

LEGAL NOTICE NO. 158 OF 2002

THE LABOUR APPEAL COURT RULES, 2002

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LABOUR APPEAL COURT RULES, 2002

In exercise of the powers conferred upon me by section 38B of the Labour Code Order, 1992¹, I

JOSEPH LEBONA KHEOLA

Chief Justice, make the following Rules:

PART 1 - PRELIMINARY

Citation and Commencement

1. These Rules may be cited as the Labour Appeal Court Rules, 2002, and shall come into operation on the date of their publication in the Gazette.

Interpretation

2. (1) In these rules, unless the context otherwise indicates -

“Code” means the Lesotho Labour Code Order, 1992;

“day” means any day other than a Saturday, Sunday or public holiday;

“court” means the Labour Appeal Court established in terms of section 38 of the Code;

“deliver” means serve on the other parties and file with the Registrar;

“judge” means the judge of the Labour Appeal Court;

“party” means any party to court proceedings and includes a person representing the party;

“Registrar” means the Registrar of the Labour Appeal Court contemplated in section 38(10) of the Code;

“serve” means to send by registered post, fax or to deliver by hand.

(2) Any expression in these Rules that is defined in the Code has the same meaning as that in the Code.

(3) When any particular number of days is prescribed in these Rules for the doing of any act, the number of days shall be calculated by excluding the first day and including the last day.

PART II – COURT SITTINGS AND REGISTRAR’S OFFICE HOURS

Sittings of the court

3. (1) The court sittings shall be divided into four terms each year commencing and ending on such dates and times as the Judge may designate and cause to be published by notice which shall be affixed to a board in a conspicuous place within the court’s precincts.

(2) If the day fixed for the commencement of a term is a Saturday, a Sunday or a public holiday, the term shall commence on the next succeeding day.

(3) If the day fixed for the end of a term is a Saturday, Sunday or a public holiday, the term shall end on the preceding day.

(4) Despite the provisions of this Rule, the Judge may direct that an appeal be heard on a Saturday, a Sunday, a public holiday and at any place that he or she may designate.

Registrar’s office hours

4. (1) The office of the Registrar is the office of the Registrar of the Labour Court.

(2) The office of the Registrar shall be open on all court days from 09.00 am to 12.30pm and from 14.30hrs to 16.00hrs.

(3) Notwithstanding sub-rule (2), the Judge or President may, for good reasons shown, direct that a document be filed outside the hours referred to in sub-rule (2).

PART III - APPEALS

Appeals from a decision or order of the Labour Court

5. (1) In every matter in which there is a right of appeal to the court, a notice of appeal shall be filed by the appellant within six weeks of the judgment or order of the Labour Court, and that the court may condone the late filing of the notice of appeal upon good cause shown if it considers it to be in the interests of justice.

(2) The notice of appeal shall as far as is possible be in accordance with Civil Form LAC1 as set out in Schedule Two.

(3) The notice of appeal shall -

- (a) state whether the whole or part of the judgement is being appealed;
- (b) if a part is being appealed, state the part being appealed; and
- (c) state concisely and succinctly the grounds of objection to the judgement in numbered paragraphs distinguishing between objections to findings of fact and conclusions of law.

(4) Any respondent who wishes to cross-appeal shall deliver a notice of cross-appeal. A notice of cross-appeal shall be delivered within 14 days, or such longer period as may on good cause shown be allowed, after receiving notice of appeal from the appellant.

(5) The notice of cross-appeal shall comply with Sub-Rule (3).

(6) After an appeal has been noted, the appellant shall, in accordance with Rule 7 (1) serve a copy of the record of the proceedings of the Labour Court on each respondent and file five copies of the record with the Registrar.

Criminal appeals from a subordinate court

6. (1) Any person convicted by a subordinate court of an offence contemplated in section 38A(2) of the Code may appeal from that decision by filing a notice of appeal with the Registrar within 30 days of the date of the conviction.

