.**

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

(2) The Registrar of the Supreme Court shall at the same time send to the Registrar the original record of proceedings in the Supreme Court, and the original documentary exhibits in the Supreme Court, other than any of great bulk, but shall not send any exhibits other than documentary ones, unless requested to do so by the Registrar.

### **84 Memorandum of appeal**

(1) The appellant shall, within forty-two days after service on him of the record of appeal, lodge a memorandum of appeal, in quintuplicate, with the Registrar.

(2) The memorandum shall set forth concisely and under distinct heads, numbered consecutively, without argument or narrative, the grounds of objection to the decision appealed against.

(3) The Registrar shall as soon as practicable cause a copy of the memorandum of appeal to be served on the respondent.

(4) A memorandum of appeal shall be substantially in the Form CA8 in the First Schedule and shall be signed by or on behalf of the appellant.

(5) If no memorandum of appeal is lodged within the prescribed time, the Court may dismiss the appeal or may direct that it be set down for hearing:

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

### **85 Supplementary memorandum**

The appellant may at any time with the leave of the Court lodge a supplementary memorandum of appeal and shall cause a copy thereof to be served on the respondent.

### **86 Withdrawal of appeal**

(1) An appeal may be withdrawn at any time before hearing by notice in writing to the Registrar signed by the appellant, and upon such notice being given the appeal shall be deemed to have been dismissed.

(2) When an appeal is withdrawn, the Registrar shall forthwith notify the respondent and the Registrar of the Supreme Court.

(3) An appeal which has been withdrawn may be restored by leave of the Court on the application of the appellant if the Court is satisfied that the notice of withdrawal was induced by fraud or

mistake, oppression or undue influence, and that the interests of justice require that the appeal be heard.

## **87 Abatement of appeal**

An appeal, other than an appeal against a sentence of fine or an order for costs, compensation or forfeiture, shall abate on the death of the appellant or, where the appellant is the Crown, on the death of the respondent.

## **88 Notice of hearing**

(1) The Registrar shall cause notice to be given to the appellant and the respondent of the time and place at which an appeal will be heard.

(2) Such notice shall be given not less than fourteen days before the date appointed for the hearing, unless in any case the President or the presiding judge shall otherwise direct.

## **89 Appearance at hearing and dismissal for non-appearance**

(1) The appellant, other than an appellant who is in custody, and the respondent shall be entitled to be present at the hearing of the appeal.

(2) If on the day fixed for the hearing of the appeal, the appellant does not appear in person or by advocate and has not lodged a statement under rule 14, the appeal may be dismissed or may be heard in his absence:

Provided that where an appeal has been dismissed under this sub-rule, the Court may restore it for hearing if it is satisfied that the appellant was prevented by any sufficient cause from appearing when the appeal was called on for hearing.

(3) If on the day fixed for the hearing of an appeal, the respondent does not appear in person or by advocate, the appeal shall proceed, unless the Court sees fit to adjourn it.

## **90 Arguments at hearing**

At the hearing of an appeal the appellant shall not, without the leave of the Court, argue any ground of appeal not specified in the memorandum of appeal or in any supplementary memorandum lodged under rule 85.

## **91 Appellant in custody**

(1) If the appellant is in custody, he shall be deemed to have complied with the requirements of rules 14, 79, 84 and 85 or any of them if he gives to the person in charge of the place to which he was committed the statement, notice of appeal, memorandum of appeal or supplementary memorandum provided for in those rules respectively.

(2) In any such case, in computing the time limited for lodging the statement, notice or memorandum, there shall be excluded-

- (a) the time between the appellant's conviction and his arrival at the place to which he was committed; and

- (b) the time between the giving of the statement, notice or memorandum to the person in charge of that place and its lodging by him with the Registrar of the Supreme Court or the Registrar, as the case may be.

(3) A person in charge of a place where any person is held in custody who receives a statement, notice or memorandum under this rule shall forthwith endorse the same with the date and time of receipt.

## **PART V** **FORMS, FEES, INTEREST AND COSTS**

### **92 Forms**

The forms contained in the First Schedule shall be used for the purposes to which they are expressed to relate, with such modifications as the circumstances may require.

