

Supreme Court Rules, 2018

SI 84/2018

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IT is hereby notified that the Minister of Justice, Legal and Parliamentary Affairs has, in terms of section 34(4) of the Supreme Court Act [Chapter 7:13], hereinafter called “the Act”, approved the following rules of court made by the Chief Justice, in terms of subsection (1) of that section, for regulating the proceedings of the Supreme Court—

PRELIMINARY

1. Title These rules may be cited as the Rules of the Supreme Court, 2018.

2. Interpretation

- (1) In these rules—
“court” means the Supreme Court;
“judge” means the Chief Justice, a judge of the Supreme Court and an acting judge of the Supreme Court;
“legal practitioner” means a legal practitioner registered in terms of the Legal Practitioners Act [Chapter 27:07];
- (2) Where the word “registrar” appears in these rules such reference shall—
- (a) except where mention is made specifically of a registrar of the High Court, be construed as a reference to a registrar of the Supreme Court;
- (b) be construed as including a deputy registrar and an assistant registrar appointed in terms of section 33 of the Act;
- (c) be construed as being the appropriate registrar, that is to say, the registrar whom any registrar shall indicate as the appropriate registrar and, in the absence of any such indication—
- (i) in the event of an appeal, the registrar upon whom the appellant serves his or her notice of appeal or, where leave to appeal is necessary, the registrar at the place where application for leave to appeal is made;
- (ii) in the event of an application, the registrar upon whom a copy of the application is first served.
- (3) Any reference in these rules to “counsel” shall be read and construed as a reference to a legal practitioner.
- (4) Any reference in these rules to “legal representative” includes any person authorised by any law to represent any litigant.

PART II

GENERAL

3. Reckoning of time

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

4. Departure from rules

Subject to the provisions of section 19(3) of the Act, a judge or the court may direct a departure from these rules in any way where this is required in the interests of justice and, additionally or alternatively, may give such directions in matters of practice or procedure as may appear to him or it to be just and expedient.

5. Hearing of applications

An application made to a judge under these rules may be heard either in chambers or in open court and at such time as the judge may determine.

6. Heads of argument

(1) Subject to the provisions of rule 52, counsel may, in any matter which is to be heard before the court or a judge submit written heads of argument for the assistance of the court and shall submit such written heads of argument when requested to do so by a judge.

(2) Where written heads of argument are requested by a judge in terms of subrule (1) and subject to any direction which may be given by the judge, the provisions of rule 52 shall apply *mutatis mutandis*.

7. Report

- (1) A. judge may, in any appeal or application, request any judge or magistrate of a subordinate court to furnish a report on any matter which arises in, or is relevant to, such appeal or application.
- (2) Copies of such request and of such report shall be given to such persons as the judge may direct.

8. Judgment

- (1) In an application, judgment may be given at the hearing or in such other manner as the court or judge hearing the application may think fit and by the issue, thereafter; of an order by a registrar..
- (2) Judgment in an appeal, if not given at the hearing of the appeal or at a time specified by the court, shall be given at a time of which notice shall be given to the parties by a registrar.
- (3) Judgment in an appeal shall be pronounced in such manner as may be determined by a judge of the court which gives it, whether or not he or she was present at the hearing and whether or not the other judges who were present at the hearing are present.
- (4) A registrar shall draw up and certify all judgments and shall transmit a certified copy of the judgment, together with the reasons therefor, if any, to the registrar or clerk of the court appealed from.

9. Postponement and settlement

- (1) If for any reason it appears desirable that the hearing of an appeal or an application must be postponed, an order to that effect may be made by the court or by a judge.
- (2) It shall be the duty of all parties to a civil appeal to furnish without delay to a registrar all available information as to the appeal being or being likely to be settled, or affecting the estimated length of hearing, and, if the appeal is settled or is withdrawn, to notify a registrar of that fact without delay.

10. Address for service

- (1) Every appellant or applicant in the court shall, at the time when he or she notes an appeal or makes any application, give an address at which he or she will accept service in terms of these rules, including service by registered post or electronic mail in terms of rule 11.
- (2) If a person is legally represented, the address given in terms of subrule (1) shall be the address of his or her legal practitioner.
- (3) Subject to rule 14, a legal practitioner may at any time renounce his or her agency by giving notice to his or her client and to a registrar but, until the client furnishes the registrar with, and notifies the opposite party of, a new address for service and any process served on the retiring legal practitioner at his or her address for service shall be considered good service and the retiring legal practitioner shall notify his or her former client of the service of any such process by letter addressed to the client's last-known address.
- (4) If an address for service has been given in terms of these rules other than the address of a legal practitioner in terms of subrule (2) and the person concerned changes such address, he or she shall notify a registrar and other parties to the proceedings of the new address and if he or she fails to make such notification, his or her address for service shall be deemed to be the address given in terms of subrule (1).

11. Service

- (1) Subject to rule 12, any document required by these rules or by direction of the court or any judge to be served on any person shall be served as follows—
 - (a) if the person to be served has given his or her address for service as being that of a legal practitioner, by delivery at the office of that legal practitioner or by sending the document by registered post to that legal practitioner;
 - (b) if the person to be served has given an address other than that of his or her legal practitioner for service, service may be effected personally or on a responsible person thereat by any person authorized thereto by a registrar or by the Sheriff or by sending the document by registered post, electronic mail or express courier service;
 - (c) if the person to be served is in custody, by delivery to, or by sending the document by registered post to, the person in charge of the place of custody in which that person is detained;
 - (d) if the person to be served is the Attorney-General or Prosecutor-General, by delivery to his or her office or by posting the document by registered post to him or her;
 - (e) if the person to be served is a registrar of the Supreme Court or High Court or any other court, by delivery to, or posting the document by registered post to, the registrar concerned:Provided that for the purposes of this paragraph, service of the document shall be deemed to have been effected at the time it is received by the registrar concerned.

- (2) Proof of service in terms of subrule (1) shall be effected—
 - (a) where service is effected at the office of a legal practitioner, by production of a receipt signed by the legal practitioner or his or her agent accompanied by a certificate by the person effecting service to the effect that the document delivered is the document to which the receipt relates;

- (b) where service is effected by means of registered post, by production of a certificate of posting by registered post accompanied by a certificate by the person posting the document that the document posted is the document to which the certificate of posting relates;
- (c) where service is effected by a litigant himself or herself, by an affidavit of service in [Form 1](#) stating that the document concerned was personally served by him or her on the person concerned and stating the specific manner in which service was effected;
- (d) where service is effected by electronic mail, by production of a copy of the mail and the document so sent together with an affidavit from the sender that the document sent is the one to which the email relates;
- (e) where service is effected by express courier service, by production of a receipt accompanied by an affidavit by the person effecting service to the effect that the document delivered is the one to which the receipt relates;
- (f) where service is effected by the Sheriff, by means of a return of service;
- (g) where service is effected by delivery to the person in charge of the place of custody in which a person is detained, by production of a receipt signed by an official at the place of custody accompanied by a certificate by the person effecting service to the effect that the document delivered is the document to which the receipt relates.

(3) If a document has to be served by a person who is in custody and who is not legally represented, it shall be submitted to the officer in charge of the place of custody who shall forward it forthwith to a registrar or the registrar of the High Court, as the case may be and that registrar shall thereafter be responsible for ensuring it is served on the person to be served. For the purpose of determining whether any act performed by the person in custody has been performed timeously the time of service shall be regarded as the time when the document was submitted to the officer in charge of the place of custody.

(4) If any difficulty arises in serving a document in accordance with this rule, a judge may, at the request of a registrar, give special directions as to service and a document served in accordance with such directions shall be regarded as properly served.

(5) Notwithstanding anything to the contrary in this rule, any document required by these rules or by the direction of the court or any judge to be served on any person may be served in the manner specified in section 40 of the Interpretation Act [*Chapter 1:01*].

12. Service of notices of set down

(1) All notices of set down shall be served by the Sheriff at the appropriate address for service provided in terms of rule 10.

(2) At the time of filing an appeal or application, the appellant or applicant shall deposit with the Sheriff an amount as determined by the Sheriff as security for costs of service of all notices of set down.

(3) A copy of the receipt obtained in terms of subrule (2) shall be furnished to a registrar by the party concerned within five days of filing the appeal or application.

(4) When a matter is ready for set down, the registrar shall submit a notice of set down to the Sheriff for service to be effected.

(5) The Sheriff shall submit the return of service to the registrar within five days after service has been effected and, in any event, not less than five days before the date of hearing.

(6) If a party fails to comply with the provisions of subrule (3), the appeal or application shall be regarded as abandoned and shall be deemed to have been dismissed.

13. Orders of registrar

(1) Any person aggrieved by any act, order or decision of a registrar, other than an act performed or order or decision made at the direction of a judge, may apply to have such act, order or decision set aside.

(2) An application in terms of subrule (1) shall be by chamber application served on the registrar and any other person interested in the matter and shall state clearly and specifically the grounds on which it is sought to have the act, order or decision set aside.

(3) The registrar shall report on the application and shall serve copies of his or her report on the applicant and any person cited as co-respondent.

(4) On receipt of a copy of the report referred to in subrule (3), the applicant and co-respondent may file submissions in relation to any matter arising therefrom and thereafter a judge shall hear the application and may make such order in the matter as he or she may think fit.

14. Renunciation of agency by legal practitioner

(1) Subject to this rule, an appellant's legal practitioner may for good cause renounce his or her 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 or she has been notified of the date of hearing of the appeal in terms of rule 25 or 52, as the case may be:

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

(2) Where an appellant's legal practitioner wishes to renounce his or her agency in terms of subrule (1), he or she shall—

- (a) without delay file a notice with a registrar substantially in [Form 2](#);
- (b) as soon as possible thereafter, serve copies of the notice upon the appellant and upon every other party to the appeal; and
- (c) lodge proof of such service with the registrar in accordance with rule 11.

(3) A renunciation of agency in terms of subrule (1) shall be effective from the date on which the notice referred to in subrule (2) is filed with the registrar.

(4) Where an appellant's legal practitioner wishes to renounce his or her agency after the period specified in subrule (1), he or she 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 or she, as the case may be, considers that the circumstances of the case justify such a course.

(5) If an appellant's legal practitioner purports to renounce his or her agency otherwise than in terms of subrule (1) or (2) or without leave granted in terms of subrule (4), as the case may be, the renunciation shall be ineffective, and—

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

15. Special orders as to costs

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

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

(2) If the court or a judge 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 or judge may make any one or more of the following orders—

- (a) ordering him or her 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 or her to refund to his or her client all or any of the fees his or her client may have paid him or her in respect of the appeal and additionally, or alternatively, in the trial court;
- (c) ordering him or her not to charge his or her client any fee in respect of all or part of the work done by him or her in respect of the appeal or application and additionally, or alternatively, the proceedings in the trial court;
- (d) ordering him or her to pay the costs referred to in paragraph (a) on a legal practitioner and client scale or on any other appropriate scale.

