

Judicature And Application of Laws (Criminal Appeals and Revisions in Proceedings Originating From Primary Courts)

GOVERNMENT NOTICE NO. 390 published on 14/5/2021

THE JUDICATURE AND APPLICATION OF LAWS ACT,
(CAP. 358)

RULES

(Made under section 4)

THE JUDICATURE AND APPLICATION OF LAWS (CRIMINAL APPEALS AND REVISIONS
IN PROCEEDINGS ORIGINATING FROM PRIMARY COURTS) RULES, 2021

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PART I

PRELIMINARY PROVISIONS

Citation

1. These Rules may be cited as the Judicature and Application of Laws (Criminal Appeals and Revisions in Proceedings Originating from Primary Courts) Rules, 2021.

Application

2. These Rules shall apply to proceedings in criminal appeals and revisions to-

- (a) the district court in matters originating in the primary court exercising its original jurisdiction;
- (b) the High Court against the decision of the district court exercising its appellate and revisional jurisdiction over matters originating in primary court; and
- (c) the district court in exercise of its appellate and revisional jurisdiction over the decision of the primary court exercising its appellate or revisional jurisdiction under the Ward Tribunals Act, whereby the procedure applicable to appeals and revisions under paragraph (a) shall apply *mutatis mutandis* in appeals and revisions under this paragraph.

Cap. 206

Interpretation

Cap. 11

3. In these Rules, unless the context otherwise requires-
“Act” means the Magistrates’ Courts Act;
“agent” means an advocate or any person authorised by law to appear and act for any party;
“appellate court” means the High Court or the district court, as the case may be;
“petition of appeal” means a record of grounds of appeal and

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includes the grounds stated orally and recorded by the district court under section 20 (4) (b) of the Act; and
“Registrar” means the Registrar of the High Court, a Deputy Registrar and includes an acting Deputy Registrar.

PART II

GENERAL ADMINISTRATIVE AND PROCEDURAL PROVISIONS

Petition of appeal and application for revision **4.-(1)** An appeal to the appellate court under these Rules shall be by way of a petition of appeal and shall-

- (a) contain the names of the parties;
- (b) set out precisely and under distinct heads numbered consecutively the grounds of appeal against the decision or order appealed against; and
- (c) be signed and dated by the appellant or his agent.

(2) An application for revision under these Rules shall be by way of chamber summons supported by an affidavit, stating the grounds for revision thereof.

(3) The petition of appeal or the application for revision shall be filed in duplicate and such additional number of copies commensurate with the number of parties involved.

(4) Notwithstanding the provisions of subrules (1) and (2), in appeals or revisions to the district court, the magistrate may permit the appellant or the applicant to state the grounds for his appeal or revision orally and shall record them and hear the appeal or revision, as the case may be, accordingly;

Provided that, the date on which the grounds were stated before the magistrate shall be recorded.

Filing of documents GN. No. 148 of 2018 **5.** The document may, where these Rules require the filing of a document in the appellate court, be filed electronically and the Judicature and Application of Laws (Electronic Filing) Rules, 2018 shall apply *mutatis mutandis*.

Registration of appeals **6.-(1)** When a petition of appeal to a district court is filed in that court, it shall immediately be endorsed with the date of filing, numbered and entered in a register to be kept for that purpose.

(2) When a district court permits an appellant to state the grounds of his appeal orally and records them, the record shall similarly be dated, numbered and entered in the register.

(3) The district court shall, when a petition of appeal to the High Court is filed in the district court, cause the date of filing to be

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endorsed on the petition before dispatching it to the High Court.

(4) When a petition of appeal is received in the High Court, it shall immediately be numbered and entered in a register to be kept for that purpose.

Service of notice of hearing

7. Where an appeal is filed to an appellate court, a notice of hearing of appeal together with a copy of the petition of appeal shall be served on the respondent or his agent.

Summary rejection

8. The Judge of the High Court shall, where he rejects an appeal summarily under section 28(1) of the Act, give reasons for the rejection and a copy of the order rejecting the appeal shall be served upon the appellant or his agent.

Compliance with orders

9. The Registrar shall, where he gives directions under section 26(a) of the Act as to the time within which any further step in the proceedings is to be taken by any party to the appeal, cause a notice of such directions to be served upon that party or his agent.

Application for leave to appeal out of time

10. An application for leave to appeal out of time to an appellate court shall set out the reasons why a petition was not or cannot be filed within thirty days after the date of the decision or order against which it is desired to appeal, and shall be accompanied by the petition of appeal.

