



Tuvalu

**COURT OF APPEAL RULES 2009**





Tuvalu

## COURT OF APPEAL RULES 2009

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Tuvalu

# **SUPERIOR COURTS ACT, 1987**

## **COURT OF APPEAL RULES 2009**

Commencement [1 January 2009]

In exercise of the powers conferred upon the Rules Committee by section 22 of the Superior Courts Act, 1987, the following Rules are made: —

### **PART I - PRELIMINARY**

#### **1 Citation and commencement.**

These Rules may be cited as the Court of Appeal Rules 2009 and shall come into operation on the 1st January 2009

#### **2 Interpretation.**

In these Rules, unless the context otherwise requires —

“**advocate**” means a barrister or solicitor acting for an appellant or respondent to an appeal whether entitled to right of audience before the Court of Appeal or the High Court, as the case may be;

“**appellant**” includes a person who has been convicted and desires to appeal under these Rules; and where the Attorney General is, or is deemed to be, a party to any proceedings and desires to appeal under these Rules, includes such Attorney General;

“**Court of Appeal**” means the Court of Appeal for Tuvalu

“**decision**” includes any order, judgment or decree;

“**Head of State**” means the Sovereign of Tuvalu in accordance with section 48 of the Constitution;

“**High Court**” means the High Court of Tuvalu;

“**record**” means the aggregate of the papers relating to an appeal (including the pleadings, proceedings, evidence and judgments) proper to be laid before the Court of Appeal on the hearing of the appeal;

“**respondent**” includes any person who has been served with notice of appeal or who is entitled to be so served;

“**sentence**” includes any order of a court made on a conviction with reference to the person convicted;

## **PART II - GENERAL**

### **3 Constitution of Court of Appeal.**

The constitution of the Court of Appeal shall be governed by the laws of Tuvalu for the time being in force.

### **4 Commencement of appeals.**

Appeals, including applications for extension of time within which to file an appeal, shall be filed with the Registrar of the High Court.

### **5 Appellant confined to grounds of appeal.**

The appellant shall not, without the leave of the Court of Appeal, urge or be heard in support of any ground of objection not stated in his notice of appeal, but the Court of Appeal shall not be confined to the grounds so stated:

Provided that the Court of Appeal shall not rest its decision on any ground not stated in the notice of appeal unless the respondent has had sufficient opportunity of contesting the case on that ground either in writing or by appearance in person or by advocate.

### **6 Application of High Court Rules.**

Subject to these Rules, the Western Pacific High Court (Civil Procedure) Rules 1964 shall apply to proceedings in and before the Court of Appeal in civil causes or matters.



**7 Application of practice and procedure in England.**

Where no other provision is made by these Rules, or by any other enactment, the jurisdiction, power and authority of the Court of Appeal and the judges thereof shall be exercised —

- (a) in civil causes or matters, according generally to the course of the practice and procedure for the time being observed by and before Her Majesty's Court of Appeal in England; and
- (b) in criminal proceedings, according to the general course of practice and procedure observed by and before Her Majesty's Court of Appeal (Criminal Division) in England prior to the passage of the English Criminal Appeal Act 1968.

**8 Adjournment of hearing.**

If for any reason it appears to the Court of Appeal right to adjourn an appeal, the Court of Appeal shall have full power to do so upon such terms and for such times as to it shall see fit.

**9 Enlargements of time.**

The Court of Appeal, or a judge thereof, or a judge of the High Court or the Senior Magistrate, may enlarge the time prescribed by the Rules for the doing of anything to which these Rules apply.

**10 Fees.**

- (1) The fees prescribed in the First Schedule shall be the fees payable in respect of civil proceedings in the Court of Appeal.
- (2) No fees shall be payable in criminal proceedings in the Court of Appeal.

**11 Judgments.**

Upon the final determination of an appeal the Registrar of the Court of Appeal shall transmit to the Chief Justice a certified copy of the judgment of the Court of Appeal.

**12 Appeal from decisions of Registrar of Court of Appeal.**

Any person aggrieved by anything done or ordered by the Registrar of the Court of Appeal, other than anything done or ordered under the direction of a judge of the Court of Appeal, may apply to have the act, order or ruling complained of set aside to a judge of the Court of Appeal who may give such directions or make such orders thereon as he shall think fit; and every such application shall be made by notice of motion supported by affidavit.

**13 Service.**

- (1) Service, where required by these rules, shall be effected by the Registrar of the High Court in accordance with the rules prescribed therefor by the Western Pacific High Court (Civil Procedure) Rules 1964:

Provided that in the event of the party or person to be served, or his representative for acceptance of service, being beyond the jurisdiction of the High Court, service shall be effected in the same manner as is prescribed for service of process by the Western Pacific High Court (Civil Procedure) Rules, 1964.

- (2) The Registrar of the Court of Appeal may require any party on behalf of whom service is required to provide as a condition of such service, such number of copies as he may require for service and filing.
- (3) Notwithstanding anything hereinbefore contained, the Court of Appeal or any judge thereof may, in any case, make such orders and give such directions to service as may be required.

