

RGN No. 449 of 1975

SUPREME COURT (MISCELLANEOUS APPEALS AND REFERENCES) RULES, 1975

SI 12/1992. RGN 449/1975.

IT is hereby notified that the President has, in terms of subsection (5) of section 51 of the High Court Act, 1964, approved the following rules of court made by the Chief Justice and the Judge President in terms of that section:—

1. Title and date of commencement

(1) These rules may be cited as the Supreme Court (Miscellaneous Appeals and References) Rules, 1975.

[Rule amended by s.i 15 of 1992] (2)

These rules shall come into operation on the 1st July, 1975.

2. Application

(1) Subject to the provisions of subrule (2), these rules shall apply to any appeal to, or any reference of any stated or special case or question to, the court or a judge which is provided for in any enactment having the force of law in Zimbabwe.

(2) These rules shall not apply to—

- (a) an appeal or reference in terms of the Act; or
- (b) an appeal or reference in relation to which the enactment concerned itself expressly prescribes the whole procedure to be followed or provides for the making of rules or regulations prescribing such procedure; or
- (c) an appeal or reference in relation to which special rules made in terms of section 34 of the Act are in force.

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

3. Interpretation of terms

In these rules—

“court” means the Supreme Court;

[Definition amended by s.i 15 of 1992]

“judge” means a judge of the court;

“notice” means a notice instituting an appeal;

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

“registrar” means—

- (a) the registrar of the court; or
- (b) any deputy or assistant registrar designated and acting as a registrar of the court;

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

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 15 of 1992]

4. Notice of appeal

(1) An appeal shall be instituted by means of a notice directed and delivered by the appellant to the presiding officer of the tribunal or the officer whose decision is appealed against, and to all other parties affected.

(2) A notice shall also be filed with the registrar.

5. Time within which notice to be given

Subject to the provisions of rule 6, a notice shall be delivered and filed in accordance with the provisions of rule 4 within fifteen days of the decision appealed against being given.

(Rule amended by s.i 15 of 1992)

6. Condonation of late noting of appeal

Save where it is expressly or by necessary implication prohibited by the enactment concerned, a judge may, if special circumstances are shown, extend the time laid down, whether by rule 5 or by the enactment concerned, for instituting an appeal.

7. Contents of notice of appeal

A notice instituting an appeal shall state—

- (a) the tribunal or officer whose decision is appealed against; and
- (b) the date on which the decision was given; and (c) the grounds of appeal; and
- (d) the exact nature of the relief sought; and
- (e) the address of the appellant or his legal representative.

8. Record

(1) Subject to the provisions of rule 9, within fifteen days of receipt of a notice, the tribunal or officer concerned shall—

- (a) if a formal record of the proceedings was kept, lodge it with the registrar;
- (b) if no formal record of the proceedings was kept, lodge with the registrar reasons for the decision concerned, together with all papers relating to the matter in issue.

[Rule amended by s.i 15 of 1992]

(2) Where a formal record is lodged, the provisions of rule 50 of the Rules of the Supreme Court, 1964, shall, *mutatis mutandis*, apply.

(3) Where no formal record is lodged, the registrar may require to be submitted such additional copies of the papers as he deems necessary.

9. Statement of case on appeal on point of law

(1) In the case of an appeal which involves a question of law alone a judge may, either on the request of a party thereto or of his own motion, request the tribunal or officer concerned to state the question for determination.

(2) If a judge requests that the question for determination in an appeal be stated, it shall be the duty of the tribunal or officer concerned to prepare, in consultation with the parties, a stated case setting Out the question to be determined, together with all the circumstances under which that question has arisen.

(3) The stated case shall set out in numbered paragraphs the relevant facts found proved by the tribunal or officer concerned, the relevant portions of the judgment or reasons for the decision appealed against, the respective contentions of the parties in regard thereto and the question of law which arises for decision on appeal.

(4) Where a stated case has been prepared, the tribunal or officer concerned shall lodge a record consisting of the notice of appeal, the stated case and a copy of the judgment or reasons for the decision appealed against.

10. References

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

(2) The stated case shall set out in numbered paragraphs the relevant facts, the question which arises for decision and the respective contentions of the parties and the views of the tribunal or officer concerned thereon.

10A. Heads of argument In appeals

(1) The registrar shall send written notification to the parties as soon as he has received the record or other papers relating to an appeal and, in the case of an appeal in which the appellant will be legally represented at the hearing, the registrar shall call upon the legal practitioner representing the appellant 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 respondent.

(3) Where the respondent will be represented by a legal practitioner at the hearing of an appeal, that legal practitioner shall, within ten days after receiving the appellant's heads of argument in terms of subrule (2), file with the registrar a document setting out the main heads of his argument together with a list of authorities to be cited in support of each head, and immediately thereafter shall deliver a copy to the appellant:

Provided that, where the appeal is set down for hearing less than fifteen days after the respondent receives the appellant's heads of argument, the respondent 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.

(4) 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.

[Rule inserted by s.i 15 of 1992]

11. Hearing

(1) Where the enactment concerned provides that the appeal or reference, as the case may be, may be dealt with by a judge, the registrar, after receipt of all the papers relating thereto, shall forthwith lay them before a judge in chambers.

(2) Where—

(a) a judge has directed that an appeal or reference referred to in subrule (1) shall be—

- (i) set down for oral argument in chambers; or
- (ii) dealt with by the court; or

(b) the enactment concerned provides that the appeal or reference shall be dealt with by the court; the registrar shall, subject to subrule (3) and to rule 10A, notify the parties of the date of set-down:

Provided that, unless the parties agree otherwise, at least six week's notice of the date of set-down shall be given to all parties to the appeal or reference.

[Rule amended by s.i 15 of 1992 and proviso substituted by s.i 15 of 1992]

(3) The registrar may send a legal practitioner representing any party to an appeal or reference, other than an appeal to which rule 10A applies, a written notice requiring him to file with the registrar, not later than four days before the hearing of the appeal or reference, 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 the legal practitioner concerned shall comply with any such requirement:

Provided that the Registrar shall give the legal practitioner not less than five days' notice of any such requirement.

[Rule inserted by s.i 15 of 1992]

12. Amendment

Rule 56 of the Rules of the Appellate Division of the High Court, published in Rhodesia Government Notice No. 380 of 1964, is repealed.