(3) Before making an order in terms of subrule (1) or (2), the court or judge shall give the party or legal practitioner concerned an opportunity to make representations as to whether or not the order must be made.

(4) This rule shall not derogate from the power of the court or a judge to make any other order or give any direction, whether as to costs or otherwise, arising out of the conduct of parties or legal practitioners.

PART III

APPEALS FROM THE HIGH COURT

16. General for all appeals

(1) All written proceedings shall be—

- (a) on A4-size paper of good quality, unless the nature of the document renders this impracticable;
- (b) clear and easily legible; and
- (c) printed, cyclostyled, typewritten or reproduced in photostat or in any combination of these media.

(2) The typewriting or printing shall be double-spaced, in a minimum font size of 12 and only one side of the paper shall be used, a margin of not less than fifty millimetres being left on the left-hand side of each sheet.

(3) Notwithstanding the provisions of subrules (1) and (2), any particulars on, or attached to, a notice of appeal lodged in terms of rule 18 or on, or attached to, an application for leave to appeal made in terms of rule 20, lodged or made by a person who is in custody, may be set out in legible handwriting.

(4) Every registrar shall refuse to accept any document that does not comply with the requirements of subrules (1), (2) and (3).

17. Record

- (1) The record shall comply with the provisions of subrules (1) and (2) of rule 16.
- (2) The record shall be paginated continuously throughout but in criminal cases notices of appeal or applications for leave to appeal and other documents which were not before the High Court at the trial may, for the purposes of this subrule, be disregarded in the numbering of pages.
- (3) Every tenth line of each page shall be indicated by numbering in the unbound portion of the margin.
- (4) At the top of each page containing evidence the name of the witness whose evidence is recorded on that page shall appear.
- (5) The record shall contain an index of the names of witnesses whose evidence is included in the record and of all proceedings and documents which are included in the record. In addition there shall be a list of evidence, proceedings and documents omitted from the record. Such index and such list shall appear at the beginning of the record.
- (6) The record shall be securely bound in suitable covers with the title of the appeal on the outside.
- (7) Bulky records shall be—
 - (a) divided into separate conveniently sized volumes of approximately 150 pages each;
 - (b) securely bound in book format to withstand constant use; and
 - (c) so bound that, upon being used, they will lie open without restraint.
- (8) If the record consists of more than one volume, the first volume shall contain an index of all the volumes so prepared, and each volume shall also have an index of the documents contained therein.
- (9) The volumes referred to in subrule (8) shall be consecutively numbered and shall state the number of the volume in relation to the other volumes so prepared and filed.
- (10) A registrar of the High Court as well as the parties and their legal representatives shall endeavour to—
 - (a) exclude from the record all documents, more particularly such as are purely formal, that are not relevant to the appeal;
 - (b) reduce the bulk of the record as far as practicable to avoid the duplication of documents and the unnecessary repetition of headings and other formal parts of documents;
 - (c) avoid the inclusion of evidence which is not relevant to the appeal.
- (11) A registrar of the High Court responsible for preparing a record shall invite the appellant and the respondent or their legal representatives to inspect the record before it is bound in order to ensure that—
 - (a) all necessary documents are included in the record and are in the proper order;
 - (b) any unnecessary documents are omitted from the record;
 - (c) the record has been compiled in accordance with subrules (1) to (10);
 - (d) the papers are all properly paginated; and
 - (e) the record is legible.
- (12) If the appellant or his or her legal representative does not inspect the record as provided in subrule (11) within 10 days after being invited to do so, or within any further time granted by the registrar of the High Court, the registrar of the High Court shall notify the registrar of that fact, and thereupon—
 - (a) the appellant shall be deemed to have abandoned his or her appeal;
 - (b) the notification in terms of this subrule shall be treated as notice by the appellant in terms of rule 48 that he or she has abandoned his or her appeal.
- (13) The preparation of a record under the provisions of rules 23 and 46 shall be subject to the supervision of a registrar of the High Court. The parties may submit any matter in dispute arising from the preparation of such record to a judge of the High Court who shall give such directions thereon as justice may require.
- (14) After completion and inspection of the record, a registrar of the High Court shall certify that it is correct.

PART IV

CRIMINAL APPEALS FROM THE HIGH COURT

18. Noting of appeals

- (1) Subject to the provisions of subrule (4), an accused person wishing to appeal against any conviction or sentence shall note his or her appeal by lodging a notice of appeal with a registrar and a registrar of the High Court. Such notice shall be in [Form 3](#) and shall be signed by the appellant or his or her legal representative and shall be accompanied by grounds of appeal in the form specified in rule 19.
- (2) In a case in which leave to appeal is not necessary, the notice of appeal together with two copies thereof shall be delivered to a registrar of the High Court and a duplicate notice to a registrar within ten days of the date of the conviction or sentence against which the appeal is made.
- (3) In a case in which leave to appeal has been granted by a judge of the High Court, the notice together with two copies thereof shall be delivered to a registrar of the High Court and a duplicate notice to a registrar within four

days of the granting of leave to appeal or within ten days of the conviction or sentence against which the appeal is noted, whichever is the later.

(4) Where the Supreme Court grants leave to appeal, the appeal shall be regarded as having been instituted on the day when such leave is granted and no notice of appeal shall be required.

(5) Notwithstanding the provisions of subrules (2) and (3), if the person instituting an appeal is not legally represented and is in custody, it shall not be necessary for him or her to deliver a copy of the notice of appeal and the accompanying grounds of appeal where it is not reasonably possible for him or her to do so.

(6) A registrar of the High Court shall forward one copy of the notice of appeal delivered under subrule (2) or (3) to the Prosecutor- General. If by reason of the provisions of subrule (5) there are no copies of the notice of appeal, it shall be the responsibility of a registrar of the High Court to make them.

(7) If it appears to a registrar that an appellant has instituted an appeal on a ground of appeal for which leave to appeal is necessary, without obtaining such leave, the registrar shall report the matter to a judge who may give such directions in the matter as he or she thinks fit.

19. Grounds of appeal

(1) The notice of appeal shall set out clearly and specifically, in separate numbered paragraphs, the grounds on which the appeal is made:

Provided that the grounds of appeal in respect of conviction or other order shall be separated from grounds of appeal in respect of sentence.

(2) Where an appeal has been instituted by an appellant who is not legally represented but who thereafter obtains legal representation, his or her legal representative may, not later than five days before the hearing of the appeal, file a notice amending, altering or supplementing the grounds of appeal:

Provided that a ground of appeal for which leave to appeal is necessary may not be added in a case where leave to appeal has not been granted.

(3) The appellant shall not, without leave of the Court, urge or be heard in support of any ground of appeal not set out when the appeal was noted or in respect of which leave to appeal was not granted, or added under subrule (2), but the court in deciding the appeal shall not be confined to the grounds so stated: Provided that the court shall not rest its decision on any—

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

20. Applications for leave to appeal

(1) A person who has been refused leave to appeal by a judge of the High Court may, within ten days of the date when leave to appeal was refused, or within fifteen days of conviction, whichever is the later date, apply to a judge for leave to appeal.

(2) An application for leave to appeal in terms of this rule shall be—

(a) in [Form 4](#);

(c) signed by the applicant or his or her legal representative;

(d) accompanied by grounds of appeal in the form specified in rule 19; and

(e) delivered together with two other copies thereof to a registrar and a copy thereof to a registrar of the High Court.

(3) The application for leave to appeal may be accompanied by written argument in support thereof.

(4) Notwithstanding the provisions of subrule (2), if the person making the application in terms of this rule is not legally represented and is in custody, it shall not be necessary for him or her to deliver a copy of [Form 4](#) and the accompanying grounds of appeal where it is not reasonably possible for him or her to do so.

(5) On receipt of the notice of appeal and accompanying documents in terms of subrule (2), a registrar shall request a registrar of the High Court to forward a copy of the judgment in the case, the reasons of the judge of the High Court for refusing leave to appeal, a copy of the indictment, and such other documents in the case as he or she may require.

(6) On receipt of the documents requested in terms of subrule (5), the registrar shall forward to the Prosecutor-General—

(a) a copy of the application for leave to appeal together with the grounds of appeal and any written arguments submitted by the applicant; and

(b) a notification as to whether or not the applicant has applied for leave to appear in person or is legally represented.

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

(8) If the judge decides to hear the applicant in terms of subrule (7), the Prosecutor-General may also appear and the applicant and the Prosecutor-General shall be notified by the registrar of the date of the hearing. If the applicant is not to be represented or to appear, the Prosecutor-General may, within four days of receipt of the documents referred to in subrule (6), submit written representations as to why the application should not be granted and, if he or she does so, opportunity shall be given to the applicant to reply thereto.

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

21. Application for extension of time or leave to appeal out of time

(1) A person who wishes to apply for an extension of time in which to institute an appeal in terms of rule 18 or for leave to appeal in terms of rule 20 shall do so in **Form 5** signed by himself or herself or his or her legal representative.

(2) The Form referred to in subrule (1) shall be accompanied either by the documents required in terms of subrule (1) of rule 18 or the documents required in terms of subrule (2) of rule 20, whichever rule is applicable, together with an affidavit setting out why the applicant did not institute his or her appeal or apply for leave to appeal within the time specified.

(3) The documents referred to in subrule (2), together with one copy thereof, shall, unless the applicant is not legally represented and is in custody and cannot reasonably provide copies, be delivered to a registrar.

(4) On receipt of the application for extension of time and the accompanying documents in terms of subrules (1) and (2), a registrar shall request a registrar of the High Court to forward a copy of the judgment in the case and of any judgment of the High Court refusing leave to appeal, and of such other documents in the case as he or she may require.

(5) On receipt of the documents requested in terms of subrule (4), the registrar shall forward, to the Prosecutor-General a copy of the documents referred to in subrules (1) and (2), together with a notification whether or not the applicant has applied for leave to appear in person or is legally represented. The Prosecutor-General may submit an affidavit in reply to that filed by the applicant and, if he or she does so, an opportunity shall be given to the applicant to reply thereto.

(6) Subject to the provisions of section 29 of the Act, the applicant shall have the right either to be represented or to appear at the hearing of the application and, if he or she does so appear or is so represented, the Prosecutor-General may also appear.