**14 Sittings in chambers.**

Except in proceedings involving the decision of an appeal, the Court of Appeal or a judge thereof may sit and act in chambers.

**15 Non-compliance with rules may be waived by the Court of Appeal.**

- (1) Non-compliance on the part of an appellant or respondent in any proceeding, whether civil or criminal with any of the provisions of these Rules shall not prevent the further prosecution of the appeal or response if the Court of Appeal or a judge thereof considers that such non-compliance was not wilful and that the same may be waived or remedied by amendment or otherwise; and the Court of Appeal or a judge thereof may in such manner as it or he thinks fit direct such appellant or respondent, as the case may be, to remedy such non-compliance, and thereupon the appeal or the response shall proceed.
- (2) Any direction given pursuant to the provisions of paragraph (1) shall be communicated, as soon as may be, by the Registrar of the Court of Appeal to any party concerned who was not present or represented when the direction was given in the manner prescribed by rule 13.

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## PART III - CIVIL APPEALS

### 16 Wrong ruling as to stamp.

The Court of Appeal shall not grant a new trial or reverse any decision by reason of any ruling of the High Court that the stamp upon any document or instrument is sufficient or that the document or instrument does not require to be stamped.

### 17 Conditions precedent to appeal.

Subject to the provisions of rule 15, the Court of Appeal shall not entertain any appeal made under the provisions of this Part unless the appellant has fulfilled all of the conditions of appeal as hereinafter set out:

Provided that, notwithstanding the generality of the foregoing, the Court of Appeal may in its discretion for cause shown entertain an appeal under the provisions of this Part upon any terms it may consider just.

### 18 Notice of appeal.

- (1) An appeal to the Court of Appeal shall be by way of rehearing and shall be brought by notice of motion (in these Rules referred to as “notice of appeal”).
- (2) Notice of appeal may be given either in respect of the whole or in respect of any specified part of the decision of the Court below.
- (3) In addition to complying with rule 5, every notice of appeal shall specify the precise form of the order which the appellant proposes to ask the Court of Appeal to make.
- (4) Every notice of appeal shall be filed with the Registrar of the High Court who shall —
  - (a) cause a copy thereof to be served, as soon as may be, upon every person directly effected by the appeal; and
  - (b) Place the original notice on the appeal file.
- (5) For the purpose of service under paragraph (4), the Registrar of the High Court may require the appellant, as a condition precedent to filing, to provide such number of copies of the notice of appeal as may be required for service and filing.

### 19 Time for appealing.

Except where by Ordinance otherwise provided and subject to rules 9 and 20 any notice of appeal, whether from an interlocutory or final decision of the High Court, shall be filed with the Registrar of the High Court within thirty days after the

decision complained of, calculated from the date on which the judgment or order of the High Court was signed, entered or otherwise perfected.

## **20 Leave to appeal required in interlocutory matters.**

- (1) No notice of appeal against any interlocutory order of the High Court, whether made at first instance or in exercise of its appellate jurisdiction, in any civil cause or matter shall be filed unless leave to appeal has first been obtained from a judge of the High Court or the Senior Magistrate, or, if such leave be refused, from the Court of Appeal.
- (2) Every application for leave to appeal under this rule shall be by summons in chambers to be filed with the Registrar of the High Court or with the Registrar of the Court of Appeal, as the case may be, within the period prescribed in rule 19 for the filing of notice of appeal:

Provided that upon the filing of an application for leave to appeal time within which, if leave be granted, the notice of appeal shall be filed shall be extended by such period as a judge of the High Court, the Senior Magistrate, or a judge of the Court of Appeal, as the case may be, shall consider appropriate having regard to all the circumstances.

## **21 Appeal fee and security for costs.**

- (1) The appellant shall —
  - (a) forthwith upon the filing of any notice of appeal, pay to the Registrar of the High Court the fee prescribed for the filing of such notice; and
  - (b) upon request of the said Registrar made at any time after the filing of the notice of appeal —
    - (i) deposit with the Registrar such sum as the Registrar shall assess as the probable expenses of the preparation, certification and copying of the record; and
    - (ii) deposit such further sum, or give security therefor to the satisfaction of the Registrar, as the Registrar may fix as security for the prosecution of the appeal and for the payment of all such costs as may be ordered to be paid by the appellant.
- (2) In the event of non-compliance with the provisions of paragraph (1), or in the event of any security required to be given not being given, or being given in part only, within the time directed or within such extended time as may be allowed in accordance with rule 9, all proceedings in the appeal shall be stayed, unless the Court of Appeal shall otherwise order, and the appeal shall be listed for the next sessions of the Court of Appeal for a formal order of dismissal.

