

**Statutory instrument 504 of 1979**

**SUPREME COURT(MAGISTRATESCOURTS) (CRIMINAL APPEALS) RULES,1979**

*SIs 504/1079, 27/1983. 171/1991, 12/1992, 98/1992.*

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**IT is hereby notified that the President has, in terms of subsection (7) of section 57 of the High Court Act [Chapter 7:06], approved the following rules of court which have been made by the Chief Justice and the Judge President:—**

PRELIMINARY

## **1. Title**

These rules may be cited as the Supreme Court (Magistrates Court) (Criminal Appeals) Rules, 1979.

[Rule amended by s.i 27 of 1983]

## **2. Interpretation**

(1) In these rules—

“Chapter 7:10” means the Magistrates Court Act [*Chapter 7:10*];

“court” means a magistrates court;

“Registrar” means the Registrar of the Supreme Court.

(2) ....

[Subrule repealed by s.i 12 of 1992]

## **3. Application**

These rules shall apply in respect of any appeal relating to the decision of a court in any criminal matter in which sentence is passed on or after the 1st August, 1979.

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

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

[Rule inserted by s.i 12 of 1992]

## **PART I**

### **GENERAL**

## **4. Appeals generally**

The prosecution and finalization of all appeals in terms of these rules, especially any appeal, other than an appeal by the Attorney-General in terms of paragraph (a) of section 61 of Chapter 7:10, relating to a case in which the convicted person has received an unsuspended prison sentence, shall be treated by all persons concerned as a matter of urgency.

## **5. Departure from rules**

A judge of the Supreme Court or the High Court, or the Supreme Court of the High Court, may direct a departure from these rules in any way where this is required in the interests of justice, and, additionally or alternatively, may give such directions on matters of practice or procedure as may appear to him to be just and expedient.

## **6. Amendment of notice of appeal**

(1) The Attorney-General or an appellant as defined in Part V, VI, VII or VIII may amend his notice of appeal by lodging a notice in duplicate with the Registrar setting out clearly and specifically the amendment to the grounds of appeal—

(a) in the case of an appeal against conviction or conviction and sentence, as soon as possible and in any event not later than twenty days after the noting of the appeal;

[Paragraph amended by s.i 12 of 1992]

(b) in the case of an appeal against sentence only, as soon as possible and in any event not later than ten days after the noting of the appeal.

[Paragraph amended by s.i 12 of 1992]

(2) A copy of a notice of appeal lodged in terms of subrule (1) shall, at the same time as the lodging of such notice, be served on the other party to the appeal.

(3) An amendment to a notice of appeal in terms of subrule (1) shall not delay the preparation and lodging with the Registrar of the record of the case to which the appeal relates.

## **6A. Renunciation of agency by legal practitioner**

(1) In this rule—

“appellant” means an appellant as defined in Part V, VI, VII or VIII.

(2) Subject to this rule, an appellant’s legal practitioner may for good cause renounce his agency at any time before the appeal has been set down for hearing or, after it has been set down, not later than three weeks after he has been notified of the date of hearing of the appeal in terms of rule 25, 32, 37 or 44, as the case may be:

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

(3) Where an appellant’s legal practitioner wishes to renounce his agency in terms of subrule (2), he shall without delay file a notice with the Registrar substantially in form SCMC 1 and, as soon as possible thereafter, serve copies of the notice upon the appellant and upon every other party to the appeal, and shall lodge proof of such service with the

Registrar in accordance with rule 11 of the Rules of the Supreme Court, 1964, published in Rhodesia Government Notice 380 of 1964.

(4) A renunciation of agency in terms of subrule (2) shall be effective from the date on which the notice referred to in subrule (3) is filed with the Registrar.

(5) Where an appellant's legal practitioner wishes to renounce his agency after the period prescribed in subrule (2), he shall apply to the court or a judge for leave to do so and the court or judge, as the case may be, may grant leave if it or he, as the case may be, considers that the circumstances of the case justify such a course.

(6) If an appellant's legal practitioner purports to renounce his agency otherwise than in terms of subrule (2) or (3) or without leave granted in terms of subrule (5), as the case may be, the renunciation shall be ineffective, and—

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

[Subrule inserted by s.i 171 of 1991]

### **6B. Special orders as to costs**

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

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

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

- (a) ordering him personally to pay all or part of the costs of the appeal or application and additionally, or alternatively, in the trial court;
- (b) ordering him to refund to his client all or any of the fees his client may have paid him in respect of the appeal and additionally, or alternatively, in the trial court;
- (c) ordering him not to charge his client any fee in respect of all or part of the work done by him in respect of the appeal or application and additionally, or alternatively, the proceedings in the trial court;

## **PART II**

### **APPEAL BY ATTORNEY-GENERAL UPON POWER OF LAW**

#### **7. Noting of appeal**

(1) Where the Attorney-General wishes to appeal in terms of section 61 of Chapter 7:10 against the finding of the court upon a point of law in any criminal case, he shall—

- (a) note the appeal by lodging a notice of appeal in duplicate with the clerk of the court specifying the judgment against which the appeal is brought and the point of law in issue; and
- (b) send to the last-known address of the person who was the accused person in the case to which the appeal relates a copy of such notice of appeal together with a notice in writing advising him that the ruling of the Supreme Court on the appeal shall in no way affect the finality of the finding of the court in his case, and that he has the right, should he so desire, at his own expense, to be represented by a legal practitioner for the purpose of arguing the point of law in issue.