Withdrawal of appeals

11. An appellant may withdraw his appeal at any time before judgment.

PART III
HEARING OF THE APPEAL

Hearing procedure

12.-(1) The appellate court shall, during the hearing of an appeal, first hear the appellant or his agent and thereafter hear the respondent or his agent and then the appellant or his agent shall have the right of reply.

(2) When separate appeals are filed by two or more parties to a proceeding, the appeals shall be registered separately and they shall, unless the appellate court orders otherwise, be heard together.

Cross-appeal

13.-(1) Where there are separate appeals by adverse parties, the subsequent appeal shall be treated as a cross-appeal the hearing of which shall be subject to subrule (2).

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(2) The court shall hear the appeal of the appellant first, then the respondent on the appeal and on his cross-appeal, then the appellant in reply to the appeal and on the cross-appeal and finally the respondent in reply to the cross-appeal.

Restrictions on hearing

14. An appellant or his agent shall not, except by leave of the appellate court, be entitled to be heard on any ground not set forth in his petition of appeal.

Adjournments

15.-(1) An appellate court may, for good cause on an application of any party or on its own motion, adjourn the hearing to another date.

(2) When the hearing is adjourned under subrule (1) in the absence of the parties, the court shall, after fixing the date for the resumed hearing, give notice of it to the parties or their agents;

Provided that, it shall not be necessary to give a notice of the resumed hearing to a person who has signified in writing that he does not intend to appear at the hearing.

PART IV

APPEARANCE OF PARTIES AND CONSEQUENCES OF NON-APPEARANCE

Appearance of parties

16. Subject to the provisions of rule 17 (1) and (3), the parties shall, on the day fixed for hearing of the appeal, be in attendance in person or through their agents and the appeal shall be heard unless the hearing is adjourned.

Non-appearance of parties

17.-(1) An appellant may embody in his petition of appeal a statement that he does not intend to appear personally or by his agent at the hearing, together with a statement in writing of his arguments in support of the appeal and in such event and unless the court or the Registrar has expressly required the appearance of the appellant, the court shall not dismiss the appeal for want of appearance and the appellate court shall have regard to such arguments.

(2) Subject to the provisions of subrule (1), the appellate court may, where on the date fixed for hearing of the appeal or any day to which it may be adjourned, the sole appellant or any of the appellants where there are multiple appellants does not appear in person or by agent, dismiss the appeal against the sole appellant or any of the defaulting appellants.

(3) Where the appellant appears and the sole respondent or any of the respondents where there are multiple respondents, having

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been duly served, does not appear, the appeal shall proceed in the absence of the respondent or any of the defaulting respondents, unless the appellate court for any good cause considers it necessary to adjourn the hearing, but if the defaulting respondent had, before the date of the hearing, filed a statement in writing of his arguments in opposition to the appeal, the appellate court shall have regard to such arguments.

Re-admission of appeal dismissed for non-appearance

18.-(1) The appellant or his agent may, where an appeal has been dismissed under rule 17(2) in default of his appearance, apply to the appellate court concerned for the re-admission of the appeal.

(2) The court may, upon being satisfied that the appellant was prevented by good cause from appearing either personally or by an agent when the appeal was called for hearing, re-admit the appeal.

Re-hearing of appeal heard in absence of respondent

19.-(1) The respondent or his agent may, where an appeal is heard in his absence of and judgment is pronounced against him under rule 17 (3) of these Rules, apply to the appellate court concerned to re-hear the appeal.

(2) The court shall, if satisfied that the respondent was not duly served with the notice or that he was prevented by good cause from appearing either personally or by agent when the appeal was called for hearing, set aside the judgment and re-hear the appeal.

Application for re-admission and re-hearing of appeal

20. An application under rules 18 and 19 shall set out the reasons why the applicant did not attend the hearing.

PART V
MISCELLANEOUS

Revision procedure

21. The procedure for petition of appeals under these Rules shall apply *mutatis mutandis* to applications for revision under these Rules.

Judgment

22.-(1) The judgment of the appellate court shall be in writing in the language of the court, and shall state –
(a) the points for determination;
(b) the decision; and
(c) the reasons for the decision.

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(2) The judgment shall be signed, dated and pronounced in open court.

Mode of
application

23.-(1) An application under these Rules shall, save for application for revision provided for under rule 4, be in writing.

(2) Notwithstanding the provisions of subrule (1) of this rule, where an application is made to a district court, the court may permit the applicant to state the reasons for his application orally and it shall record them.

(3) The application under subrules (1) and (2) of this rule shall be signed by the applicant and the date on which it was made shall be indicated.

Dar es Salaam
4th May, 2021

IBRAHIM HAMIS JUMA
Chief Justice