(7) If the applicant is not to be represented or to appear, the Prosecutor-General may, within four days of the receipt of the documents in terms of subrule (5) and, if affidavits are to be filed, at the time of lodging his or her affidavits, submit written representations as to why the application should not be granted.

(8) If the application is for the purpose of obtaining an extension of time for making an application for leave to appeal, the Prosecutor-General may also submit written representations as to why such leave should not be granted.

(9) The applicant shall be given an opportunity of replying to any representations made in terms of subrules (7) and (8).

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

(11) If the application is granted in terms of subrule (10), and the case is one in which leave to appeal is necessary, the judge may, thereupon, grant or refuse leave to appeal:

Provided that leave to appeal shall not be granted in terms of this subrule unless application for leave to appeal has been made to the High Court and has been refused.

(12) If leave to appeal out of time is granted in terms of this rule, the appeal shall be deemed to have been instituted on the date of the granting of such leave, unless the judge otherwise orders.

22. Legal aid

(1) A person who wishes to apply for legal aid, in terms of the Legal Aid Act [*Chapter 7:16*], to pay the costs of the preparation of the record or to have a legal practitioner assigned to argue an appeal or application to which he or she is a party, may apply to a registrar by submitting **Form 6**— (a) with his or her notice of appeal in terms of rule 18; or

(b) if he or she has applied for leave to appeal in terms of rule 20, within four days of notification that leave to appeal has been granted.

(2) On receipt of an application referred to in subrule (1), the registrar shall inquire into the question of the means of the applicant and, for that purpose, may require the applicant to give evidence on oath either in person or by affidavit.

(3) After inquiry in terms of subrule (2), the application shall be dealt with in terms of the Legal Aid Act [Chapter 7:16] and regulations made thereunder.

23. Record

(1) Subject to the provisions of subrules (3) and (4) of rule 24, the record shall include particulars of the trial in Form 7, the notice of appeal and, alternatively or additionally, the notice of application for leave to appeal and the grounds of appeal.

(2) An appellant other than the Prosecutor-General shall, within ten days of instituting the appeal or, if he or she has applied for legal aid and it has been refused, within ten days of notification of such refusal, make arrangements with a registrar of the High Court for the preparation of the record.

(3) The registrar of the High Court may, in his or her discretion and at any time, allow the appellant such time and terms for the preparation of the record or the payment of the costs thereof as he or she thinks fit.

(4) In considering the time allowed for the preparation of the record, the registrar shall have regard to the fact that a stated case has, or has not, been requested or will or; will not be, requested.

(5) Where arrangements have been made in terms of subrule (2), or where legal aid has been granted for the preparation of the record, the registrar of the High Court shall be responsible for ensuring that the record is prepared in terms of this rule as read with rule 17.

(6) When the record has been prepared, a registrar of the High Court shall certify its correctness and shall send to—

(a) the Prosecutor-General two copies of the record; and

(b) a registrar the certified record together with three copies of it, or, if further copies have been requested, such further copies.

(7) If legal aid has been granted for the preparation of a record, the registrar of the High Court shall, in addition, send to a registrar a copy of the record for each appellant to whom legal aid has been granted.

(8) An appellant who has not been granted legal aid may obtain any number of copies of the record as he or she may require from the registrar of the High Court upon payment of the fees due for the preparation of such record.

24. Stated case

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

(2) If the judge makes a request to the High Court to state a case, it shall be the responsibility of the High Court to state the case. It may, but need not, consult the parties to the appeal.

(3) When the case has been stated, the record shall be prepared in the manner specified in rules 17 and 23 save, however; that the record shall consist only of Form 7, the notice of appeal, the stated case, the judgment of the High Court and such other documents as the judge may direct to be included.

(4) If the High Court reserves a question of law in terms of section 24 or 25 of the High Court Act [Chapter 7:06], it shall be the responsibility of the court reserving the question to state the question so reserved and it may, but need not, consult the parties. A record shall be prepared in accordance with the directions of the High Court consisting of the indictment, any exception or objection thereto, the question as stated, the judgment of the court and any other matters which, in the opinion of the court reserving the question, are relevant.

25. Set down

(1) A registrar of the High Court shall notify the appellant or his or her legal practitioner of the date that the record was sent to a registrar in terms of subrule (5) of rule 23 and, where the appellant is legally represented, shall call upon his or her legal practitioner to file heads of argument within fifteen days after the date of such notification.

(2) Notification in terms of subrule (1) shall be given to the appellant or his or her legal practitioner personally or sent by registered post to the address for service supplied in terms of rule 10. If such notification is not given personally, it shall be deemed to have been received four days after it is posted by registered letter to the appellant's address for service.

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

(4) Within fifteen days after being called upon to file heads of argument in terms of subrule (1), or within such longer period as a judge may for good cause allow, a legal practitioner shall file with a registrar a document setting out the heads of his or her argument together with a list of authorities to be cited in support thereof, and immediately thereafter shall deliver a copy to the Prosecutor-General.

(5) After receiving notification in terms of subrule (1) and, where appropriate, after filing heads of argument in terms of subrule (4), the appellant or his or her legal practitioner shall apply to a registrar in writing for a date of hearing, and may provide the registrar with an estimate of the time it is envisaged the hearing of the appeal will take.

(6) On receipt of an application in terms of subrule (5), the registrar shall, subject to subrule (1) of rule 26, set down the appeal for hearing on a day selected by him or her and shall forthwith give notice thereof to the appellant or his or her legal practitioner and to the Prosecutor-General:

Provided that the day selected for the hearing shall be such as to give all parties to the appeal not less than six weeks' notice thereof unless they agree to shorter notice.

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

(8) Within fifteen days after receiving the appellant's heads of argument, or notice of set down, whichever is the earlier, the Prosecutor-General shall file a document setting out the heads of his or her argument together with a list of authorities to be cited in support thereof, 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 Prosecutor-General receives the appellant's heads of argument, the Prosecutor-General shall file his or her heads of argument as soon as possible and in any event not later than four days before the hearing of the appeal.

(9) If the appellant has been granted legal aid for the preparation of the record and is not legally represented, the registrar shall, when giving notice of set down, supply to the appellant a copy of the record. If the appellant has been assigned counsel, a copy of the record shall be provided to his or her counsel.

26. Dismissal of appeal for want of prosecution

(1) If—

- (a) no arrangements have been made for the preparation of the record within the time specified in subrule (2) of rule 23; or
- (b) no heads of argument have been filed in terms of subrule (4) of rule 25 within the period specified in that rule; or
- (c) no application for a date of hearing has been made in terms of subrule (5) of rule 25 within eight weeks of receiving notification in terms of subrule (1) of that rule;

the appeal shall be regarded as abandoned and shall be deemed to have been dismissed.

(2) An appellant may apply to a judge for an appeal which is deemed to have been dismissed in terms of subrule (1) to be reinstated and for an extension of time to be granted in which to apply for a date of hearing and the provisions of rule 21 shall, *mutatis mutandis*, apply to an application in terms of this subrule.

(3) The judge may grant or refuse an application made in terms of subrule (2) and may, in granting the application, impose such conditions as he or she thinks fit.

(4) An appellant may at any time abandon an appeal instituted by him by notice to a registrar and the appeal shall then be deemed to have been dismissed.

(5) The Prosecutor-General, after receiving a notice of appeal, may apply to the court to have the appeal dismissed on the grounds that it is frivolous or vexatious.

(6) When at the hearing of an appeal there is no appearance by, and no heads of argument on behalf of, an appellant who is not in custody, the court may dismiss the appeal:

Provided that a judge may on application and for good cause shown reinstate, on such terms as he or she thinks fit, any appeal dismissed in terms of this subrule.

(7) If an appeal is deemed to have been dismissed in terms of subrule (1) or (4), a registrar shall give notice of the fact to the appellant, the Prosecutor-General and a registrar of the High Court.

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

27. Applications

(1) Except as otherwise provided in these rules, all applications under this Part, other than an application for leave to appeal, for extension of time in which to perform any act or for legal aid, shall be made by court application.

(2) If it is necessary in any such application to rely on facts outside any record, such facts shall be set out in an affidavit or, if the facts are set out by the Prosecutor-General, in a statement.

(3) The court application together with supporting documents shall be served on a registrar and on the respondent not less than five days before the hearing of the application.

(4) The respondent shall be entitled to file affidavits or statements, as the case may be, in reply to the application and these shall be served on the registrar and the applicant.

(5) Where the applicant is in custody and not legally represented, a registrar shall make copies of the court application and supporting documents, and any affidavit filed in terms of subrule (2), and serve the same on the respondent.

(6) If in any application there are heads of argument filed by the applicant, the Prosecutor-General shall not, except by special leave, be entitled to appear but may make written representations in regard to the application and the applicant shall have the right of replying thereto.

28. Applications to lead further evidence

(1) An application to adduce further evidence on appeal shall be accompanied by an affidavit by the witness whose evidence it is sought to lead, an affidavit or a statement by counsel as to why that evidence was not adduced at the trial and a copy of the judgment at the trial.

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

(1)

29. Written arguments in lieu of appearance

In the event of arguments in writing being presented in accordance with the provisions of subsection (4) of section 29 of the Act, the persons to be served with such arguments and the number of copies thereof required shall be as follows—

- (a) in an appeal, three copies on a registrar and one copy on the respondent, or appellant, as the case may be;
- (b) in an application, one copy on a registrar and one copy on the respondent or applicant, as the case may be.

(2) Notwithstanding the provisions of subrule (1), where a person wishing to submit an argument in writing is in custody and is not legally represented, he or she may serve one copy of the argument on a registrar who shall be responsible for the preparation and service of the other copies.

(3) The time within which written arguments shall be served shall be— (a) in an appeal, five days before hearing;

(b) in an appeal by the Prosecutor-General where the respondent wishes to present argument, five days after service of [Form 8](#) or [Form 9](#);

(c) in an application for leave to appeal or for an extension of time, at the time when [Form 4](#) or [Form 5](#) is delivered;

(d) in any other application, one day prior to the hearing.

(4) Notwithstanding that written arguments have been filed, the court or a judge may allow the person filing such arguments to appear in person or by his or her legal practitioner.

PART V

APPEALS BY PROSECUTOR-GENERAL FROM HIGH COURT

30. Noting of appeals where no leave required

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

(a) against the judgment of the High Court in any case in terms of section 44(6) of the High Court Act

[*Chapter 7:06*], he or she shall, within ten days of the date of judgment—

(i) lodge a notice of such appeal with a registrar of the High Court; and (ii) file a duplicate notice with a registrar.

(b) against the sentence imposed by the High Court in any case in terms of section 44(7)(a) of the High Court Act [*Chapter 7:06*], he or she shall, within ten days of the passing of sentence— (i) lodge a notice of such appeal with a registrar of the High Court; and (ii) file a duplicate notice with a registrar.