(2) The clerk of the court shall, as soon as possible after the noting of the appeal in terms of subrule (1), send one copy of the notice of appeal to the Registrar.

#### **8. Response by magistrate to notice of appeal**

(1) The magistrate shall, within five days of the noting of an appeal in terms of subrule (1) of rule 7, so far as may be necessary having regard to any judgment or statement filed of record, deliver to the clerk of the court a statement in writing setting forth the facts which he found to be proved and his reasons for judgment and sentence and dealing with the grounds of appeal.

[Subrule amended by s.i 12 of 1992]

(2) The clerk of the court shall immediately dispatch to the Attorney-General a copy of any statement delivered in terms of subrule (1), and such statement shall become part of the record.

(3) Within five days of receipt of the statement delivered in terms of subrule (1), the Attorney-General may amend his grounds of appeal by lodging with the clerk of the court a written statement setting out clearly and specifically such amendments.

[Subrule amended by s.i 12 of 1992]

(4) The magistrate may, within five days of the lodging of any amendments to the grounds of appeal in terms of subrule (3), deliver to the clerk of the court a further or amended statement as to the facts which he found to be proved and his reasons for judgment and sentence and dealing with the amended grounds of appeal.

[Subrule amended by s.i 12 of 1992]

(5) The clerk of the court shall immediately dispatch to the Attorney-General a copy of any statement delivered in terms of subrule (4), and such statement shall become part of the record.

#### ***9. Preparation of record***

(1) The clerk of the court shall, on receipt of the notice of appeal lodged in terms of subrule (1) of rule 7, give instructions for the preparation of the record:

Provided that those parts of the record which the Attorney-General indicates are unnecessary for the determination of the appeal shall be omitted therefrom.

(2) The clerk of the court shall, as soon as possible and in any event not later than twenty days after the noting of the appeal in terms subrule (1) of rule 7, lodge with the Registrar the original record together with five typed copies which shall be certified as true and correct copies.

[Subrule amended by s.i 12 of 1992]

#### ***10. Setting down of appeal***

The Registrar shall upon receiving the record and copies thereof referred to in subrule (2) of rule 9, set the appeal down for hearing:

Provided that, unless the persons concerned agree otherwise, at least seven days' notice shall be given to the Attorney-General and any representative of the person who was the accused in the case to which the appeal relates.

### **PART III**

#### **APPEAL BY ATTORNEY-GENERAL AGAINST SENTENCE WHERE LEAVE TO APPEAL NOT REQUIRED**

#### ***11. Noting of appeal***

(1) Where the Attorney-General wishes to appeal in terms of paragraph (a) of subsection (1) of section 62 of Chapter 7:10 against sentence, he shall, as soon as possible and in any event not later than ten days after sentence has been passed—

- (a) note the appeal by lodging a notice of appeal in duplicate with the clerk of the court specifying the sentence against which the appeal is brought and the grounds of the appeal; and
- (b) send to the last-known address of the person convicted in the case to which the appeal relates a copy of such notice of appeal together with a notice in writing advising him of—
  - (i) the sentence which the Attorney-General considers should have been imposed; and
  - (ii) the right of such convicted person to apply to the Registrar for legal aid; and
  - (iii) the right of such convicted person to appear in person at the appeal or to be represented at his own expense by a legal practitioner of his choice.

[Subrule amended by s.i 12 of 1992]

(2) The clerk of the court shall, as soon as possible after the noting of the appeal in terms of subrule (1), send one copy of the notice of appeal to the Registrar.

#### ***12. Response by magistrate to notice of appeal***

The magistrate shall, within five days of the lodging of a notice of appeal in terms of subrule (1) of rule 11, so far as may be necessary having regard to any judgment or statement already filed of record, deliver to the clerk of the court a statement in writing setting forth the facts which he found to be proved and his reasons for judgment and sentence and dealing with the grounds of appeal, and such statement shall form part of the record:

Provided that, if the magistrate is not available or for any other reason unable to comply with this requirement, such statement shall not, unless a judge otherwise directs, be required, and its absence shall not delay the preparation of the record.

[Rule amended by s.i 12 of 1992]

### **13. Preparation of record**

(1) The clerk of the court shall, on receipt of the notice of appeal lodged in terms of subrule (1) of rule 11, give instructions for the preparation of the record:

Provided that those parts of the record which the Attorney-General indicates are unnecessary for the determination of the appeal shall be omitted therefrom.

(2) The clerk of the court shall, as soon as possible and in any event not later than ten days after the noting of the appeal in terms of subrule (1) of rule 11 lodge with the Registrar the original record together with five typed copies which shall be certified as true and correct copies.

[Subrule amended by s.i 12192]

(3) One copy of the record referred to in subrule (2) shall be made available without charge to the person referred to in paragraph (b) of subrule (1) of rule 11 or his legal representative.