### **93 Fees**

Subject to the provisions of rules 95 and 96, the fees set out in the Second Schedule shall be payable in respect of the matters and services therein set out:

Provided that-

- (a) no fee shall be payable upon any appeal from the Supreme Court acting in its original jurisdiction in a criminal case or on any application in connection with any such appeal or for the supply of the copy of the record of appeal to any party to any such appeal;
- (b) no fee shall be payable by the Crown or by the Government of the Falkland Islands in respect of any criminal application or appeal;
- (c) copies of any documents may be issued without fee to such persons as the President may nominate or at such reduced fee as the President may direct.

### **94 Time for payment of fees**

(1) The fee payable on lodging any document shall be payable at the time when the document is lodged.

(2) The Registrar may require the payment in advance of the fee for any other service or, where the amount of the fee cannot conveniently be ascertained when the service is requested, may require a deposit towards it. Any fee so paid in advance or deposit made shall be refunded if the request for the service is cancelled before the service has been undertaken.

### **95 Relief from fees in civil appeals**

If in any appeal from the Supreme Court in its original or appellate jurisdiction in any civil case, the Court is satisfied on the application of an appellant that he lacks the means to pay the required fees and that the appeal is not without reasonable possibility of success, the Court may by order direct that the appeal may be lodged without prior payment of fees of court, or on payment of any specified amount less than the required fees.

## **96 Waiver of fees in criminal appeals**

(1) If in any appeal from the Supreme Court acting in its appellate jurisdiction in any criminal matter, the Judge of the Supreme Court is satisfied on the application of the appellant-

- (a) that the appeal raises one or more questions of law proper for determination by the Court; and
- (b) that the appellant ought not, by reason of poverty, to be required to pay the whole of the fees ordinarily payable, including the fees for preparing the record of appeal,

he may by order direct that the whole or any part of such fees be waived.

(2) An application for an order under sub-rule (1) may be made informally at any time but not later than fourteen days after the appellant has been informed of the amount which, in the absence of an order, he would be required to pay as fees or to deposit in respect thereof:

Provided that the Judge of the Supreme Court may entertain any such application out of time if it appears to him that there was sufficient cause for the delay in making the same.

(3) The Judge of the Supreme Court considering the means of an applicant may rely on a report made to him by the Registrar of that Court.

(4) The Judge of the Supreme Court making an order under sub-rule (1) may, at the same time and without formal application, order the extension of the time for giving notice of appeal or for lodging the memorandum of appeal.

(5) An order allowing or dismissing an application under sub-rule (1) shall be final:

Provided that the decision by the Judge of the Supreme Court that an appeal raises or does not raise a question of law proper for determination by the Court shall be conclusive of that question only in relation to the application.

## **97 Interest on decretal amount**

Where an appeal from a decree awarding money is dismissed, interest on the decretal amount, for such time as execution has been delayed by the appeal, shall be allowed, unless the Court otherwise orders.

## **98 Assessment of costs or direction for taxation**

(1) When making any decision as to the payment of costs, the Court may assess the same or direct them to be taxed and any decision as to the payment of costs, not being a decision whereby the amount of costs is assessed, shall operate as a direction that the costs be taxed.

(2) For the purpose of execution in respect of costs, the decision of the Court directing taxation and the certificate of the taxing officer as to the result of such taxation shall together be deemed to be a decree.

## **99 Taxing officer**

The Registrar shall be a taxing officer with power to tax the costs as between party and party of or arising out of any application or appeal to the Court.

## **100 Reference on taxation**

(1) Any person who is dissatisfied with a decision of the Registrar in his capacity as taxing officer may require any matter of law or principle to be referred to a Judge of the Court for his decision and the Judge shall determine the matter as the justice of the case may require. For the purpose of this sub-rule, any decision extending or refusing to extend time for the lodging of a bill of costs shall be deemed to involve a matter of principle.

(2) Any person who contends that a bill of costs as taxed is, in all the circumstances, manifestly excessive or manifestly inadequate, may require the bill to be referred to a Judge and the Judge shall have power to make such deduction or addition as will render the bill reasonable. Save as in this sub-rule provided, there shall be no reference on a question of quantum only.

(3) An application for a reference may be made to the Registrar informally at the time of taxation or by writing within fourteen days thereafter.

(4) A reference to a Judge may be adjourned by him for the consideration of the Court.