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

(a) in the case of a notice in terms of paragraph (a) of subrule (1)—

- (i) specify the judgment against which the appeal is brought and the point of law in issue; and
- (ii) indicate whether or not a stated case is appropriate;

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

31. Preparation of record and service thereof on respondent

(1) The Prosecutor-General shall, within ten days of noting an appeal in terms of rule 30, make arrangements with a registrar of the High Court for the preparation of the record.

(2) The provisions of rule 17 and subrule (1) of rule 23 shall, *mutatis mutandis*, apply in respect of a record prepared in terms of subrule (1).

Provided that, if a judge makes a request in terms of section 18 of the Act, the provisions of subrules (3) and (4) of rule 24 shall, *mutatis mutandis*, apply.

(3) When the record has been prepared, the registrar of the High Court shall certify its correctness and shall send to—

- (a) the Prosecutor-General, two copies of the record; and
- (b) a registrar, the certified record together with three copies thereof, or, if further copies have been requested, such further copies.

(4) The Prosecutor-General shall, as soon as possible after he or she has received the record, cause to be served on the respondent a copy of the record including a copy of the notice of appeal and—

- (a) in the case of an appeal referred to in paragraph (a) of subrule (1) of rule 30, a notice in [Form 8](#);
- (b) in the case of an appeal referred to in paragraph (b) of subrule (1) of rule 30, a notice in [Form 9](#).

(1)

32. Set down

The Prosecutor-General shall, as soon as possible after receiving the copies of the record sent in terms of subrule (3) of rule 31, apply in writing to a registrar for a date of hearing, providing an estimate of the time it is envisaged the hearing of the appeal will take.

(2) On receipt of an application in terms of subrule (1) the registrar shall set down the appeal for hearing on a day selected by him and shall forthwith serve notice thereof on the Prosecutor-General and the respondent or his or her legal practitioner so as to give them at least five days' notice.

33. Applications for leave to appeal

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

- (2) The Prosecutor-General shall, in an application referred to in subrule (1)—
- (a) specify the sentence against which the appeal is brought and the proposed grounds of the appeal; and
 - (b) submit written argument in support thereof; and may, at the same time, submit a request that the matter be set down for oral argument.

(3) On receipt of an application in terms of subrule (1), the registrar shall request a registrar of the High Court to forward—

- (a) a copy of the judgment in the case, including the reasons of the judge of the High Court for sentence; and
- (b) a copy of the indictment and such other documents in the case as he or she may require.

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

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

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

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

(8) If the application is granted, a registrar shall notify a registrar of the High Court, and forward a copy of the application referred to in subrule (1), and the appeal shall be deemed to have been noted and the provisions of rules 31 and 32 shall, *mutatis mutandis*, apply.

34. Applications out of time

(1) Where the Prosecutor-General wishes to—

- (a) note an appeal against the sentence of the High Court in any case; or
 - (b) apply for leave to appeal against the sentence of the High Court in any case;
- after the expiration of the time limit specified in this Part, an application for an extension of time in which to note an appeal or for leave to appeal, as the case may be, shall be lodged with a registrar and a duplicate notice of appeal shall immediately thereafter be lodged with a registrar of the High Court.

(2) The provisions of subrules (2) to (7) of rule 33 shall, *mutatis mutandis*, apply in respect of an application referred to in subrule (1):

Provided that the Prosecutor-General shall, together with the written argument referred to in paragraph (b) of subrule (2) of rule 33, submit an adequate statement explaining why the appeal was not noted or the application was not made, as the case may be, within the proper time.

(3) If an application for an extension of time in which to apply for leave to appeal is granted, the judge shall thereupon grant or refuse leave to appeal.

(4) If—

- (a) an application for an extension of time in which to note an appeal is granted; or
 - (b) leave to appeal is granted in terms of subrule (3);
- the registrar shall notify the registrar of the High Court, and forward a copy of the application referred to in subrule (1), and the appeal shall be deemed to have been noted and the provisions of rules 31 and 32 shall, *mutatis mutandis*, apply.

(1)

35. Abandonment of appeal

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

36. Legal aid

A person who wishes to apply for legal aid in terms of the Legal Aid Act [*Chapter 7:16*] to have counsel assigned to appear on his or her behalf at the hearing of an appeal or application in terms of this Part may apply to a registrar, and attach his or her notification that he or she intends to oppose the application or appeal, as the case may be—

- (a) in the case of an appeal referred to in subrule (1) of rule 30, by submitting to the registrar his or her application in [Form 8](#) or [Form 9](#); and
- (b) in the case of an application referred to in subrule (1) of rule 33 or subrule (1) of rule 34, by submitting to the registrar his or her application in [Form 10](#).

(2) On receipt of an application referred to in subrule (1), the registrar shall inquire into the question of the means of the applicant and, for that purpose, may require the applicant to give evidence on oath either in person or by affidavit.

(3) After inquiry in terms of subrule (2) the application shall be dealt with in terms of the Legal Aid Act [*Chapter 7:16*] and regulations made thereunder.

PART VI

CIVIL APPEALS FROM THE HIGH COURT

37. Entry of appeal

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

- (a) the date on which, and the court by which, the judgment appealed against was given;
- (b) if leave to appeal or condonation and extension of time to appeal was granted, the date of such grant;
- (c) whether the whole or part only, and if so which part, of the judgment is appealed against;
- (d) the grounds of appeal in accordance with the provisions of rule 44;
- (e) the exact relief sought;
- (f) the address for service of the appellant or his or her legal practitioner.

(2) The notice of appeal shall be filed and served on a registrar, a registrar of the High Court and the respondent in accordance with rule 38.

(3) If the appellant does not serve the notice of appeal in compliance with subrule (2) as read with rule 38, the appeal shall be regarded as abandoned and shall be deemed to have been dismissed.

38. Time for entry of appeal

(1) An appellant shall institute an appeal within the following times—

- (a) by filing and serving a notice of appeal in compliance with subrule (2) of rule 37 within 15 days of the date of the judgment appealed against;
- (b) if leave to appeal is necessary and has been granted, by filing and serving a notice of appeal in compliance with subrule (2) of rule 37 within ten days of the granting of leave to appeal or within 15 days of the date of the judgment appealed against, whichever is the later.

(2) If leave to appeal is necessary and has been refused by the High Court, the appellant shall apply for leave to appeal within ten days of the refusal.

39. Applications generally

(1) Subject to the provisions of rules 43, 48, 49, 53 and 55, applications shall be by court application signed by the applicant or his or her legal practitioner and accompanied by an affidavit setting out any facts which are relied upon.

(2) The court application and any affidavits or other documents referred to in subrule (1) shall be filed with a registrar and thereafter served on the opposite party within three days, failing which the application shall be regarded as abandoned and deemed to have been dismissed.

(3) The respondent shall have the right to file opposing affidavits within five days of receipt of the application in terms of this rule and, thereafter, the applicant shall have the right of filing answering affidavits within a further period of five days calculated from the date of receipt of the respondent's opposing affidavits.

(1)

(4) Applications referred to in rules 43, 48, 49, 53 and 55 shall be by way of chamber application as regulated, *mutatis mutandis*, by the High Court Rules.

40. Applications to lead further evidence on appeal

An application to lead further evidence on appeal shall be accompanied by that evidence in the form of an affidavit and also by an affidavit, or a statement from counsel, showing why the evidence was not led at the trial, together with a copy of the judgment appealed from and a statement indicating in what manner it is alleged the evidence sought to be adduced affects the matters at issue.

41. Power to allow amendment

The court may upon application by notice or upon oral application by counsel during the course of any hearing allow, upon such terms as it may think fit to impose, amendment of the grounds of appeal or of any pleadings or other document and may similarly permit a party to appear or be represented notwithstanding any declaration in terms of rule 50 to the effect that the party does not intend to appear or be represented.

42. Any other application

If in the course of the hearing of an appeal any party wishes to make any other application, he or she may do so verbally on such terms as the court may allow.

43. Applications for leave to appeal or extension of time to appeal

(1) An application for leave to appeal or for condonation of non-compliance with the rules and for extension of time in which to appeal shall be signed by the applicant or his or her legal practitioner and shall be accompanied by a copy of the judgment against which it is sought to appeal.

(2) An application for leave to appeal shall set out the date on which the High Court refused leave to appeal and shall have attached to it—

- (a) a notice of appeal containing the matters required in terms of paragraphs (a) to (f) of subrule (1) of rule 37;
- (b) a copy of the proceedings before the High Court when leave to appeal was refused, together with the judgment, if any;
- (c) an affidavit setting out any facts which are relied upon as affecting the granting of leave to appeal.

(3) An application for condonation of non-compliance with the rules and for extension of time in which to appeal shall have attached to it a notice of appeal containing the matters required in terms of subrule (1) of rule 37 and an affidavit setting out the reasons why the appeal was not entered in time or leave to appeal was not applied for in time. Counsel may set out any relevant facts in a statement. Where such application is in relation to a matter in which leave to appeal is necessary the application shall, in addition, comply with the requirements of subrule (2).

(4) An application in terms of this rule and accompanying documents shall be filed with a registrar and thereafter served on the respondent within three days, failing which the application shall be regarded as abandoned and deemed to have been dismissed.

(5) The respondent shall be entitled, within three days of service, to file with the registrar his or her opposing affidavits, which shall also be served on the applicant and the applicant shall thereafter be entitled, within three days, to file with the registrar his or her answering affidavits.

(6) The registrar shall give notice of the date of hearing to the parties.

(7) A judge may make such order on the application as he or she thinks fit and shall, if an extension of time is granted, deal also with any question of leave to appeal which may be involved.

(8) If leave to appeal or condonation and extension of time to appeal is granted, the appeal shall be deemed to have been instituted in accordance with the notice of appeal filed in the application on the date on which leave is granted, unless the judge otherwise orders.

(9) Where an order is granted in terms of subrule (8), the appellant shall attach a copy of the order to the notice of appeal.

(10) The registrar shall notify a registrar of the High Court of the date of the judgment or determination in the matter and shall at the same time deliver to the registrar a copy of the order and judgment, if any.

44. Grounds of appeal

(1) The grounds of appeal shall be set forth clearly and concisely and in separate numbered paragraphs.

(2) The appellant, whether on appeal or on cross-appeal, shall not without leave of the court urge or be heard in support of any ground of appeal not set out when the appeal is entered, but the court in deciding the appeal shall not be confined to the grounds so stated:

Provided that the court shall not rest its decision on any other ground unless the parties have had sufficient opportunity to contest the case on that ground.