### **14. Setting down of appeal**

The Registrar shall, upon receiving the record and copies thereof referred to in subrule (2) of rule 13, set the appeal down for hearing:

Provided that, unless the parties agree otherwise, at least seven days' notice shall be given to the AttorneyGeneral and the person referred to in paragraph (b) of subrule (1) of rule 11 or his legal representative.

## **PART IV**

### **APPEAL BY ATTORNEY-GENERAL AGAINST SENTENCE WHERE LEAVE TO APPEAL IS REQUIRED**

### **15. Application for leave to appeal**

Where the Attorney-General wishes to appeal in terms of paragraph (b) of subsection(1) of section 62 of Chapter 7:10 against sentence, he shall, as soon as possible and in any event not later than ten days after sentence has been passed—

- (a) apply for leave to appeal by lodging an application for such leave together with a draft notice of appeal with the Registrar; and
- (b) lodge a copy of the documents referred to in paragraph (a) with the clerk of the magistrates court concerned.

[Rule amended by s.i 12 of 1992]

### **16. Response by magistrate to application for leave to appeal**

(1) The documents referred to in paragraph (b) of rule 15 shall be laid before the magistrate who passed the sentence, and the magistrate shall, within five days of the lodging of such documents, so far as may be necessary having regard to any judgment or statement already filed of record, deliver to the clerk of the court a statement in writing setting out the facts which he found to be proved and the reasons for judgment and sentence, and replying to the draft grounds of appeal:

Provided that, if the magistrate is unavailable, or for any other reason unable to comply with this requirement, such statement shall not, unless a judge of the Supreme Court otherwise directs, be required.

[Subrule substituted by s.i 27 of 1983]

(2) The clerk of the court shall, within five days of the lodging of the documents referred to in paragraph (b) of rule 15, send to the Registrar the record of the proceedings of the case together with any statement referred to in subrule (1):

Provided that, where any of the evidence in the case has been taken down in shorthand writing or recorded by mechanical means, it shall be sufficient compliance with the provisions of this subrule if the clerk of the court forwards to the Registrar the manuscript notes of such evidence made by the magistrate.

[Subrule amended by s.i 12 of 1992]

### **17. Consideration of application by judge of the Supreme Court**

(1) The Registrar shall, on receipt of the documents referred to in subrule (2) of rule 16, lay them immediately before a judge of the Supreme Court.

(2) If the judge of the Supreme Court considers that, *prima facie*, the sentence passed in the case is manifestly inadequate, he shall grant leave to appeal.

(3) If the judge of the Supreme Court considers that, *prima facie*, the sentence is not manifestly inadequate, he shall refuse the application, and the Registrar shall notify the clerk of the court forthwith accordingly.

(4) If leave to appeal is granted, the Registrar shall—

- (a) notify the clerk of the court immediately, and send to him all the documents relating to the matter, and

- (b) notify the convicted person of the granting of leave to appeal against sentence and inform him of his right to appear in person, to be represented at his own expense by a legal practitioner of his choice, or to apply to the Registrar for legal aid.

[Rule substituted by s.i 27 of 1983]

### **18. Response of magistrate to granting of leave to appeal**

[Rule repealed by s.i 27 of 1983]

### **19. Preparation of record**

(1) The clerk of the court shall, on receiving notice in terms of subrule (5) of rule 17, give instructions for the preparation of the record:

Provided that those parts of the record which the Attorney-General indicates are unnecessary for the determination of the appeal shall be omitted therefrom.

(2) The clerk of the court shall, as soon as possible and in any event not later than ten days after receiving notice in terms of subrule (5) of rule 17, lodge with the Registrar the original record together with five typed copies which shall be certified as true and correct copies.

[Subrule amended by s.i 12 of 1992]

(3) One copy of the record referred to in subrule (2) shall be made available without charge to the person referred to in subrule (2) of rule 17.

### **20. Setting down of appeal**

The Registrar shall, upon receiving the record and copies thereof referred to in subrule (2) of rule 19, set the appeal down for hearing:

Provided that, unless the persons concerned agree otherwise, at least five days' notice shall be given to the Attorney-General and the person referred to in subrule (2) of rule 17 or his legal representative.

[Rule amended by s.i 12 of 1992]

## **PART V**

APPEAL AGAINST CONVICTION OR CONVICTION AND SENTENCE BY CONVICTED PERSON WHO IS LEGALLY REPRESENTED

### **21. Application of this Part**

The provisions of this Part shall apply in respect of an appeal by a person convicted by a court who is or intends to be legally represented at the hearing of the appeal and who appeals against conviction or both conviction and sentence (hereinafter in this Part called "the appellant").

### **22. Noting of appeal**

(1) The appellant shall, within ten days of the passing of sentence, or, where a request has been made in terms of subrule (1) of rule 3 of Order IV of the Magistrates Courts (Criminal) Rules, 1966, within five days of the receipt of the judgment or statement referred to in that rule, whichever is the later, note his appeal by lodging with the clerk of the court a notice in duplicate setting out clearly and specifically the grounds of the appeal and giving for the purpose of service the address of his legal representative or, if a legal representative has yet to be appointed, the address of the appellant:

Provided that, where the proceedings are sent on review in terms of subsection (1) of section 51 or section 58 of Chapter 7:10, the appellant may, by notice in writing to the clerk of the court, within four days of the passing of sentence, elect to defer the noting of the appeal until after the determination of the review proceedings, and may note his appeal in terms of this subrule against the conviction or conviction and sentence, as the case may be, with such alterations thereto as may have been determined on review within five days of the date on which the determination of the review proceedings is communicated to him by the clerk of the court.