(2) The Director of Public Prosecutions may file a notice of appeal on any question of law or fact arising from any decision by a subordinate court in respect of an offence contemplated in section 38A(2) of the Code. That notice shall be filed with the Registrar within 30 days of the date of the decision.

(3) The notice of appeal shall-

- (a) as far as is possible, be in accordance with Criminal Form LAC1 as set out in Schedule One;
- (b) state whether the whole or part of the decision is being appealed;
- (c) if a part is being appealed, state the part being appealed; and
- (d) state concisely the grounds of objection to the decision in numbered paragraphs distinguishing, where applicable, between objections to findings of fact and conclusions of law.

(4) The notice of appeal shall be served on the other parties within six weeks of the decision contemplated in sub-rule (1).

(5) The appellant may file and serve further grounds of appeal provided no such grounds may be filed in the period of fourteen days preceding the date of hearing of the appeal.

(6) The clerk of the subordinate court shall provide an appellant with a copy of the record, or part of it, on payment of the fees prescribed for making a copy.

(7) Subject to sub-rule (6), the appellant shall file five copies of the record of the proceedings of the subordinate court and serve copies on the other parties within 30 days of the filing of the notice of appeal.

(8) If the other parties consent, the appellant may omit those portions of the record that do not affect the result of the appeal. The Court may, however, order that the full record be made available at the hearing.

(9) A party that wishes to cross appeal shall file a notice of cross appeal and serve that notice on the appellant and other parties within 14 days of receipt of the notice of appeal. The notice of cross appeal shall comply with sub-rule (3).

(10) After an appeal has been noted, the appellant shall, in accordance with rule 7, serve a copy of the record on each respondent and file five copies of the record with the Registrar.

Record of proceedings

7. (1) Subject to sub-rule (12), the appellant shall deliver to the office of the Registrar a record of the proceedings within 14 days in the case of civil appeals and 30 days in the case of criminal appeals of the date of the filing of the notice of appeal.

(2) The Appellant shall certify that the copies of the record filed are correct.

(3) Every copy of the record shall-

(a) be clearly typed or printed in double spacing on A4 standard paper;

- (b) be paginated;
- (c) be numbered on every tenth line;
- (d) be securely bound in suitable covers disclosing the names of the parties and the name of the representatives of the parties;
- (e) be divided into separate, conveniently-sized volumes of approximately 100 pages each. A volume may consist of fewer pages if it is convenient that a document or part of a record be contained in a separate volume;
- (f) include the judgement given by the court;
- (g) contain a complete index of the evidence, the documents and the exhibits in the case. The nature of an exhibit shall be briefly stated in the index; and
- (h) contain only those documents that were referred to in the proceedings of the court.

(4) A document shall not be included in the record more than once.

(5) The record shall not contain any of the following documents, unless they affect the merits of the appeal -

- (a) copies of subpoenae;
- (b) notices of trial;
- (c) consents to postponements;
- (d) schedules of documents;
- (e) notices to produce or to permit inspection;

- (f) other documents of a formal nature;
- (g) opening addresses;
- (e) heads of argument.

(6) A list of the documents referred to in sub-rule (5) shall be included in the record with the heading "List of documents excluded from the record".

(7) The documents that were referred to in any proceedings of a court shall be arranged in chronological order.

(8) Any reference in the record of evidence of any witness to any document or exhibit contained in the appeal record shall reflect, in brackets in the margin opposite the reference, the page number in the appeal record of that document or exhibit.

(9) If the decision of a matter on appeal is likely to turn only on a question of law, the parties may agree to submit the question of law in the form of a special case. In that event, only those parts of the record necessary for that decision shall be lodged with the Registrar.

(10) The costs of preparing copies of the record or special case form part of the costs of appeal.

(11) The Registrar may refuse to accept a copy of a record or a special case that does not, in the Registrar's opinion, comply with the provisions of this rule.

(12) Notwithstanding sub-rule (1), the period for the filing and service of the record may be extended if-

- (a) the parties consent to an extension;
- (b) the party concerned applies to the judge in chambers for an extension and the Judge, on good cause shown, grants the extension.