(3) Application to amend the grounds of appeal may be made before the hearing of the appeal to a judge or at the hearing of the appeal by notice of amendment duly served on the respondent.

45. Cross-appeal and abandonment of judgment

(1) When an appeal has been instituted the respondent shall be entitled, within ten days of the entry of appeal in terms of rule 37, to enter a cross-appeal.

(2) Notice of cross-appeal shall be signed by the respondent or his or her legal practitioner and shall state in respect of which appeal the cross-appeal is made and shall, *mutatis mutandis*, comply with rules 37 and 38.

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

46. Preparation and service of record

(1) The appellant, unless he or she has been granted leave to appeal *in forma pauperis*, shall at the time of the noting of an appeal in terms of rule 37 or within such period therefrom not exceeding fifteen days as a registrar of the High Court may allow, deposit with the said registrar the estimated cost of the preparation of the record in the case concerned:

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

(2) The registrar of the High Court shall be responsible for the preparation of the record which shall be prepared in accordance with the provisions of rule 17.

(3) The record shall incorporate the notice of appeal and notice of cross-appeal, if any.

(4) After certification of the record, the registrar of the High Court shall deliver the certified copy and three other copies, or more if a registrar so requires, to that registrar. If the respondent has been granted leave to oppose the appeal *in forma pauperis*, the registrar of the High Court shall deliver two copies of the record to the respondent.

(5) If the appellant fails to comply with the provisions of subrule (1), or any written undertaking made in terms of the proviso to that subrule, the appeal shall be deemed to have lapsed.

47. Stated case

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

(2) If on the request of a party in terms of subrule (1) or of his or her own motion the judge requests that a case be stated under section 23 of the Act, the appellant shall, with the agreement, if possible, of the respondent, prepare a draft stated case and submit it to the court whose judgment is appealed against.

(3) The stated case shall set out in numbered paragraphs—

- (a) the relevant facts found proved by the court whose judgment is appealed against;
- (b) the relevant portions of the judgment appealed against;
- (c) the respective contentions of the parties in regard to that decision; and (d) the question of law which arises for decision on appeal.

(4) On consideration of the draft stated case the court which gave the judgment may suggest amendments to the draft to the party or parties who have prepared the stated case. If the parties thereafter agree to the statement of case, the case shall be regarded as being so stated.

(5) If the draft stated case has been prepared by the appellant and the respondent has not agreed to the draft, the appellant shall, after submitting the draft stated case to the court whose judgment has been appealed against and amending the draft, if he or she considers it desirable, in the light of any suggestions made by that court, serve notice on the respondent stating that the draft may be inspected at a place specified and that unless he or she objects to the draft within seven days the case will be so stated.

(6) If no objection is made in terms of subrule (5) or if the parties can, within the period specified, agree to the terms of an amended draft, the case shall be regarded as being stated in terms of the draft or amended draft, as the case may be.

(7) If objection is made in terms of subrule (5) and no agreement can be reached within the period specified as to the terms of an amended draft, the parties shall be deemed to have failed to agree upon the terms of the stated case and the matter shall thereafter be dealt with in the manner specified in section 23(3) of the Act.

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

48. Abandonment

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

(2) A respondent may, upon receipt of a notice in terms of subrule (1), make application to a judge for an order in respect of any costs accrued by him or her, including the costs of any cross-appeal:

Provided that where a respondent claims the costs of a cross-appeal in terms of this subrule, the cross-appeal shall, thereby, be deemed to have been abandoned.

(3) An appellant in a cross-appeal may at any time abandon a cross-appeal and, except in the case where a cross-appeal is deemed to have been abandoned by virtue of the provisions of subrule (2), the respondent in the cross-appeal may thereupon claim his or her costs by making an application to a judge for an order in respect of any costs incurred by him or her by virtue of such cross-appeal.

(4) if on the abandonment of an appeal by an appellant the respondent who has noted a cross-appeal wishes to persist in his or her cross-appeal, such respondent shall be regarded as the appellant for the purposes of the preparation of the record and the prosecution of the appeal.

(5) The registrar shall notify a registrar of the court appealed from of any abandonment of an appeal or crossappeal in terms of this rule.

49. *In forma pauperis* proceedings

(1) Any person without means may apply for leave to prosecute or defend a civil appeal *in forma pauperis*.

(2) Where the opposite party consents to the applicant proceeding *in forma pauperis* an application for leave to proceed as aforesaid may be made either to a registrar or orally from the bar at the hearing of the appeal and where an application is so made the registrar or court, as the case may be, may forthwith grant the application.

(3) Where the opposite party after having been consulted does not consent to the applicant proceeding *in forma pauperis*, an application shall be made to a judge.

(4) An application in terms of subrule (3) shall set forth fully the financial position of the applicant and, in particular, shall state that the applicant is unable to provide sureties and that, excepting household goods, wearing apparel, tools of trade and his or her interest in the subject matter of the appeal, he or she is not possessed of property to the amount of ten thousand dollars (USD 10 000). Such particulars shall be supported by a verifying affidavit and shall be accompanied by a certificate of a legal practitioner that he or she has considered the case of the applicant and that prima facie he or she has reasonable grounds to prosecute or defend the appeal.

(5) If leave to prosecute or defend an appeal *in forma pauperis* is granted, the court shall give such directions as to the cost of preparation of the record as it deems fit and may assign to the applicant such legal assistance as may appear to be necessary.

(6) Whenever a person obtains leave to prosecute or defend an appeal *in forma pauperis* he or she shall not be required to lodge security for the costs of the opposite party or to pay any court fees.

(7) If a person to whom leave has been granted as aforesaid does not succeed in the appeal, no fees shall be taken from him by the legal practitioner or counsel assigned to him under the provisions of subrule (5).

(8) If such person is successful in the appeal and is awarded costs against the opposite party, he or she shall, subject to taxation, be entitled to include and recover in such costs the fees of his or her legal practitioner or counsel and all other fees, including the cost of the record, exempted by reason of leave to prosecute or defend an appeal *in forma pauperis* having been granted.

(9) On good cause shown to the court, leave to prosecute or defend an appeal *in forma pauperis* may be reviewed, rescinded or varied by the court and the leave to proceed *in forma pauperis* shall not exempt the applicant from liability to be adjudged to pay costs.

(10) All pleadings, process and documents filed of record by a party proceeding *in forma pauperis* shall be headed accordingly.

50. *Written arguments*

A party to a civil appeal may, not less than five days before the date on which the appeal has been set down for hearing, file with a registrar a declaration in writing that he or she does not intend to be present in person or to be represented by counsel at the hearing of the appeal, together with four copies of such argument as he or she wishes to submit to the court. Such argument shall be in numbered paragraphs under distinct heads. A copy of such declaration and argument shall be served on the other parties to the appeal as soon as possible after service on the registrar.

51. *Preliminary objections*

A party to an appeal who intends to rely on a preliminary objection to any proceeding or to the use of any document shall give notice in writing of the objection to a registrar and to the opposite party and where the objection is to be taken at the hearing of an appeal three additional copies of the notice shall be given to the registrar.

52. *Setting down of appeal and heads of argument*

(1) Where the appellant will be represented by a legal practitioner at the hearing of the appeal, a registrar shall send written notification to that legal practitioner as soon as he or she has received the record in terms of rule 46, 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 heads of his or her argument together with a list of authorities to be cited in support thereof, and immediately thereafter shall deliver a copy to the respondent.

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

Provided that where—

- (i) the respondent's legal practitioner has not received the appellant's heads of argument in terms of subrule (2), whether because the appellant will not be legally represented at the hearing of the appeal or for any other cause; or
 - (ii) the appeal is set down for hearing less than fifteen days after the respondent's legal practitioner receives the appellant's heads of argument in terms of subrule (2);
- the respondent's legal practitioner shall file his or her heads of argument as soon as possible and in any event not less than four days before the hearing of the appeal.

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

Provided that, unless the parties agree otherwise, at least four weeks' notice shall be given to the appellant and the respondent.

(5) Where a respondent who is legally represented fails to file his or her heads of argument in terms of subrule (3), he or she shall be automatically barred.

53. Dismissal of appeal in the absence of heads of argument or appearance

(1) If, within the period specified in subrule (2) of rule 52, a registrar does not receive heads of argument from an appellant who is legally represented, the appeal shall be regarded as abandoned and shall be deemed to have been dismissed.

(2) Where an appeal is deemed to have been dismissed in terms of subrule (1), the registrar shall forthwith notify the parties and a registrar of the High Court of that fact.

(3) Where, at the time of the hearing of an appeal, there is no appearance for the appellant or no heads of argument have been filed by him, the court may, at its discretion, determine or dismiss the appeal and make such order as to costs as it may think fit.

(4) The registrar shall notify a registrar of the court whose judgment is appealed against of the dismissal of any appeal under this rule.

54. Third parties

(1) If prior to the hearing of an appeal it appears to a judge, or at the hearing it appears to the court, that a person who is not a party to the appeal may be so affected by an order made in it that he or she must be heard, notice may be given to that person to enable him to apply to intervene in the appeal if he or she so wishes.

(2) If notice is given in terms of subrule (1) the person to whom notice is given may apply to the judge or to the court, as the case may be, for permission to enable him or her to intervene in the appeal.

(3) The judge or the court hearing an application in terms of subrule (2) may refuse the application or grant it upon such terms and conditions as may seem just.

55. Security

(1) If the judgment appealed from is carried into execution by direction of the court appealed from, security for the costs of appeal shall be as determined by that court and shall not be required under this rule.

(2) Where the execution of a judgment is suspended pending an appeal and the respondent has not waived his or her right to security, the appellant shall, before lodging copies of the record with a registrar, enter into good and sufficient security for the respondent's costs of appeal:

Provided that where the parties are unable to agree on the amount or nature of the security to be furnished—

(i) the matter shall be determined by the registrar upon application by the appellant; and (ii) the registrar shall specify the period within which the security shall be furnished.

(3) A judge may, on application at the cost of the appellant and for good cause shown, exempt the appellant wholly or in part from the giving of security under subrule (2).

(4) No security for costs in terms of subrule (2) need be furnished by the Government of Zimbabwe or by a municipal or city council or by a town management board.

(5) Subject to the proviso to subrule (2), where an appellant is required by this rule to furnish security for the respondent's costs of appeal, such security shall be furnished within one month of the date of filing of the notice of his or her appeal in terms of rule 37 or, where applicable, within the period specified by the registrar in terms of the proviso to subrule (2).

(6) If an appellant who is required to furnish security for the respondent's costs of appeal fails to furnish such security with the period specified in subrule (5), the appeal shall be regarded as abandoned and shall be deemed to have been dismissed.