[Subrule amended by s.i 12 of 1992]

(2) The appellant shall, at the time of the noting of an appeal in terms of subrule (1) or within such period thereof, not exceeding five days, as the clerk of the court may allow, deposit with the clerk of the court the cost as estimated by the clerk of the court of one certified copy of the record in the case concerned:

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

[Subrule amended by s.i 12 of 1992]

(3) Any difference between any payment of the estimated cost referred to in subrule (2) and the actual cost of the copy of the record shall be paid to the clerk of the court by the appellant or by the clerk of the court to the appellant, as the case may be, once the cost has been determined and before the appeal is heard.

(4) Any failure to comply with the provisions of subrule (2) or (3) or any undertaking made in terms of the proviso to subrule (2) shall invalidate the noting of an appeal:

Provided that a judge of the Supreme Court may give leave for a fresh appeal to be noted.

(5) A copy of the notice of an appeal noted in accordance with the provisions of this rule shall be sent to the Registrar.

### ***23. Response by magistrate to notice of appeal***

(1) The magistrate shall, within five days after the noting of an appeal in terms of rule 22, so far as may be necessary having regard to any judgment or statement already filed of record, deliver to the clerk of the court a statement in writing setting forth the facts which he found to be proved and his reasons for judgment and sentence and dealing with the grounds on which the appeal is based:

Provided that, if the magistrate is not available or for any other reason unable to comply with this requirement such statement shall not, unless a judge of the Supreme Court otherwise directs, be required, and its absence shall not delay the preparation of the record.

[Subrule amended by s.i 12 of 1992]

(2) The clerk of the court shall immediately dispatch to the address given in terms of subrule (1) of rule 22 a copy of the statement, if any, delivered in terms of subrule (1), and such statement shall become part of the record.

(3) Within five days after receipt of the statement delivered in terms of subrule (2), the appellant may amend his grounds of appeal by lodging with the clerk of the court a written statement setting out clearly and specifically such amendments.

[Subrule amended by s.i 12 of 1992]

(4) The magistrate may, within five days of the lodging of any amendments to the grounds of appeal in terms of subrule (3), deliver to the clerk of the court a further or amended statement as to the facts which he found to be proved and his reasons for judgment and sentence and dealing with the amended grounds of appeal:

Provided that, if the magistrate is not available or for any other reason unable to avail himself of the opportunity to make a further or amended statement such statement shall not, unless a judge of the Supreme Court otherwise orders, be required, and its absence shall not delay the preparation of the record.

[Subrule amended by s.i 12 of 1992]

(5) The clerk of the court shall immediately dispatch to the address given in terms of subrule (1) of rule 22 a copy of any statement delivered in terms of subrule (4), and such statement shall become part of the record.

(6) The appellant or his legal representative shall be deemed to have received any statement dispatched in terms of subrule (2) or (5) within four days of its dispatch by the clerk of the court to the address given in terms of subrule (1) of rule 22.

### ***24. Preparation of record***

(1) The clerk of the court shall, on receipt of the payment or undertaking, as the case may be, referred to in subrule (2) of rule 22, give instructions for the preparation of the record.

(2) The clerk of the court shall, as soon as possible and in any event not later than twenty days after the noting of the appeal in terms of subrule (1) of rule 22, lodge with the Registrar the original record together with five typed copies which shall be certified as true and correct copies, and shall deliver a further such copy to the appellant or his legal representative. [Subrule amended by s.i 12 of 1992]

(3) The appellant's legal representative may uplift from the clerk of the court such further certified copies of the record as he may require, and shall pay for any such further copies at the rate prescribed or, if no such rate has been prescribed, at the rate determined by the clerk of the court: Provided that—

- (i) notice of any additional copies of the record required by the appellant shall be given to the clerk of the court at the time when the appeal is noted or at the earliest possible time thereafter;
- (ii) if the clerk of the court is unable to supply more than one copy of the record to the appellant, this shall not delay the setting down or hearing of the appeal.

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

(1) The Registrar shall send written notification to the appellant's legal practitioner as soon as he has received the record and copies thereof referred to in subrule (2) of rule 24, and shall call upon the legal practitioner to file heads of argument within fifteen days after the date of such notification.

(2) Within fifteen days after being called upon to file heads of argument in terms of subrule (1), or within such longer period as a judge may for good cause allow, the appellant's legal practitioner shall file with the Registrar a document setting out the main heads of his argument together with a list of authorities to be cited in support of each head, and immediately thereafter shall deliver a copy to the Attorney-General.



(3) Within fifteen days after receiving the appellant's heads of argument, the Attorney-General shall file with the Registrar a document setting out the main heads of his argument together with a list of authorities to be cited in support of each head, and immediately thereafter shall deliver a copy to the appellant's legal practitioner:

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

[Subrule amended by s.i 98 of 1992]

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

Provided that, unless the persons concerned agree otherwise, at least six week's notice shall be given to the appellant and the Attorney-General.