(5) Any person dissatisfied with a decision of a Judge given under sub-rule (1) or sub-rule (2) may apply to the Court to vary, discharge or reverse the same. Such application may be made either informally to the Judge at the time of the decision or by writing to the Registrar within seven days of that time.

## **101 Payment out of security for costs**

Where security for costs has been lodged, the Registrar may pay out the same either by consent of the parties or in conformity with the decision of the Court and having regard to the rights of the parties thereunder.

## **102 Costs improperly incurred**

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

## **103 Improper agreement for remuneration**

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

**FIRST SCHEDULE  
FORMS**

**FORM CA 1**

**APPLICATION**

**Rule 40(2)**

In the Falkland Islands Court of Appeal

Delete  
inappropriate  
words.

Civil / Criminal Application No. of 19

In the matter of an intended Appeal / Civil / Criminal Appeal No. of 19  
between  
and  
Appellant  
Respondent

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

(Appeal from the  
the Falkland Islands dated the  
day of 19 in Civil/Criminal Application/Appeal No. of 19

(1) of the Supreme Court of

APPLICATION is hereby made to the Falkland Islands Court of Appeal for an  
order that .....  
.....  
on the grounds that .....

And for an order that the costs of and incidental to this application abide the  
result of the said appeal.

The application will be supported by the affidavit of .....  
sworn on the ..... day of ..... 19 .....

The address for service of the applicant is .....

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

*Signed*

*Applicant*  
\_\_\_\_\_  
Advocate for the Applicant

Lodged in the Registry on the ..... day of ..... 19 .....

*Registrar*

**FORM CA 2****Rule 52(6)**

*(Heading as in proceedings appealed from)*

**NOTICE OF APPEAL**

(1) Delete as  
necessary.

TAKE NOTICE that ..... being dissatisfied  
with the decision of the Honourable Mr Justice .....  
given at ..... on the ..... day of ..... 19 .....  
intends to appeal to the Falkland Islands Court of Appeal against the whole  
of the said decision / such part of the said decision (1) as decides that .....  
.....  
.....

The address for service of the appellant is

It is intended to serve copies of this notice on

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

*Signed*

Applicant  
Advocate for the Applicant

To - The Registrar of the Supreme Court of .....

Lodged in the Supreme Court of ..... at ..... am/pm  
this ..... day of ..... 19 .....

*Registrar*

[NOTE: Rule 56 requires a person on whom this notice is served

- (a) within 21 days, to lodge with the Registrar and serve on the appellant notice of a full and sufficient address for service; and
- (b) within a further 14 days, to serve a copy of such address for service on every other person named in the notice of appeal as a person intended to be served.

You need not comply with this requirement if your address for service is unchanged from your address of record in the proceedings in the Supreme Court.]

**FORM CA 3**

**Rule 56(2)**

*(Heading as in proceedings appealed from)*

**NOTICE OF ADDRESS FOR SERVICE**

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

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

*Signed*

Respondent  
Advocate for the Applicant

To - The Registrar of the Court of Appeal

Copies to be served on .....

Lodged with the Registrar at ..... am / pm on the ..... day  
of ..... 19 .....

*Registrar*

**FORM CA 4**

**Rule 62(3)**

IN THE FALKLAND ISLANDS COURT OF APPEAL

Civil Appeal No. .... of 19 .....

Between

..... Appellant

and

..... Respondent

(Appeal from a ..... of the Supreme Court of the Falkland Islands dated the ..... day of ..... 19 ..... in Civil Case/ Civil Appeal / Bankruptcy Cause / Matrimonial Cause / Miscellaneous Cause No ..... of 19 ....

**MEMORANDUM OF APPEAL**

..... the above-named appellant appeals to the Falkland Islands Court of Appeal against the whole / part of the above-mentioned decision on the following grounds, namely -

1. .....
2. .....

etc.

It is proposed to ask the Court for an order that .....

*Signed*

Appellant  
Advocate for the Appellant

To - The Honourable the Judges of the Falkland Islands Court of Appeal.

Copies to be served on .....

Lodged with the Registrar at ..... am / pm on the ..... day of ..... 19 .....

*Registrar*

**FORM CA 5****Rule 67(3)***Heading as in Form CA 4***NOTICE OF CROSS-APPEAL**

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

1. .....
2. .....

etc.