(13) An application contemplated in sub-rule 12(b) shall be on motion supported by an affidavit and accompanied with proof of service on all other parties. Any party wishing to oppose the grant of an extension of time may deliver an answering affidavit within 14 days of service of the application.

(14) If a party fails to lodge a record within the periods contemplated in sub-rules 7(1) and (12), the appellant is deemed to have withdrawn the appeal.

Withdrawal of Appeal and Prosecution of Cross-Appeal

8. (1) If an appellant delivers a notice of withdrawal of an appeal, or is deemed to have withdrawn an appeal under rule 7 (14), any respondent who has noted a cross-appeal may deliver a notice of an intention to prosecute the cross-appeal within 14 days of-

- (a) the date on which a notice of withdrawal is delivered; or
- (b) the date on which the appellant is deemed to have withdrawn the appeal.

(2) If the respondent delivers a notice contemplated in sub-rule (1), the respondent is for the purposes of rule 6 deemed to be the appellant, and the period prescribed in rule 7 (1) is calculated as from the date on which-

- (a) the appellant withdrew the appeal; or
- (b) the appeal was deemed to have been withdrawn.

Powers of attorney

9. (1) A power of attorney authorising a representative to prosecute the appeal or the cross-appeal shall be delivered within 10 days of the delivery of the notice of appeal or cross-appeal.

(2) If there is no cross-appeal, a power of attorney to oppose an appeal shall be filed with the Registrar by the respondent's representative when copies of the respondent's main heads of argument are filed under rule 10.

(3) The Attorney General or any attorney acting on behalf of the Kingdom of Lesotho need not file a power of attorney.

Date of hearing

10. (1) Once the record of proceedings or the special case has been delivered, and subject to the directions of the Judge, the registrar shall notify the parties of the date, time and place of the hearing.

(2) The notice required by sub-rule (1) may be given by hand, fax or registered letter.

(3) A registered letter or fax that has been forwarded to a party's last-known address or the address of that party's last-known representative is deemed to be sufficient notice of the date, time and place of the hearing for the purposes of this rule.

Heads of argument

11. (1) The appellant shall deliver a copy of the heads of argument not later than 14 days before the hearing or not later than any earlier date determined by the Judge. The original plus three copies of the heads of argument shall be filed with the Registrar.

(2) The respondent shall deliver a copy of the heads of argument not later than 7 days before the hearing or not later than any earlier date that may be determined by the Judge. The original plus three copies shall be filed with the Registrar.

(3) The heads of argument of the appellant and the respondent shall -

(a) include a chronology of the material facts;

- (b) in its first reference to a factual allegation contain a page and paragraph or line reference to the record or bundle of documents;
- (c) include a list of the authorities referred to in the heads of argument;
- (d) in its first reference to a textbook specify the author, title, edition and page number (in that order, for example: Smith Labour Law, 2nd ed, (44));
- (e) in its first reference to a reported case contain the full name of the case, the year, volume, commencement page, division of the court and page and margin reference to which specific reference is made.

Urgent appeals

12. (1) A party, on notice to all other parties, may apply to the Judge for an appeal to be heard urgently. If the application is successful, the Judge shall give directions as to the future conduct of the appeal.

(2) An application contemplated in sub-rule (1) shall be on motion supported by an affidavit and accompanied with proof of service on all other parties.

(3) The Judge may deal with an application under sub-rule (1) in any manner he or she thinks fit.

Failure to appear at an appeal hearing

13. If for no good reasons shown to the Court, the appellant fails to appear in person or through a representative on the date of hearing, the Court may-

- (a) strike the matter off the court roll with an appropriate order as to costs;
- (b) dismiss the appeal;
- (c) postpone the matter to a later date;
- (d) or make any order as may seem appropriate.