(5) If the Registrar does not receive heads of argument from the appellant's legal practitioner within the period prescribed in subrule (2), the appeal shall be regarded as abandoned and shall be deemed to have been dismissed.

(6) Where an appeal is deemed to have been dismissed in terms of subrule (5), the Registrar shall forthwith send written notification of that fact to the Attorney-General and the trial court.

[Rule substituted by s.i 12 of 1992]

## PART VI

### APPEAL AGAINST CONVICTION OR CONVICTION AND SENTENCE BY CONVICTED PERSON IN PERSON

#### ***26. Application of this Part***

The provisions of this Part shall apply in respect of an appeal by a person convicted by a court who intends to appeal in person and who appeals against conviction or both conviction and sentence (hereinafter in this Part called "the appellant").

#### ***27. Noting of appeal***

The appellant shall, within ten days of the passing of sentence, note his appeal by lodging with the clerk of the court a notice in duplicate—

- (a) setting out clearly and specifically the grounds of the appeal and giving for the purpose of service the address of the appellant; and
- (b) stating that the appellant intends to prosecute the appeal in person.

[Rule amended by s.i 12 of 1992]

#### ***28. Response by magistrate to notice of appeal***

(1) The magistrate may, within four days of the noting of an appeal in terms of rule 27, deliver to the clerk of the court a statement containing any comments which he may wish to make on the grounds of appeal.

(2) The clerk of the court shall, as soon as he receives any statement referred to in subrule (1) and in any event not later than five days after the noting of the appeal in terms of rule 27, send to the Registrar the record of the proceedings of the case together with any statement referred to in subrule (1):

Provided that, where any evidence in the case has been taken down in shorthand writing or recorded by mechanical means, it shall be sufficient compliance with the provisions of this subrule if the clerk of the court forwards to the Registrar the manuscript notes of such evidence made by the magistrate.

[Subrule amended by s.i 12 of 1992]

#### ***29. Consideration of application for certificate by judge of the Supreme Court***

(1) The Registrar shall, on receipt of the documents referred to in subrule (2) of rule 28, lay them immediately before a judge of the Supreme Court.

(2) If the judge of the Supreme Court grants a certificate in terms of subsection (1) of section 11 of the Supreme Court Act [Chapter 7:13]—

- (a) the Registrar shall notify the clerk of the court immediately and send to him all the documents relating to the matter; and
- (b) the clerk of the court shall notify the appellant of the granting of such certificate.

(3) If the judge of the Supreme Court refuses to grant a certificate in terms of subsection (1) of section 11 of the Supreme Court Act [Chapter 7:13], the Registrar shall notify the appellant and the clerk of the court accordingly.

#### ***30. Response of magistrate to granting of certificate***

(1) The magistrate shall, within five days of notification in terms of paragraph (a) of subrule (2) of rule 29, so far as may be necessary having regard to any judgment or statement filed of record, deliver to the clerk of the court a

statement in writing setting forth the facts which he found to be proved and his reasons for judgment and sentence and dealing with the grounds of appeal, and such statement shall become part of the record:

Provided that, if the magistrate is not available or for any other reason unable to comply with this requirement, such statement shall not unless a judge of the Supreme Court otherwise directs, be required, and its absence shall not delay the preparation of the record.

[Subrule amended by s.i 12 of 1992]

(2) The clerk of the court shall immediately dispatch to the address given in terms of paragraph (a) of rule 27 a copy of the statement, if any, delivered in terms of subrule (1), and such statement shall become part of the record.

### **31. Preparation of record**

(1) The clerk of the court shall, on receiving notice in terms of paragraph (a) of subrule (2) of rule 29, give instructions for the preparation of the record.

(2) The clerk of the court shall, as soon as possible and in any event not later than twenty days after receiving notice in terms of paragraph (b) of subrule (2) of rule 29, lodge with the Registrar the original record together with five typed copies which shall be certified as true and correct copies.

[Subrule amended by s.i 12 of 1992]

(3) One copy of the record referred to in subrule (2) shall be made available without charge to the appellant.

### **32. Setting down of appeal**

The Registrar shall, upon receiving the record and copies thereof referred to in subrule (2) of rule 31, set the appeal down for hearing:

Provided that, unless the persons concerned agree otherwise, at least six weeks' notice shall be given to the appellant and the Attorney-General.

[Rule amended by s.i 171 of 1991]

## **PART VII**

### **APPEAL AGAINST SENTENCE BY CONVICTED PERSON WHO IS LEGALLY REPRESENTED**

### **33. Application of this Part**

The provisions of this Part shall apply in respect of an appeal by a person convicted and sentenced by a court who is or intends to be legally represented at the hearing of the appeal and who appeals against sentence only (hereinafter in this Part called "the appellant").

### **34. Noting of appeal**

(1) The appellant shall, within five days of the passing of sentence, note his appeal by lodging with the clerk of the Court a notice in duplicate setting out clearly and specifically the grounds of the appeal and giving for the purpose of service the address of his legal representative or, if a legal representative has yet to be appointed, the address of the appellant:

Provided that, where the proceedings are sent on review in terms of subsection (1) of section 57 or section 58 of Chapter 7: 10, the appellant may, by notice in writing to the clerk of the court, within four days of the passing of sentence, elect to defer the noting of the appeal until after the determination of the review proceedings, and may note his appeal in terms of this subrule against the sentence, with such alterations thereto as may have been determined on review, within five days of the date on which the determination of the review proceedings is communicated to him by the clerk of the court.