56. Taxation

(1) Where costs are allowed they shall be taxed by a registrar and legal practitioners' fees shall be charged and taxed in accordance with the relevant provisions of the tariff for the time being used by the High Court of Zimbabwe.

(2) Any party aggrieved by the taxation shall give notice of review to the registrar and to the opposite party within 15 days of the taxation, setting out his or her grounds of objection.

(3) The registrar shall make a report in writing setting forth any relevant facts found by him and stating his or her reasons for any decision. A copy of such report shall be given to a judge and shall be served on the parties to the taxation.

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

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

PART VII

MISCELLANEOUS APPEALS AND REFERENCES

57. Application

(1) Subject to the provisions of subrule (2), this Part shall apply to any appeal to the court or a judge which is provided for in any enactment having the force of law in Zimbabwe.

(2) This Part shall not apply to—

(a) an appeal or reference in terms of the High Court Act [*Chapter 7:06*]; or

(b) an appeal in relation to which the enactment concerned itself expressly specifies the whole procedure to be followed or provides for the making of rules or regulations regulating such procedure.

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

58. Interpretation of terms

In this Part—

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

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

59. Notice of appeal

(1) Every appeal under this Part shall be instituted by a notice of appeal signed by the appellant or his or her legal representative.

(2) The notice of appeal referred to in subrule (1) shall be directed and delivered by the appellant to the registrar or administrative officer of the tribunal, or to the officer whose decision is appealed against, and to all other parties affected, and shall also be filed with a registrar in accordance with rule 60.

(3) The notice of appeal shall state—

(a) the date on which the decision was given;

(b) the tribunal or officer whose decision is appealed against;

(c) the grounds of appeal in accordance with rule 44;

(d) the exact nature of the relief sought;

(e) the address of the appellant or his or her legal representative; and (f) if leave to appeal was granted, the date of such grant.

(4) If the appellant does not serve the notice of appeal in compliance with subrule (2) as read with rule 60, the appeal shall be regarded as abandoned and shall be deemed to have been dismissed.

60. Time within which notice to be given

(1) Subject to the provisions of rule 61 and the enactment under which the appeal is lodged, a notice of appeal shall be delivered and filed in accordance with the provisions of rule 59 within 15 days of the date of the decision appealed against.

(2) An appeal from a decision of the Labour Court in terms of section 92F of the Labour Act [*Chapter 28:01*] shall be delivered, and filed with a registrar, within 15 days from the grant of leave to appeal by the Labour Court or, where such leave is refused, within 15 days from the grant of leave by a judge:

Provided that where leave to appeal is refused by the Labour Court, the applicant shall apply for leave to appeal to a judge within ten days of the refusal to grant leave.

61. Applications for extension of time to appeal

Save where it is expressly or by necessary implication prohibited by the enactment concerned, a judge may, if special circumstances are shown by way of an application in writing, condone the late noting of the appeal and extend the time laid down, whether by rule 60 or by the enactment concerned, for instituting an appeal.

62. Record

(1) Within 15 days of receipt of a notice of appeal, the tribunal or officer concerned shall lodge the record of proceedings with a registrar.

(2) The provisions of rules 16 and 17 shall apply, *mutatis mutandis*, to every record of proceedings lodged in terms of subrule (1) including, without derogation from the generality of this subrule, records from the Labour Court, Administrative Court, Fiscal Appeals Court, Special Court for Income Tax Appeals, Intellectual Property Tribunal, Courts Martial, Electoral Court and Magistrates Court.

63. Special cases referred or reserved to the court

(1) In any reference of a special case or question to the court or a judge, it shall be the duty of the court, judge, tribunal or officer concerned to prepare, in consultation with the parties, a special 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) Where any question is either reserved by a subordinate court for determination by the court, or referred to the court for its determination in terms of subrule (1), the registrar or clerk of the subordinate court or tribunal shall transmit the question so stated by the presiding officer to a registrar of the court within 15 days after the decision to reserve the question or referral of the question is made.

(3) The case referred to in subrule (1) shall be in [Form 11](#).

(4) Where the referral or reservation of the question is made at the instance of a court or presiding officer the registrar shall, upon receipt of the case referred to in subrule (1), call for heads of argument from both parties, which heads shall be filed within 15 days of receipt by either party of the notification by the registrar:

Provided that where a party or both parties do not file heads of argument within the specified time, the registrar shall nevertheless set the matter down for hearing.

(5) Where the referral or reservation in terms of subrule (1) is at the instance of a party, rule 6 shall apply, *mutatis mutandis*:

Provided that the party which requested the referral or reservation shall be deemed to be the appellant for the purposes of this subrule.

(6) The court or judge may request such further information as may be required for the purposes of securing a just and expedient resolution of the matter.

(7) Where the enactment under which the referral or reservation is made specifies any procedure for the determination of the matter, this rule shall apply to such referral or reservation in a manner that is consistent with that enactment.

64. Casus omissus

In the event of any *casus omissus* in this Part, the provisions of Part VI shall apply, *mutatis mutandis*.

PART VIII

BAIL APPLICATIONS AND APPEALS

65. Bail applications pending appeal or leave to appeal

(1) An application to a judge in terms of section 123(1)(a) of the Criminal Procedure and Evidence Act [*Chapter 9:07*] for bail or for the alteration of conditions of bail pending appeal in terms of section 126 of the said Act shall be filed with a registrar and shall consist of a written statement setting out—

- (a) the name of the applicant;
- (b) the applicant's residential address;
- (c) if the applicant is employed, his or her employer's name and address and the nature of his or her employment;
- (d) the details of the applicant's conviction which include—
 - (i) the offence of which the applicant has been convicted and the sentence that was imposed on him or her;
 - (ii) the court or courts which convicted the applicant and imposed sentence upon him or her;
 - (iii) the court criminal record book number, if that number is known to the applicant; and
 - (iv) the date or dates on which the applicant was convicted and sentenced.
- (e) whether or not bail has previously been refused by a judge and, if it has been refused—
 - (i) the grounds on which it was refused, if the grounds are known to the applicant; and
 - (ii) the date on which it was refused;
- (f) where the applicant seeks an alteration of the conditions of his or her bail, the conditions which he or she seeks to have altered;
- (g) the grounds on which the applicant seeks release on bail or, as the case may be, the grounds on which he or she seeks to have the conditions of bail altered; and

(h) where appropriate, the amount of bail which the applicant is prepared to give and the names of any persons who are prepared to stand as sureties for his or her attendance and appearance.

(2) As soon as possible after an application has been filed in terms of subrule (1)— (a) the applicant's legal practitioner, where the applicant is legally represented; or (b) the registrar, where the applicant is not legally represented, shall—

- (i) cause a copy of the written statement referred to in subrule (1) to be served on the Prosecutor-General or his or her representative; and.
- (ii) obtain a copy of the judgment of the court which convicted and, additionally or alternatively, sentenced the applicant, and cause the copy to be filed with the registrar or, where the registrar has secured a copy, cause it to be filed together with the written statement referred to in subrule (1), at least one day before the hearing of the application:

Provided that a judge may permit an application to be heard without a copy of the judgment having been so filed, if he or she is satisfied that to obtain such a copy would unreasonably delay the hearing of the application.

(3) At least one day before the hearing of the application, the Prosecutor-General shall cause the following documents to be filed with the registrar—

- (a) his or her written response to the application;
- (b) a copy of any comments which he or she has been able to elicit from the judge or magistrate who presided over the applicant's trial;

and, where possible, he or she shall cause a copy of his or her response to be served on the applicant or the applicant's legal practitioner.

(4) The registrar shall set down an application for bail, after consultation with a representative of the Prosecutor-General, for hearing by a judge within four days of filing in terms of subrule (1):

Provided that the four-day period may be extended by agreement between the applicant and the Prosecutor-General or by order of a judge in terms of rule 4.

66. Appeals by Prosecutor-General against grant of bail

(1) An appeal by the Prosecutor-General in terms of section 121(1)(a) of the Criminal Procedure and Evidence Act [Chapter 9:07] shall be noted, within 48 hours after the grant of bail by the judge of the High Court, by filing with a registrar a written statement indicating—

- (a) the grounds on which he or she seeks the revocation or alteration of bail;
- (b) where he or she seeks the alteration of bail, the proposed terms thereof; and
- (c) whether or not bail has previously been refused by a judge or magistrate and, if it has been refused— (i) the grounds on which it was refused; and (ii) the date on which it was refused.

(2) In addition to the statement in subrule (1), the Prosecutor-General shall simultaneously lodge with the registrar a record of the bail proceedings which are the subject of the appeal.

(3) As soon as possible after filing an appeal in terms of subrule (1), the Prosecutor-General shall—

- (a) cause a copy of the statement and record referred to in subrules (1) and (2) to be served on—
 - (i) the respondent and, if he or she is legally represented, on his or her legal practitioner; and
 - (ii) the judge whose decision is the subject of the appeal; and

(b) obtain a copy of the judgment of the court which convicted and, additionally or alternatively, sentenced the respondent, and cause the copy to be filed with the registrar at least one day before the hearing of the application:

Provided that a judge may permit an application to be heard without a copy of the judgment having been so filed, if he or she is satisfied that to obtain such a copy would unreasonably delay the hearing of the appeal.

(4) Where practicable, a judge on whom a statement has been served in terms of paragraph (a) of subrule (3) shall file with the registrar his or her written comments on the appeal at least one day before the hearing of the appeal.

(5) Where the respondent is legally represented, his or her legal practitioner shall cause his or her written response to the appeal to be filed with the registrar at least a day before the hearing of the appeal and, where practicable shall cause a copy of his or her response to be served on the Prosecutor-General or his or her representative;

Provided that where the respondent is not legally represented, he or she may file such response at least three hours before the appeal is heard.

(6) The registrar shall set down an appeal referred to in subrule (1), after consultation with a representative of the Prosecutor-General and any legal practitioner representing the respondent, for hearing by a judge within four days after the appeal is filed and served on the respondent or his or her legal practitioner:

Provided that the four-day period may be extended by agreement between the Prosecutor-General and the respondent or by order of a judge in terms of rule 4.

67. Appeals against refusal of bail

(1) An appeal against the refusal of bail in terms of section 121 (l)(b) of the Criminal Procedure and Evidence Act [*Chapter 9:07*] may be noted, at any time after the refusal of bail by the judge of the High Court, by filing with a registrar a written statement indicating—

- (a) the reasons why bail should be granted;
- (b) the proposed terms thereof; and
- (c) whether or not bail has previously been refused by a judge or magistrate and, if it has been refused— (i) the grounds on which it was refused, if the grounds are known to the appellant; and (ii) the date on which it was refused.