PART IV - THE COURT SITTING AS A COURT OF FIRST INSTANCE

The court sitting as a court of first instance

14. (1) (a) A party may apply to the Judge in chambers, on good cause shown, for a direction that a matter before the Labour Court or the Directorate of Dispute Prevention and Resolution be heard by the Court sitting as a court of first instance.
- (b) The application shall be made in writing, and served on the other parties.
 - (c) If the application is opposed, the Judge shall hear the parties in chambers before giving a direction.
 - (d) If the application is successful, the Judge shall give directions as to the future conduct of the matter.

(2) Any party who is dissatisfied with the decision or order of the court sitting as a court of first instance may appeal to the Court of Appeal of Lesotho and the Court of Appeal Rules 1980 shall *mutatis mutandis* apply.

PART V - REVIEWS

Review of decisions of The Labour Court

15. (1) A party wishing to review a decision of the Labour Court shall file a notice of motion with the Registrar and serve the notice of motion on the Labour Court and on the other affected parties.

(2) The notice of motion shall-

(a) call upon the presiding officer of the Labour Court responsible for the decision to show cause why the decision or proceedings should not be reviewed and corrected or set aside; and

(b) be supported by an affidavit setting out the factual and legal grounds upon which the applicant relies to have the decision or proceedings corrected or set aside.

(3) The Applicant shall file the record or the part of the record of the proceedings sought to be corrected or set aside, together with any reasons given, with the Registrar within 30 days of filing of the notice of motion contemplated in sub-rule (1).

(4) The Registrar shall certify one of the copies of the record filed as correct.

(5) The provisions of rule 7(3) to (8) apply, subject to changes required by context, to a record contemplated in this rule.

(6) The applicant shall, within 21 days after the Registrar has made the record available, either-

(a) by delivery of a notice and accompanying affidavit, amend, add to or vary the terms of the notice of motion and supplement the supporting affidavit;
or

- (b) deliver a notice that the applicant stands by its notice of motion.

(7) Any person wishing to oppose the application to review shall, within 14 days of receipt of a notice referred to in sub-rule (6) deliver an affidavit in answer to the allegations made by the applicant.

(8) The applicant may file a replying affidavit within 14 days after receipt of an answering affidavit.

Review of arbitration awards, administrative action and decisions of subordinate courts

16. (1) For the purposes of this rule-

(a) "decision" means-

- (i) an arbitration award contemplated in section 38(1)(b)(ii) of the Code;
- (ii) an administrative action contemplated in section 38(1)(b)(iii) of the Code; or
- (iii) a decision of a subordinate court contemplated in section 38(2) of the Code.

(2) A party wishing to review a decision shall file a notice of motion with the Registrar and serve the notice of motion on the decision maker and on the other affected parties.

(3) The notice of motion shall-

- (a) call upon the decision maker to show cause why the decision or proceedings should not be reviewed and corrected or set aside;

- (b) call upon the decision maker to deliver to the Registrar within 14 days of the service of the notice of motion on the decision maker-
 - (i) the record of the proceedings; and
 - (ii) any reasons that decision maker is required to give or wishes to give; and
- (c) be supported by an affidavit setting out the factual and legal grounds upon which the applicant relies to have the decision or proceedings corrected or set aside.

(4) On receipt of the record and reasons contemplated in sub-rule 3(b), the Registrar shall-

- (a) advise the applicant that the record is available;
- (b) make the record available to the applicant, subject to any terms that the Registrar considers appropriate to ensure the safety of the record.

(5) The applicant shall-

- (a) make as many copies of the record or part of the record as are necessary for the purposes of the review;
- (b) file five copies of the record with the Registrar; and
- (c) serve copies on the other affected parties.

(6) The applicant shall, within 7 days after the Registrar has made the record available, either-

- (a) by delivery of a notice and accompanying affidavit, amend, add to or vary the terms of the notice of

motion and supplement the supporting affidavit; or

- (b) deliver a notice that the applicant stands by its notice of motion.

(7) . Any person wishing to oppose the application to review shall, within 14 days of receipt of a notice referred to in sub-rule (6) deliver an affidavit in answer to the allegations made by the applicant.