[Subrule amended by s.i 12 of 1992]

(2) The appellant shall, at the time of the noting of an appeal in terms of subrule (1) or within such period thereof, not exceeding five days, as the clerk of the court may allow, deposit with the clerk of the court the cost as estimated by the clerk of the court of one certified copy of the record in the case concerned:

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

[Subrule amended by s.i 12 of 1992]

(3) Any difference between any payment of the estimated cost referred to in subrule (2) and the actual cost of the copy of the record shall be paid to the clerk of the court by the appellant or by the clerk of the court to the appellant, as the case may be, once the actual cost has been determined and before the appeal is heard. (4) Any failure to comply with the provisions of subrule (2) or (3) or any undertaking made in terms of the proviso to subrule (2) shall invalidate the noting of an appeal: Provided that a judge of the High Court may give leave for a fresh appeal to be noted.

(5) A copy of the notice of an appeal noted in accordance with the provisions of this rule shall be sent to the Registrar.

### ***35. Response by magistrate to notice of appeal***

(1) The magistrate shall, within five days after the noting of an appeal in terms of rule 34, so far as may be necessary having regard to any judgment or statement already filed of record, deliver to the clerk of the court a statement in writing setting forth the facts which he found to be proved and his reasons for judgment and sentence and dealing with the grounds on which the appeal is based:

Provided that, if the magistrate is not available or for any other reason unable to comply with this requirement such statement shall not, unless a judge of the High Court otherwise directs, be required, and its absence shall not delay the preparation of the record.

(2) The clerk of the court shall immediately dispatch to the address given in terms of subrule (1) of rule 34 a copy of the statement, if any, delivered in terms of subrule (1), and such statement shall become part of the record.

### ***36. Preparation of record***

(1) Subject to the provisions of this rule, the clerk of the court shall, on receipt of the payment or undertaking, as the case may be, referred to in subrule (2) of rule 34, give instructions for the preparation of the record.

(2) The record prepared under the provisions of subrule (1) shall only consist of—

- (a) the notice of appeal; and
- (b) any statement delivered to the clerk of the court in terms of subrule (1) of rule 35; and
- (c) the judgment of the magistrate and his reasons for sentence; and
- (d) any statement of agreed facts placed before the magistrate; and
- (e) any record of previous convictions proved at the trial; and (f) any other part of the proceedings which—
  - (i) the appellant, through his legal representative, has in terms of subrule (3) requested to be included in the record; and
  - (ii) the Attorney-General has, in terms of subrule (5), requested to be included in the record.

(3) The appellant may, at the time of the noting of the appeal, through his legal representative request the clerk of the court in writing to include in the record prepared under the provisions of subrule (1) any part of the proceedings in addition to the parts referred to in paragraphs (a) to (e) of subrule (1).

(4) The clerk of the Court shall, as soon as possible and in any event not later than six days after the noting of the appeal in terms of rule 34, send to the Attorney-General a copy of the record prepared in terms of subrules (1) and (2).

[Subrule amended by s.i 12 of 1992]

(5) The Attorney-General may, within two days of the receipt of the record in terms of subrule (4), request the clerk of the court to include in the record prepared under the provisions of subrule (1) any part of the proceedings in addition to those included in the record.

(6) The clerk of the court shall, as soon as possible and in any event not later than twenty- eight days after the noting of the appeal in terms of subrule (1) of rule 34, lodge with the Registrar the original record together with five typed copies which shall be certified as true and correct copies, and shall deliver a further copy to the appellant or his legal representative.

(7) The appellant's legal representative may uplift from the clerk of the court such further certified copies of the record as he may require, and shall pay for any such further copies at the rate prescribed or, if no such rate has been prescribed, at the rate determined by the clerk of the court: Provided that—

- (i) notice Of any additional copies of the record required by the appellant shall be given to the clerk of the clerk of court at the time when the appeal is noted or at the earliest possible time thereafter;
- (ii) if the clerk of the court is unable to supply more than one copy of the record to the appellant, this shall not delay the setting down or hearing of the appeal.

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

(1) The Registrar shall send written notification to the appellant's legal practitioner as soon as he has received the record and copies thereof referred to in subrule (6) of rule 36, and shall call upon the legal practitioner to file heads of argument within fifteen days after the date of such notification.

(2) Within fifteen days after being called upon to file heads of argument in terms of subrule (1), or within such longer period as a judge may for good cause allow, the appellant's legal practitioner shall file with the Registrar a document setting Out the main heads of his argument together with a list of authorities to be cited in support of each head, and immediately thereafter shall deliver a copy to the Attorney-General.

(3) Within fifteen days after receiving the appellant's heads of argument, the Attorney-General shall file with the Registrar a document setting out the main heads of his argument together with a list of authorities to be cited in support of each head, and immediately thereafter shall deliver a copy to the appellant's legal practitioner.

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

[Subrule amended by s.i 98 of 1992]

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

Provided that, unless the persons concerned agree otherwise, at least six weeks' notice shall be given to the appellant and the Attorney-General.