(2) In addition to the statement in subrule (1), the appellant shall simultaneously lodge with the registrar a record of the bail proceedings which are the subject of the appeal:

Provided that where the appellant is not legally represented, the registrar shall obtain copies of the record from a registrar of the High Court.

(3) Where the appellant has been convicted and sentenced, he or she shall include in the statement referred to in subrule (1) the details of the conviction and the sentence setting out—

- (a) the offence for which the appellant was convicted and the sentence that was imposed;
- (b) the court or courts which convicted the appellant and imposed sentence upon him or her;
- (c) the court criminal record book number, if that number is known to the appellant;
- (d) the date or dates on which the appellant was convicted and sentenced; and
- (e) where appropriate, the names of any persons who are prepared to stand as sureties for his or her attendance and appearance.

(4) Where subrule (3) is applicable, the appellant shall ensure that the notice and grounds of appeal against—

- (a) conviction or sentence; or
- (b) both conviction and sentence;

are attached to the record referred to in subrule (2).

(5) As soon as possible after filing an appeal in terms of subrule (1), the appellant's legal practitioner, where the appellant is legally represented, or the registrar, where the appellant is not legally represented, shall—

- (a) cause a copy of the statement and the record referred to in subrules (1) and (2) to be served on the Prosecutor-General and the judge whose decision is the subject of the appeal; and
- (b) where applicable, obtain a copy of the judgment of the court which convicted and, additionally or alternatively, sentenced the appellant and cause the copy to be filed with the registrar at least one day before the hearing of the application:

Provided that a judge may permit an application to be heard without a copy of the judgment having been so filed, if he or she is satisfied that to obtain such a copy would unreasonably delay the hearing of the appeal.

(6) Where practicable, a judge on whom a statement and the record has been served in terms of subrule (5) shall file with the registrar his or her written comments on the appeal at least one day before the hearing of the appeal.

(7) The Prosecutor-General shall, at least one day before the hearing, file with the registrar and serve on the appellant a statement detailing his or her response to the appeal.

(8) The registrar shall set down an appeal referred to in subrule (1), after consultation with a representative of the Prosecutor-General and party legal practitioner representing the appellant, for hearing by a judge within four days after the appeal is filed:

Provided that the four-day period may be extended by agreement between the Prosecutor-General and the appellant or by order of a judge in terms of rule 4.

68. Urgency of bail applications and appeals

(1) A registrar shall ensure that every application or appeal referred to in these rules is set down for hearing with the utmost urgency.

(2) Whenever it comes to the attention of a prison officer in charge of a prison that a prisoner lodged therein wishes to apply for bail or appeal against the refusal of bail in terms of these rules, the prison officer shall ensure that—

- (a) the prisoner is provided with appropriate forms and adequate facilities with which to make the application or appeal; and
- (b) any forms or documents completed by the prisoner in connection with his or her application or appeal are forwarded to the registrar without any delay for filing in terms of these rules.

69. Judge may call for judgment or record

When dealing with any appeal or application under this Part, the judge seized with the matter may, where he or she deems it necessary or expedient to do so, call for the judgment or record of the trial proceedings of the court a quo or both such judgment and record.

PART IX

MISCELLANEOUS

70. Reinstatement of appeals generally

(1) Where an appeal is—

- (a) deemed to have lapsed; or
- (b) regarded as abandoned; or
- (c) deemed to have been dismissed in terms of any provision of these rules; the registrar shall notify the parties accordingly.

(2) The appellant may, within 15 days of receiving any notification by the registrar in terms of subrule (1), apply for the reinstatement of the appeal on good cause shown.

71. Referrals in terms of section 175(4) of the Constitution

(1) Where the court or a judge wishes to refer a matter to the Constitutional Court *mero motu* in terms of section 175(4) of the Constitution, the Court or judge shall—

- (a) request the parties to make submissions on the constitutional issue or question to be referred for determination; and
- (b) state the specific constitutional issue or question which the Court or judge considers must be resolved by the Constitutional Court.

(2) Where the court or a judge is requested by a party to the proceedings to refer the matter to the Constitutional Court and it or he or she is satisfied that the request is not frivolous or vexatious, the Court or judge shall refer the matter to the Constitutional Court.

(3) A referral under subrule (1) or (2) shall be in [Form 12](#) and shall be accompanied by a copy of the record of proceedings and statements from the parties setting out the arguments they seek to make before the Constitutional Court.

(4) Where there are factual issues involved, the court shall resolve or cause to be resolved any factual disputes: Provided that where there are no disputes of fact, the parties shall prepare a statement of agreed facts.

(5) The record of proceedings referred to in subrule (3) shall contain the specific findings of fact by the court and the issue or question for determination by the Constitutional Court:

Provided that where there is a statement of agreed facts in terms of the proviso to subrule (4), it shall suffice for the statement to be incorporated in the record in place of the specific findings of fact.

(6) The court or judge shall direct a registrar to prepare and transmit the record to the Constitutional Court within 14 days of the date of such direction:

Provided that, before transmission, the registrar shall ensure and certify that the record is correct and accurate and, in the case of a referral in terms of subrule (2), that it contains an appropriate draft order.

72. Forms

The forms set out in the First Schedule shall be used in all proceedings to which they are applicable with such variations as the circumstances may require.

73. Application of High Court rules

In any matter not dealt with in these rules, the practice and procedure of the Supreme Court shall, subject to any direction to the contrary by the court or a judge, follow, as closely as may be, the practice and procedure of the High Court in terms of the High Court Act [*Chapter 7:06*] and the High Court Rules.

74. Custody of exhibits used at trial

(1) The exhibits in a case in respect of which an appeal has been noted or in respect of which leave to appeal has been granted shall not ordinarily be forwarded with the record but any judge may give any direction he or she may think fit for the production of such exhibits or any of them.

(2) A registrar of the High Court shall retain the custody of such exhibits for 30 days and, if notice of appeal is given or if leave to appeal is granted, until such appeal is finally determined, unless a judge otherwise directs:

Provided that the trial court upon being satisfied that there will be no appeal may order the return of any such exhibits to the person entitled thereto.

75. *Conduct and dress of persons appearing and attending court*

The Chief Justice may, through a Practice Direction, regulate the conduct and dress of persons appearing before or attending the court.

76. *Repeals and savings* The

rules set out in the Second Schedule are repealed:

Provided that anything validly commenced or done in terms of any provision of the repealed rules prior to the coming into force of these rules shall be deemed to have been validly commenced or done, as the case may be, in accordance with the equivalent provision of these rules.

FIRST SCHEDULE (Rule 72)

		FORMS
<i>Form No.</i>	<i>Rule</i>	<i>Title</i>
Form 1	11(2)(c)	Affidavit of service by litigant in person
Form 2	14(2)(a)	Renunciation of agency by a legal practitioner
Form 3	18(1)	Notice of appeal
Form 4	20(2)(a)	Application for leave to appeal
Form 5	21(1)	Application for extension of time or leave to appeal out of time
Form 6	22(1)	Application for legal aid
Form 7	23(1)	Particulars of trial
Form 8	31(4)(a)	Notice to respondent of appeal by Prosecutor-General against judgment
Form 9	31(4)(b)	Notice to respondent of appeal by Prosecutor-General against sentence
Form 10	36(1)(b)	Application for legal aid
Form 11	63(3)	Special case referred or reserved to the court
Form 12	71(3)	Referral in terms of section 175(4) of the Constitution

SECOND SCHEDULE (Rule 76)

REPEALED RULES

1. Rules of the Supreme Court (RGN 380/1964).
2. Supreme Court (Miscellaneous Appeals and References) Rules (RGN 449/1975
3. Supreme Court (Bail) Rules (SI 290/1991).

FORM 1
[Rule 11 (2)(c)]

AFFIDAVIT OF SERVICE BY LITIGANT IN PERSON

CASE No. SC/....

IN THE SUPREME COURT OF ZIMBABWE

In the matter between

.....

APPELLANT and

.....

RESPONDENT

AFFIDAVIT OF IN TERMS OF r 11 (2)(e)

I,, do hereby make oath and swear that:

1. I am the Appellant/Respondent* in this matter and the facts deposed to herein are within my personal knowledge and to the best of my belief true and correct.
2. I served a copy of on the Appellant/Respondent/registrar/presiding officer/administrative officer etc.*
3. I served it on dd/mm/yy and by at hh:mm in the morning/afternoon/evening.*
4. I affirm that the manner of service I effected is in regular and it is terms of the law.

Thus sworn to at this day of20.....

Signed

.....

(Deponent's name)

Before me,

.....

Commissioner of Oaths

FORM 2

[Rule 14(2)(a)]

NOTICE OF RENUNCIATION OF AGENCY

CASE No. SC

IN THE SUPREME COURT OF ZIMBABWE

HELD AT

IN THE MATTER BETWEEN

..... and

APPLICANT/APPELLANT

.....

RESPONDENT

I/We* the undersigned have renounced agency for the Applicant/Respondent/Appellant* in the above matter.

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

The courses of action open to you are as follows:

- * You may engage another legal practitioner.
- * You may apply to a Registrar of the Supreme Court for leave to proceed in forma pauperis in terms of rule 49 of the Rules of the Supreme Court, 2016. To find out the procedure for this, you will need to contact the Registrar.
- * You may apply to a judge 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)

The Applicant/Respondent/Appellant’s last known address is:

.....

The Application/Appeal is set down for the day of

The Application/Appeal is yet to be set down (delete the inapplicable) The notice takes effect from the date of filing this notice with the Registrar.

Dated at this day of20.....

.....
(Signature of the retiring legal practitioner)

TO: The Registrar
 Supreme Court of Zimbabwe
 Harare

And TO: The Client
 Client’s Address

And TO: The other party
 Address

FORM 3

[Rule 18(1)]

SUPREME COURT

NOTICE OF APPEAL

To the Registrars of the High Court and Supreme Court of Zimbabwe.

Name of appellant:

Details of conviction–

Court of conviction:

Date of conviction: Offence:

.....

Sentence:

Leave to appeal:

(a) Unnecessary (when sentence of death has been passed or the appeal is on question of law only).

(b) Granted by the High Court on (date)

*(Tick the applicable box) The

appellant wishes to appeal against–

Conviction.

Sentence.

Other order (specify)

.....

*(Tick the applicable box)

GROUNDS OF APPEAL: (These must be set out clearly and specifically on the back hereof or in a separate document bearing the name of the appellant. Grounds of appeal against conviction and against sentence must be set out separately. Grounds must be set out in numbered paragraphs in compliance with rule 19. If a ground of appeal is that there was no evidence on which the trial court could convict, or that conviction was not justified on the evidence, the reasons why this is said must be set forth shortly.)

