

SUBSIDIARY LEGISLATION

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THE APPELLATE JURISDICTION ACT
(CAP.141)

RULES

(Made under section 12)

THE TANZANIA COURT OF APPEAL RULES, 2009

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THE APPELLATE JURISDICTION ACT
(CAP. 141)

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THE TANZANIA COURT OF APPEAL RULES, 2009

ARRANGEMENT OF RULES

PART I
CITATION AND INTERPRETATION

Citation 1. These Rules may be cited as the Tanzania Court of Appeal (Amendments) Rules, 2017 and shall be read as one with the Tanzania Court of Appeal Rules, 2009 hereinafter referred to as the principal Rules.

Amend- 2. The principal Rules are amended by deleting rule 11 and
ment of substituting for it the following new rule:-
rule 11

Suspension 11.-(1) A sentence of death or corporal
of sentence punishment shall not be carried out until the time
and stay of for giving notice of appeal has expired or, where
execution notice of appeal has been given, until the appeal
has been determined.

(2) Subject to the provisions of sub-rule (1), the institution of an appeal, shall not operate to suspend any sentence but the Court may in any criminal proceedings, where notice of appeal has been given in accordance with rule 68, order that the appellant be released on bail or that the execution of any warrant of distress be suspended pending the determination of the appeal.

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(3) In any civil proceedings, where a notice of appeal has been lodged in accordance with rule 83, an appeal, shall not operate as a stay of execution of the decree or order appealed from nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree or order; but the Court, may upon good cause shown, order stay of execution of such decree or order.

(4) An application for stay of execution shall be made within fourteen days of service of the notice of execution on the applicant by the executing officer or from the date he is otherwise made aware of the existence of an application for execution.

(5) No order for stay of execution shall be made under this rule unless the Court is satisfied that:-

- (a) substantial loss may result to the party applying for stay of execution unless the order is made;
- (b) the application has been made without unreasonable delay; and
- (c) security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.

(6) Notwithstanding anything contained under sub-rule (5) and rule 60(2)(b), this rule, a single judge of the Court, may make an ex parte order for stay of execution pending hearing of the appeal or application.

(7) An application for stay execution shall be accompanied by:-

- (a) a copy of a notice of appeal;
- (b) a decree or order appealed from;
- (c) a judgment; and
- (d) a copy of a notice of the intended execution.”

Amend-
ment of
rule 14

3. The principal Rules are amended in rule 14 by deleting sub-rule (5) and substituting for it the following new sub-rule-

“(5) Where the Registrar directs a party to amend or adjust a document, the party shall lodge the amended or adjusted document within seven days notwithstanding that such period may go beyond the time prescribed by the law for filing such documents.”

Amend-
ment of
rule 34

4. The principal Rules are amended by deleting rule 34 and substituting for it the following new rule-

“List of
authori-
ties and
copies of
judgment
to be
referred
to

34.-(1) An advocate who intends, at the hearing of any application or appeal, to rely on a judgment in any reported or unreported case or to quote from any book shall lodge with the Registrar at the place where the application or the appeal is to be heard, eight copies of the list containing the titles and shall attach extracts of the relevant pages of the book or article or copies of the case or cases with their citations and the names, authors and editions of the book or books, and shall serve copies of that list on the other party or on each other party appearing in person or separately represented, as the case may be.

(2) The list of authorities under sub-rule (1) shall be:-

- (a) in the case of an appeal, a minimum of eight copies or such other number as the circumstances of the case may require; or
- (b) in the case of an application, a minimum of four copies or such other number as the circumstances of the matter may require.

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(3) The list of authorities under this rule shall be lodged at least three working days before the appeal or application is due to be heard.

(4) An advocate who intends at the hearing of an application or appeal, to rely on a judgment in any unreported case or decision from a foreign jurisdiction shall, at the time of filing the list of authorities, produce and attach eight certified or photostat copies of that judgment and, except in the case of an application to be heard by a single Justice, other copies of it for the use of the Court, and in every case, one copy for the use of the other party, or each other party appearing in person or separately represented, as the case may be."

Amend-
ment of
rule 44

5. The principal Rules are amended in rule 44 by deleting the phrase "without unreasonable delay but need not be made before" appearing between the word "made" and "notice" in sub-rule (2) and substituting for it the following phrase "within fourteen days from the date when the."