(5) If the Registrar does not receive heads of argument from the appellant's legal practitioner within the period prescribed in subrule (2), the appeal shall be regarded as abandoned and shall be deemed to have been dismissed.

(6) Where an appeal is deemed to have been dismissed in terms of subrule (5), the Registrar shall forthwith send written notification of that fact to the Attorney-General and the trial court.

[Rule substituted by s.i 12 of 1992]

## PART VIII

### APPEAL AGAINST SENTENCE BY CONVICTED PERSON IN PERSON

#### **38. Application of this Part**

The provisions of this Part shall apply in respect of an appeal by a person convicted and sentenced by a court who intends to appeal in person and who appeals against sentence only (hereinafter in this Part called "the appellant").

#### **39. Noting of appeal**

The appellant shall, within five days of the passing of sentence, note his appeal by lodging with the clerk of the court a notice in duplicate—

- (a) setting out clearly and specifically the grounds of the appeal and giving for the purpose of service the address of the convicted person; and
- (b) stating that the appellant intends to prosecute the appeal in person.

[Rule amended by s.i 12 of 1992]

#### **40. Response by magistrate to notice of appeal**

(1) The magistrate may, within four days of the noting of an appeal in terms of rule 39, deliver to the clerk of the Court a statement containing any comments which he may wish to make on the ground of appeal.

(2) The clerk of the court shall, as soon as he receives any statement referred to in subrule (1) and in any event not later than five days after the noting of the appeal in terms of rule 39, send to the Registrar the record of the proceedings of the case together with any statement referred to in subrule (1):

Provided that, where any evidence in the case has been taken down in shorthand writing or recorded by mechanical means, it shall be sufficient compliance with the provisions of this subrule if the clerk of the court forwards to the Registrar the manuscript notes of such evidence made by the magistrate.

[Subrule amended by s.i 12 of 1992]

#### **41. Consideration of application for certificate by Judge of the High Court**

(1) The Registrar shall, on receipt of the documents referred to in subrule (2) of rule 40, lay them immediately before a judge of the High Court.

(2) If the judge of the High Court grants a certificate in terms of subsection (1) of section 36 of the High Court Act [Chapter 7:06]—

- (a) the Registrar shall notify the clerk of the court immediately and send to him all the documents relating to the matter; and
- (b) the clerk of the court shall notify the appellant of the granting of such certificate.

(3) If the judge of the High Court refuses to grant a certificate in terms of subsection (1) of section 36 of the High Court Act [Chapter 7:06], the Registrar shall notify the appellant and the clerk of the court accordingly

#### **42. Response of magistrate to granting of certificate**

(1) The magistrate shall, within five days of notification in terms of paragraph (a) of subrule (2) of rule 41, so far as may be necessary having regard to any judgment or statement filed of record, deliver to the clerk of the court a

statement in writing setting forth the facts which he found to be proved and his reasons for judgment and sentence and dealing with the grounds of appeal:

Provided that, if the magistrate is not available or for any other reason unable to comply with this requirement, such statement shall not, unless a judge of the High Court otherwise directs, be required, and its absence shall not delay the preparation of the record.

(2) The clerk of the court shall immediately dispatch to the address given in terms of paragraph (a) of rule 39 a copy of the statement, if any, delivered in terms of subrule (1), and such statement shall become part of the record.

#### **43. Preparation of record**

(1) Subject to the provisions of subrule (2), the clerk of the court shall, on receiving notice in terms of paragraph (a) of subrule (2) of rule 41, give instructions for the preparation of the record.

(2) The record prepared under the provisions of subrule (1) shall only consist of—

- (a) the notice of appeal; and
- (b) any comments by the judge of appeal who granted the certificate in terms of subsection (1) of section 36 of the High Court Act [*Chapter 7:06*]; and
- (c) any statement delivered to the clerk of the court in terms of subrule (1) of rule 42; and
- (d) the judgment of the magistrate and his reasons for sentence; and
- (e) any statement of agreed facts placed before the magistrate; and
- (f) any record of previous convictions proved at the trial; and
- (g) any other part of the proceedings which the judge of appeal who granted the certificate in terms of subsection (1) of section 36 of the High Court Act [*Chapter 7:06*] has directed should be included in the record.

(3) The clerk of the court shall, as soon as possible and in any event not later than ten days after receiving notice in terms of paragraph (a) of subrule (2) of rule 41, lodge with the Registrar the original record, together with five typed copies which shall be certified as true and correct copies.

[Subrule amended by s.i 12 of 1992]

(4) One copy of the record referred to in subrule (3) shall be made available by the clerk of the court without charge to the appellant.

#### **44. Setting down of appeal**

The Registrar shall, upon receiving the record and copies thereof referred to in subrule (3) of rule 43, set the appeal down for hearing:

Provided that, unless the persons concerned agree otherwise, at least seven days' notice shall be given to the appellant and the Attorney-General.