It is proposed to ask the Court for an order that .....

It is intended to serve copies of this notice on .....

*Signed*

Respondent  
Advocate for the Respondent

To - The Honourable the Judges of the Falkland Islands Court of Appeal.

Lodged with the Registrar at ..... am / pm on the ..... day  
of ..... 19 .....

*Registrar*

**FORM CA 6****Rule 68(3)**

*Heading as in Form CA 4*

**NOTICE OF GROUNDS FOR AFFIRMING THE DECISION**

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

1. .....
2. .....

etc.

It is intended to serve copies of this notice on .....

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

*Signed*

Respondent  
Advocate for the Respondent

To - The Honourable the Judges of the Falkland Islands Court of Appeal.

Lodged with the Registrar at ..... am / pm on the ..... day of ..... 19 .....

*Registrar*

*(Headings as in the proceedings appealed from)*

**NOTICE OF APPEAL**

TAKE NOTICE that ..... appeals to the Falkland Islands Court of Appeal against the decision of the Honourable Mr Justice ..... given on the ..... day of ..... 19 ..... whereby the appellant was convicted of ..... and sentenced to .....

The appeal is against conviction only / conviction and sentence / sentence only.

The address for service of the appellant is .....

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

*Signed*

Appellant  
Advocate for the Appellant

To - The Registrar of the Supreme Court of .....

Lodged in the Supreme Court of ..... at .....  
am / pm on the ..... day of ..... 19 .....

*Registrar*

**FORM CA 8**

**Rule 84(4)**

IN THE FALKLAND ISLANDS COURT OF APPEAL

Criminal Appeal No. .... of 19 .....

Between

..... Appellant

and

..... Respondent

(Appeal from a ..... of the Supreme Court of .....

(Mr Justice ..... dated the ..... day of .....  
19 ..... in Criminal Case No. ..... of 19 .....)

Appeal

**MEMORANDUM OF APPEAL**

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

1. .....
2. .....

etc.

*Signed*

Appellant  
Advocate for the Appellant

To - The Honourable the Judges of the Falkland Islands Court of Appeal.

Lodged with the Registrar at ..... am / pm on the ..... day of ..... 19 .....

*Registrar*

## SECOND SCHEDULE FEES

**PART I.** Fees in connection with applications, other than applications relating to criminal appeals from a Supreme Court in its original jurisdiction and other than applications under rule 99.

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	£
1. Upon lodging an application	5.00
2. Upon lodging an affidavit, other than an affidavit annexed to an application	.50
3. Upon giving notice under rule 51	10.00

**PART II.** Fees in connection with civil appeals

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4. Upon lodging a notice of appeal	10.00
5. Upon lodging a notice of address for service or a notice of change of address	.50
6. Upon a lodging a memorandum of appeal -	
(a) against an interlocutory decision	25.00
(b) against a final decision -	
(i) where the appeal is against an award of money or the refusal to make such an award or against a decision as to the ownership of or entitlement to the possession of property - if the amount of the money (exclusive of any interest awarded thereon) or the value of the property	
(A) does not exceed £1,000	£50.00
(B) exceeds £1,000,	
for the first £1,000	£50.00
and for each subsequent £1,000 or part thereof up to £100,000	£2.00
and for each subsequent £1,000 or part thereof	£1.00
but so that the fee shall not exceed £500,000;	
(ii) in any other case, £40.00 with an additional fee of £20.00 for each day or part of a day of hearing after the first, but so that the fee shall not exceed £200.00	25.00
7. Upon lodging a notice of cross-appeal	25.00
8. Upon lodging a notice of grounds for affirming the decision	5.00
9. Upon lodging a notice withdrawing an appeal, or a notice of cross-appeal, or a notice of grounds for affirming the decision	5.00

**PART III.** Fees in connection with criminal appeals.

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10.	Upon lodging a notice of appeal from the Supreme Court in its appellate jurisdiction	5.00
11.	For preparing the record of appeal in such an appeal, for each folio or part thereof	
	(a) for the first copy	.50
	(b) for each additional copy	.10

#### PART IV. Miscellaneous

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12.	For sealing an order in any civil application or appeal	1.00
13.	For preparing certified copies of any document, for each folio or part thereof	
	(a) for the first copy	.50
	(b) for each subsequent copy	.10