Amend-
ment of
rule 45

6. The principal Rules are amended by deleting rule (45) and substituting for it the following new rule:-

"Applica-
tion for
leave to
appeal in
civil
matters

45. In civil matters:-

- (a) notwithstanding the provisions of rule 46(1), where an appeal lies with the leave of the High Court, application for leave may be made informally, when the decision against which it is desired to appeal is given, or by chamber summons according to the practice of the High Court, within thirty days of the decision; or
- (b) where an appeal lies with the leave of the Court, application for leave shall be made in the manner prescribed in rules

49 and 50 and within fourteen days of the decision against which it is desired to appeal or, where the application for leave to appeal has been made to the High Court and refused, within fourteen days of that refusal;

Provided that in computing the time within which to lodge an application for leave in the Court under paragraph (b), there shall be excluded such time as may be certified by the Registrar of the High Court as having been required for preparation of a copy of the decision subject to the provisions of rule 49(3)".

Amendment of rule 45A

7. The principal Rules are amended by adding immediately after rule 45 the following new rule:-

"Applica-
tion for
extension
of time
where
refused by
the High
Court

45A.-(1) Where an application for extension of time to:-

- (a) lodge a notice of appeal;
- (b) apply for leave to appeal; or
- (c) apply for a certificate on a point of law,

is refused by the High Court, the applicant may within fourteen days of such decision apply to the Court for extension of time.

(2) In computing the time within which to lodge an application under this rule, there shall be excluded such time as may be certified by the Registrar of the High Court as having been required for preparation of a copy of the decision and the order.

(3) Every application under sub-rule (1) shall be accompanied by a copy of the decision against which it is desired to appeal and where application has been made to the High Court for extension of time and refused, by a copy of the refusal order.

Tanzania Court of Appeal (Amendments)

GN. No. 362(contd...)

Amendment of rule 48 **8.** The principal Rules are amended in rule 48 by deleting sub-rule (4).

Amendment of rule 55 **9.** The principal Rules are amended in rule 55 by deleting sub-rule (1) and substituting for it the following:

“(1) The notice of motion, affidavit and all supporting documents shall, within fourteen (14) days from the date of filing, be served upon the party or parties affected.”

Addition of rule 68A **10.** The principal Rules are amended by adding immediately after rule 68 the following new rule:-

“Deemed striking out of a criminal appeal **68A.** Where an appeal lies only on a certificate that a point of law is involved or with leave, and **such** certificate or a leave is denied, the notice of appeal shall be deemed to have been struck out and the Registrar shall make such entry in the register.”

Amendment of rule 82 **11.** The principal Rules are amended by deleting rule 82 and substituting for it the following new rule:-

“Application of Part V **82.** This Part shall apply to appeals from the High Court or a tribunal, acting in original revisional and appellate jurisdiction in civil cases and to matters relating to them save for the provisions of rules 106 and 107 of these rules.”

Addition of rule 86A **12.** The principal Rules are amended by adding immediately after rule 86 the following new rule:-

“Particular of address for service **86A.** The address for service referred to under rule 83(3) and 86 (1), shall contain the following particulars:
(a) the name of appellant or respondent and the advocate, if any;
(b) the description of the place of

residence of the appellant or the respondent including the “kitongjoji” or street name, email address, fax number, telephone number and post code if available”; and

- (c) the description of the physical address of the office of the advocate, if any, including the street name, email address, fax number telephone number and post code if available”.

Amendment of rule 90

13. The principal Rules are amended in rule 90 by adding immediately after sub-rule (3) the following sub new rule-

“(4) Subject to sub-rule (1), the Registrar shall strive to serve a copy of the proceedings is ready for delivery within 90 days from the date the appellant requested for such copy, and the appellant shall take steps to collect a copy on being informed by the registrar to do so, or after the expiry of 90 days”.

Amendment of rule 102

14. The principal Rules are amended by deleting rule 102 and substituting for it the following new rule-

“Withdrawal of appeal

102.-(1) An appellant may at any time in the course of hearing, informally apply to the Court for leave to withdraw the appeal and the Court may grant the application upon such terms as to costs or other conditions as it deems fit.

(2) Notwithstanding sub-rule (1), an appellant may at any time after instituting his appeal and before the appeal is called on for hearing lodge in the appropriate registry a written notice that he does not intend further to prosecute the appeal and upon receiving such notice the Registrar shall mark the appeal withdrawn.

(3) The appellant shall, before or within seven days after lodging the notice of withdrawal, serve copies of it on each respondent who has complied with the requirements of Rule 86.

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

(5) If all the parties to the appeal do not consent to the withdrawal of the appeal, the appeal shall stand dismissed with costs, except as against any party who has consented, unless the court, on the application of the appellant, otherwise orders.

(6) An application under sub-rule (5) shall be made within fourteen days after the lodging of the notice of withdrawal”.

Amend-
ment of
rule 106

15. The principal Rules are amended in rule 106 by deleting sub-rules (9) and substituting for it the following:-

The principal Rules are amended in rule 106 by deleting sub-rules (8), (9) and (10) and substituting for them the following new sub-rules:-

“(8) A respondent shall file a copy of a reply to the submissions of the appellant or applicant not later than thirty (30) days from the date of service by the appellant or applicant upon him.