### **PART IX**

#### **PROCEDURE WHERE CERTIFICATE TO PROSECUTE APPEAL IN PERSON IS REFUSED**

#### **45. Effect of refusal of certificate**

(1) If the certificate referred to in subrule (2) of rule 29 or subrule (2) of rule 41 is refused by a judge of the Supreme Court or the High Court, the appeal shall lapse for want of prosecution unless the appellant, within ten days of notification of such refusal in terms of subrule (2) of rule 29 or subrule (3) of rule 41, as the case may be—

- (a) deposits with the clerk of the court the cost, as estimated by such clerk, of one certified copy of the record in the case concerned; and
- (b) give a written assurance to the clerk of the court that he will make arrangements for his legal representation at the hearing of the appeal.

[Subrule amended by s.i 12 of 1992]

(2) If the appellant complies with the provisions of paragraphs (a) and (b) of subrule (1), the clerk of the court shall immediately notify the Registrar accordingly, and the provisions of—

- (a) in the case of an appeal against conviction or conviction and sentence, Part V; or
- (b) in the case of an appeal against sentence only, Part VII; shall thereafter, *mutatis mutandis*, apply as though the provisions of subrules (1) and (2) of rule 22 or subrules (1) and (2) of rule 34, as the case may be, had been complied with:

Provided that, unless within five days of the record being lodged with the Registrar the appellant satisfies the Registrar that he has made final arrangements for his legal representation at the hearing of the appeal, the appeal shall lapse.

[Subrule amended by s.i 12 of 1992]

## PART X

### PROCEDURE WHERE REPRESENTED APPELLANT APPLIES FOR CERTIFICATE TO PROSECUTE APPEAL IN PERSON

#### **46. Application for certificate to prosecute appeal in person**

(1) Where an appellant has noted an appeal in accordance with Part V or Part VII he may— (a) before the date on which the appeal has been set down for hearing; or

(b) with the consent of a judge of the Supreme Court or the High Court (as the case may be) on the day on which the appeal has been set down for hearing;

apply to the Registrar for a certificate in terms of subsection (1) of section 11 of the Supreme Court Act [*Chapter 7:13*] or subsection (1) of section 36 of the High Court Act [*Chapter 7:06*].

(2) If an application in terms of subrule (1) is refused, the appeal shall lapse for want of prosecution.

(3) If an application in terms of subrule (1) is granted, the judge of the Supreme Court or the High Court who grants the application shall give such directions as he may think fit with regard to the future conduct of the appeal.

## PART XI

### LAPSING OF RIGHT OF APPEAL AND APPLICATION TO APPEAL OUT OF TIME

#### **47. Lapsing of right of appeal**

If a convicted person fails to note an appeal in terms of these rules within the time-limits prescribed thereby, his right to appeal against conviction and sentence shall lapse.

#### **48. Application to appeal out of time**

(1) Where the right of a convicted person to appeal against conviction and sentence has lapsed in terms of rule 47, he may apply to a judge of the Supreme Court for leave to note an appeal out of time by lodging an application, together with the documents referred to in subrule (2), with the Registrar, and giving for the purpose of service the address of the applicant or his legal representative.

(2) An application in terms subrule (1) shall be accompanied by—

(a) a draft notice of appeal complying with the appropriate provisions of these rules; and

(b) an adequate statement explaining why the appeal was not noted within the time prescribed by these rules.

(3) The Registrar shall give notice of an application in terms of subrule (1) to the Attorney-General, who shall, within four days of receiving such notice, inform the Registrar whether or not he wishes to oppose the application.

(4) Where the Attorney-General wishes to oppose an application in terms of subrule (1), he shall, within five days of receiving notice in terms of subrule (3), lodge with the Registrar and serve on the applicant at the address supplied in terms of subrule (1) his written arguments in opposition, and may, at the same time, submit a request that the matter be set down for oral argument.

[Subrule amended by s.i 12 of 1992]

(5) The applicant may, within five days of receipt of written argument served on him in terms of subrule (4), lodge with the Registrar and serve on the Attorney-General written arguments in reply, and may, at the same time, submit a request that the matter be set down for oral argument.

[Subrule amended by s.i 12 of 1992]

(6) The Registrar shall, as soon as possible, lay all the papers relating to the application in terms of subrule (1) before a judge of the Supreme Court, who may grant or refuse the application or order that the matter be set down for oral argument.

(7) If the judge orders in terms of subrule (6) that the application in terms of subrule (1) be set down for oral argument, the Registrar shall notify the applicant and the Attorney-General of the date of the hearing, and, after hearing the Attorney-General and the applicant, if he appears, or if he does not appear, on consideration of any written argument from the applicant, the judge may grant or refuse the application.

(8) If an application in terms of subrule (2) is granted, the judge of the Supreme Court who grants the application shall give such directions as he may think fit with regard to the future conduct of the appeal.

## SCHEDULE

### FORMS

Form SCMC I

### NOTICE OF RENUNCIATION OF AGENCY

To .....

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

*Renunciation of Agency*

I hereby notify you that I am/my firm is” renouncing agency in the appeal you have instituted against the judgment of the magistrate in the case of .....

(set out names of parties), which was delivered on the ..... (date).

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

The courses of action open to you are as follows:

- \*You may engage another legal practitioner.
- \*You may apply to the Registrar of the Supreme Court for a certificate to prosecute your appeal in person.
- \*You may apply to the Registrar of the Supreme Court for legal aid.

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

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

.....  
(Signature of legal practitioner)

\*Omit whichever does not apply