The appellant *is/is not in custody.

*[Delete whichever is inapplicable) Signed

by the appellant or his or her legal representative.

Date:.....

Date of delivery to Registrars of the High Court and Supreme Court or officer in charge of place of custody:..... (to be filled in by that official).

Address for service–

(a) of appellant's legal practitioner, (b) of appellant.

*(Tick the appropriate box) Notes

- (a) If the appellant desires legal aid in the preparation of the record, he or she must complete Form 5 and deliver it with this notice.
- (b) If legal aid is not applied for, the appellant must, within ten days of delivery of this notice make arrangements with the Registrar of the High Court for preparation of the record.
- (c) Any change of personal address must be notified to the Registrar of the Supreme Court.

FORM 4

[Rule 20(2)(a)]

APPLICATION FOR LEAVE TO APPEAL

SUPREME COURT

APPLICATION FOR LEAVE TO APPEAL

Note: This form is to be used only when—

- (a) leave to appeal has been refused by the High Court; and
- (b) leave to appeal is necessary (when sentence of death has not been passed or the grounds of appeal are not on questions of law only).

To the Registrars of the High Court and the Supreme Court of Zimbabwe.

Name of appellant:

Details of conviction—

Court of conviction: Date of conviction:..... Offence:

Sentence:.....

Date of refusal of leave to appeal by the High Court:.....

The appellant wishes to appeal against conviction.

*In addition he or she wishes to appeal against sentence.

*(Delete if inapplicable)

GROUND OF APPEAL

(These must be set out clearly and specifically on the back hereof or in separate document bearing the name of the appellant. Grounds of appeal against conviction and against sentence must be set out separately. Grounds must be set out in numbered paragraphs in compliance with rule 19. If a ground of appeal is that there was no evidence on which the trial court could convict, or that conviction was not justified on the evidence, the reasons why this is said must be set forth shortly.)

The applicant *is/is not in custody.

*(Delete whichever is inapplicable) The

applicant—

- (a) submits herewith written argument
- (b) applies to be present personally at the hearing;
- (c) does not apply to be present personally at the hearing;
- (d) applies to be legally represented at the hearing; (e) does not apply to be legally represented at the hearing.

*(Tick the appropriate box or boxes)

Signed by the appellant or his or her legal representative.

Date:.....

Address for service—

- (a) of appellant’s legal practitioner
- (b) of appellant

*(Tick the appropriate box)

Notes

- (a) The applicant will be notified whether or not leave to appeal is granted.
- (b) Any change of personal address must be notified to the Registrar of the Supreme Court.

FORM 5
 [Rule 21 (1)]
 SUPREME COURT

APPLICATION FOR EXTENSION OF TIME

To the Registrars of the High Court and Supreme Court of Zimbabwe.

Name of applicant:

The Applicant wishes to—

- (a) Note an appeal out of time, Form 1, duly completed, is attached.
- (b) Apply for leave to appeal out of time. Form 2, duly completed, is attached.

*(Tick the appropriate box) An

affidavit setting out the reasons why action was not taken in time is attached.

The applicant—

- (a) is to be legally represented at the hearing of the application.

- (b) wishes to appear personally;

- (c) submits herewith written argument.

*(Tick any appropriate box or boxes. For persons in custody, see Note below.) Signed by the applicant or his or her legal representative.

.....
Date of delivery to Registrar or Officer in Charge of place of custody (to be filed in by that official):
.....

Note: The applicant if in custody is not entitled to be present at the hearing of this application, unless a special order in that regard is made; but he or she may, if not legally represented, submit written argument in support of the application with his or her application.

FORM 6
[Rule 22 (1)]
SUPREME COURT

APPLICATION FOR LEGAL AID

Name of Appellant.....

I, the above-named appellant, having given notice of appeal\having applied to the Supreme Court for leave to appeal do hereby request the Supreme Court to grant me legal aid in respect of the preparation of the record on appeal and/or in respect of a legal practitioner to appear for me at the hearing of the appeal.

.....
Appellant

You are required to complete the following—

Questions	Answers
1. What is your present income, salary or wage?
2. Are you in receipt of any allowances? If so, give particulars.
3. What other property or means have you? number of dependants supported by you. 4. State the
monthly living expenses, including dependants? 5. What are your

.....
Appellant

Date:.....

Address:.....
.....

(N.B. This form is only to be used in the case of an appeal from the High Court.)

FORM 7
[Rule 23(1)]

SUPREME COURT

PARTICULARS OF TRIAL

CRIMINAL APPEAL OF:

PARTICULARS OF TRIAL

- 1. Age and occupation of appellant:.....
- 2. Court before which convicted:..... 3.
Date of conviction:..... 4.
Charge:.....
- 5. Plea:..... 6.
Verdict:.....
- 7. Sentence:.....
- 8. Other orders:.....
- 9. Was bail granted pending appeal to the Supreme Court:

.....
REGISTRAR OF THE HIGH COURT OF
ZIMBABWE

Date:

[
FORM 8

Rule 31(4)(a)]

SUPREME COURT

NOTICE TO RESPONDENT OF APPEAL BY PROSECUTOR-GENERAL AGAINST JUDGMENT

On (1)..... you were

*acquitted/convicted on a charge

of (2)..... by (3)

*(Delete whichever is inapplicable.) (1)

Date (2) Offence (3) Court

The Prosecutor-General is appealing against the judgment on the ground that it is wrong in law.

There is sent with this notice a copy of the record and of the notice of appeal of the Prosecutor-General.

The appeal will not affect the result of the judgment as far as you are concerned.

You are entitled at your own expense to appear personally or to be legally represented at the appeal.

If you do not, a judge of the Court may order that you be represented at the expense of the Government.

You are requested to state whether you intend to appear yourself or to be represented at the hearing of the appeal.

If you do, the address of your legal practitioner or your own address should be given.

I intend to appear personally, and my address is:

.....

I intend to be legally represented, and my legal practitioner's address is:

.....

I do not intend to appear personally or to be represented.

I suggest that the appeal should be argued on my behalf for the following reasons (give reasons):

.....

.....

I shall send written arguments within seven days.

*(Tick the applicable box and complete section.)

If you intend to appear personally or by legal representative notice of the date of hearing will be sent to you at the address you give.

If you do not intend to appear personally or to be represented no further communication will be sent.

[

If this form is not returned within seven days to the Registrar, Supreme Court of Zimbabwe, it will be taken that you are not interested in the appeal, and no further communication will be sent.

FORM 9

Rule 31(4)(b)]

SUPREME COURT

NOTICE TO RESPONDENT OF APPEAL BY PROSECUTORE-GENERAL AGAINST SENTENCE

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

1. The Prosecutor-General is appealing against this sentence on the grounds set out in the notice of appeal included in the accompanying record.
2. You are entitled to appear either in person or by legal practitioner at the hearing of the appeal. If you do not appear either in person or by legal practitioner, the sentence may nevertheless be increased.
3. You are required to state whether you intend to appear in person or by legal practitioner at the hearing of the appeal. If you do intend to appear either in person or by legal practitioner, your address or that of your legal practitioner must be given.
4. You may, in terms of the Legal Aid Act [*Chapter 7:16*], apply for legal aid for your representation at the hearing of this appeal.

(Reverse side)

I intend to appear personally and my address is

I intend to apply by legal practitioner and my legal practitioner's address is:

I do not intend to appear or be represented.

I wish to apply for legal aid and provide the following information in respect of the last 12 months—

1. Income, salary or wages:
2. Allowances received by me:
3. Other property:
4. Number of dependants supported by me:

[
5. Monthly living expensed in respect of myself and my dependants:
.....

*(Tick the applicable box and complete section).

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

FORM 10

Rule 36(1)(b)]

APPLICATION FOR LEGAL AID

SUPREME COURT

APPLICATION FOR LEGAL AID

I,, having received notice that the ProsecutorGeneral intends–

- (a) to apply for leave to appeal;
- (b) To apply for leave to appeal out of time;
- (c) To not an appeal out of time;

hereby request the Supreme Court to grant to me legal aid in order to oppose the application.

*(Tick the applicable box).

.....
Appellant

You are required to complete the following–

Questions

Answers

1. What is your present income, salary or wage?

2. Are you in receipt of any allowances? [..... 3. What other property or means have you?
4. What are your monthly living expenses, including dependants?

.....
Appellant

Date:

Address:

.....

FORM 11
[Rule 63(3)]

SPECIAL CASE REFERRED OR RESERVED TO THE COURT

CASE No. SC.....

IN THE SUPREME COURT OF ZIMBABWE
HELD AT
IN THE MATTER BETWEEN:

.....APPELLANT

and

..... RESPONDENT

SPECIAL CASE REFERRED OR RESERVED TO THE COURT

This is a special case in terms of (state the law under which the referral or reservation is made)

Court from which the referral or reservation is made:.....

QUESTION FOR DETERMINATION BY THE COURT

.....
.....
.....
.....
.....
.....

BACKGROUND TO THE DISPUTE

(the circumstances under which the question has arisen)

.....
.....
.....
.....
.....

ADMISSIONS MADE BY PARTIES (if any):

.....
.....
.....
.....
.....

SIGNED BY THE PARTIES AND THE REGISTRAR

Given under my hand on this day of 20.....

Presiding Judicial Officer/Registrar/Clerk of Court

FORM 12
[Rule 71 (3)]

REFERRAL IN TERMS OF SECTION 175(4) OF THE CONSTITUTION

CASE No. SC.....

IN THE CONSTITUTIONAL COURT OF ZIMBABWE
HELD AT
A REFERRAL FROM

..... in terms of section 175(4) of the Constitution

In the matter between:

..... Appellant and

..... Respondent

Date of referral:

Constitutional question referred:

.....
.....
.....
.....

I,, do hereby certify that the record attached hereto is correct and accurate.

The record contains pages and the following items:

.....

..... Signed.....

Presiding Judicial Officer/Registrar/Clerk of Court

COURT STAMP

SECOND SCHEDULE (Section 76)

REPEALED RULES

TITLE OF RULES	RHODESIA GOVERNMENT NOTICE NUMBER	STATUTORY INSTRUMENT NUMBER
Rules of the Supreme Court, 1964	380 of 1964	
Supreme Court (Magistrates Court)(Criminal Appeals) Rules, 1979	504 of 1979	
Supreme Court (Miscellaneous Appeals and References) Rules, 1975	449 of 1975	
Supreme Court of Zimbabwe (Bail) Rules, 1991		290 of 1991