(9) A copy of the respondent’s written submissions shall be served upon the appellant or applicant within 14 days from the date of filing.

(10) Failure to file written submission under sub-rule (1) or a reply under sub-rule (8) shall not be a ground for applying for additional time for oral submission under provisions of this rule.”

Amend-
ment of
rule 107

16. The principal Rules are amended in rule 107 by deleting sub-rules (2) and (3) and substituting for them the following new sub-rules-

“(1) A respondent intending to rely upon a preliminary

objection to the hearing of the appeal or application shall give the appellant or applicant three clear days notice thereof before hearing, setting out the grounds of objection such as the specific law, principle or decision relied upon, and shall file five such copies of the notice with the Registrar within the same time and copies of the law or decision, as the case may be, shall be attached to the notice.

(2) A respondent shall not rely upon a preliminary objection unless such objection consists of a point of law which, if argued and sustained, may dispose of the appeal or application.

(3) A respondent raising a preliminary objection shall provide such necessary particulars to enable the Court and the other party to grasp the nature and scope of such objection

Amend-
ment of
rule 118

17. The principal Rules are amended in rule 118 by adding immediately after paragraph (c) the following new paragraph (d)-

“(d) No fees shall be payable by the Republic or the Government in respect of any civil proceedings instituted by or against the Republic or the Government, but a judgment in favour of the Republic or the Government for costs shall, unless the court otherwise directs, include the amount of the fees which would have been payable if the proceedings had been instituted by or against a private person.”

Amend-
ment of
the First
Schedule

18. The principal Rules are amended in the First Schedule by deleting Forms B/1 and C/1and substituting for them the following new Forms:-

FORM B/1
(Rule 75)
In the Court of Appeal of Tanzania at
Criminal/Civil or Application No of
.....20.....
In the matter of an intended appeal/Criminal/Civil. Appeal No
..... of20.....
between.....
Appellant

Tanzania Court of Appeal (Amendments)

GN. No. 362(contd...)

and.....
Respondent
(Appeal from the of the High Court of
..... at..... (Mr.
Justice) Dated..... 20.....
in
Criminal/Civil or Application/Appeal No of
.....20.....)

NOTICE OF APPEAL

TAKE NOTICE that appeals to the
Court of Appeal of Tanzania against the decision of the Honourable
Mr. Justice given at
..... on the day of
20..... whereby the appellant was convicted of and
sentenced to
The appeal is against conviction only/conviction and
sentence/sentence only.

The appellant intends/does not intend to be present at the hearing of
the appeal. The address of service of the appellant is
.....
.....

Dated this day of, 20.....

Signed..... Appellant/Advocate
for the Appellant

(Retained only to prepare this notice/
Retained to appear at the hearing of the
appeal/Assigned to appear at the hearing
of the appeal.

To: The Registrar of the High Court at

..... Lodged in the High
Court of Tanzania at
on the day of, 20.....

Registrar

Prisoner's number

.....
For Appellant who is in prison:

Date of Judgment and Conviction:

Date of entering the prison:
.....

Date of lodging an intention to appeal:
.....

Name of certifying officer - in - charge of the prison:
.....

Signature:
Date:
Date of transmission:

FORM C/1
(Rule 75)

In the Court of Appeal of Tanzania at

.....
Criminal Appeal No. of
20.....

Between.....
.... Appellant And.....

.....
Respondent
(Appeal from a of the High Court of Tanzania at
..... (Mr. Justice))

Dated the..... day of.....20....., in
Criminal/Case/Appeal No..... of
20.....)

MEMORANDUM OF APPEAL

..... the above-named
appellant, appeals to the Court of Appeal of Tanzania against the
above-mentioned decision, whereby the appellant was convicted of
..... and sentenced to

.....
on the following grounds, namely:

- 1.....
-
- 2.....
- etc.

Signed Appellant Advocate for the
Appellant

To: The Honourable the Justice of the Court of Appeal of Tanzania.
Lodged in the Registry/Sub-Registry at
..... on the
.....day of,20..... Registrar

For Appellant who is in prison:
Prisoner's number

.....
Date of Judgment and Conviction:
Date of entering the prison:

.....
Date of receiving proceedings:

Tanzania Court of Appeal (Amendments)

GN. No. 362(contd...)

.....
Date of lodging Memorandum of appeal:

.....
Name of certifying officer - in - charge of the prison:

.....
Signature:.....

.....
Date:.....

.....
Date of transmission:.....

Dar es Salaam,
31th August, 2017

IBRAHIM HAMIS JUMA,
Chief Justice