(8) The applicant may file a replying affidavit within 7 days after receipt of an answering affidavit.

Reviews generally

17. (1) A party wishing to review a decision shall file a notice of motion with the Registrar and serve the notice of motion on the decision maker and on the other affected parties.

(2) The notice of motion shall-

- (a) call upon the decision maker to show cause why the decision or proceedings should not be reviewed and corrected or set aside;
- (b) upon the decision maker to deliver to the Registrar call within 14 days of the service of the notice of motion on the decision maker-
 - (i) the record of the proceedings; and
 - (ii) any reasons that decision maker is required to give or wishes to give; and
- (c) be supported by an affidavit setting out the factual and legal grounds upon which the applicant relies to have the decision or proceedings corrected or set aside.

(3) On receipt of the record and reasons contemplated in sub-rule 3(b), the Registrar shall-

- (a) advise the applicant that the record is available;
- (b) make the record available to the applicant, subject to any terms that the Registrar considers appropriate to ensure the safety of the record.

(4) The Applicant shall-

- (a) make as many copies of the record or part of the record as are necessary for the purposes of the review;
- (b) file five copies of the record with the Registrar; and
- (c) serve copies on the other affected parties.

(5) The Applicant shall, within 14 days after the Registrar has made the record available, either-

- (a) by delivery of a notice and accompanying affidavit, amend, add to or vary the terms of the notice of motion and supplement the supporting affidavit; or
- (b) deliver a notice that the applicant stands by its notice of motion.

(6) Any person wishing to oppose the application to review shall, within 14 days of receipt of a notice referred to in sub-rule (2) deliver an affidavit in answer to the allegations made by the applicant.

(7) The applicant may file a replying affidavit within 7 days after receipt of an answering affidavit.

(8) If the review turns only on a question of law, the parties may agree to submit the question of law to the court in the form of a special case. In that event, only those parts of the record necessary for the decision of the question of law may be filed with the Registrar.

(9) The Registrar may refuse to accept copies of records or special cases that do not, in the Registrar's opinion, comply with the provisions of this Part.

(10) The costs of transcription of a record, copying and delivery of the record and reasons, if any, shall be paid by the applicant and become costs in the review.

(11) The provisions of rules 9 to 13 read with the changes required by context, to reviews under this Part apply.

PART VI - GENERAL

Costs and Fees

18. The Court of Appeal Rules, 1980, read with the changes required by context, apply in respect of Court fees and taxation of costs.

Departure from these Rules

19. (1) The Court may, for sufficient cause shown, excuse the parties from the compliance with any of these Rules.

(2) The Judge may give any directions that are considered just and expedient in matter of practice and procedure.

DATED: 5 JULY 2002

JOSEPH LEBONA KHEOLA
CHIEF JUSTICE

SCHEDULE ONE
CRIMINAL FORM LAC1

In the matter between

Appellant

and

REX

Respondent

Case No.
LAC/CRI

TAKE NOTICE that the above mentioned appellant having been convicted of the crime of

.....

on the day of and sentenced to

and being now a prisoner in the gaol at

(or now residing at

hereby notes an appeal against the above-named conviction and sentence to the Labour Appeal Court on the grounds set out in the annexure hereto.

Signed

Appellant

(or Appellant's attorney)

(Address of attorney)

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To: the Registrar of the Labour Appeal Court
And to the Director of Public Prosecutions

Dated at this day of

SCHEDULE TWO

CIVIL FORM LAC1

In the matter between

Appellant

and

Respondent
Case No.
LAC/CIV/

TAKE NOTICE that the above named appellant hereby notes

an appeal against the decision of the Labour Court in case

number LC/

(name of the parties in full)

Dated to the Labour Appeal Court on the

grounds set out in the annexure hereto.

Signed

Appellant

(or Appellant's Attorney)

(Address of Attorney)

To: Registrar of the Labour Appeal Court

Dated at thisday of