**22 Cross appeals and respondent's notice.**

- (1) A respondent who, not having appealed from the decision of the High Court desires to contend on the appeal that the decision of that court ought to be varied, either in any event or in the event of the appeal being allowed in whole or in part, shall give notice to that effect to the Registrar of the High Court, specifying the grounds for that contention and the precise form of order which he proposes to ask the Court of Appeal to make, or to make in that event, as the case may be.
- (2) A respondent who wishes to contend on the appeal that the decision of the High Court should be affirmed on grounds other than those relied upon by that court shall give notice to that effect to the Registrar of the High Court specifying the grounds for that contention.
- (3) Except with the leave of the Court of Appeal, a respondent shall not be entitled on the hearing of an appeal to contend that the decision of the High Court should be varied upon grounds not specified in a notice given under this rule, to apply for any relief not so specified or to support the decision of the High Court upon any ground not relied upon by that court or specified in such notice.
- (4) Any notice given by a respondent under this rule (in these Rules referred to as a “respondent's notice”) shall be filed with the Registrar of the High Court within twenty one days after service upon him of the notice of appeal, and such Registrar shall as soon as may be upon payment of the prescribed fee cause a copy thereof to be served upon all parties directly affected by the contentions of such respondent.
- (5) For the purposes of service under paragraph (4), the Registrar of the High Court may, as a condition precedent to service, require the respondent to provide such number of copies of the respondent's notice as he may require for the purpose of service and filing.

**23 Amendment of notice of appeal or respondent's notice.**

A notice of appeal or a respondent's notice may be amended at any time by or with the leave of the Court of Appeal or a judge thereof upon such terms as the Court of Appeal may consider just.

**24 Preparation of record.**

- (1) The Registrar of the High Court shall be responsible for the preparation of the record; and such Registrar may in his discretion exclude from the record all documents (more particularly such as are purely formal) that are not relevant to the subject matter of the appeal, and generally reduce the bulk of the record as far as may be practicable, taking especial care to avoid the duplication of

documents and the unnecessary repetition of headings and other merely formal parts of documents:

Provided that the documents omitted to be copied shall be enumerated in a list to be placed after the index to or at the end of the record.

- (2) After completion of the preparation of the record the Registrar of the High Court shall number each page and cause one copy thereof to be made which he shall certify under his hand and the seal of the High Court to be a true copy of the original record and five copies thereof, which shall not be so certified, and shall place the same in the appeal file; and except by order of the Court of Appeal or a judge thereof or of a judge of the High Court no original document shall be placed in the appeal file
- (3) The Registrar of the High Court shall on application by any party to an appeal and at the cost of such party provide him with a copy of the record prepared for the appeal or any part thereof.
- (4) Subject to the provisions of paragraph (3), the cost of the preparation, copying and certification of the record for the appeal shall be borne by the appellant as costs in the appeal.

## **25 Stay of proceedings or execution.**

- (1) Except so far as the Court of Appeal or a judge thereof, or a judge of the High Court, or the Senior Magistrate, may direct —
  - (a) an appeal shall not operate as a stay of execution or of any proceedings pursuant to any decision of the High Court; and
  - (b) no intermediate act or proceeding shall be invalidated by an appeal.
- (2) On any appeal, interest for such time as execution has been delayed by an appeal shall be allowed unless the Court of Appeal otherwise orders.

## **26 General powers of Court of Appeal.**

- (1) In relation to an appeal, the Court of Appeal shall have all of the powers and duties as to amendment, extension of time or otherwise as has the High Court.
- (2) The Court of Appeal shall have full discretionary power to receive further evidence upon questions of fact, either by oral examination in court, by affidavit or by deposition taken before an examiner or commissioner:

Provided that in the case of an appeal from a judgment after trial or hearing of any cause or matter on the merits, no such further evidence (other than evidence as to matters which have occurred after the date of the trial or hearing) shall be admitted except on special grounds.

- (3) The Court of Appeal shall have power to draw inferences of fact and to give any judgment or make any order which ought to have been given or made, and to make such further or other orders as the case may require.
- (4) The powers of the Court of Appeal under the foregoing provisions of this rule may be exercised notwithstanding that no notice of appeal or respondent's notice has been given in respect of any particular part of the decision of the High Court or by any particular party to the proceedings in that court, or that any ground for allowing the appeal or for affirming or varying the decision of that court is not specified in such a notice; and the Court of Appeal may make any order, on such terms as it may think just, to ensure the determination on the merits of the real question in controversy between the parties.
- (5) The powers of the Court of Appeal in respect of an appeal shall not be restricted by reason of any interlocutory order from which there has been no appeal.

## **27 Applications.**

Any application to a judge of the High Court or the Senior Magistrate, or to a judge of the Court of Appeal shall be by summons in chambers and subject to such directions in relation thereto as such judge or the Senior Magistrate may think fit to issue.

## **28 Additional security and interim orders.**

The Court of Appeal may, in its discretion, require security for the costs of any appeal or for the performance of any orders to be made on or in relation to any appeal in addition to such security for costs as may have been required under rule 21.

## **29 Notice of hearing.**

The Registrar of the Court of Appeal shall, upon obtaining the directions of the a judge thereof, cause notice of the date of the hearing of any appeal to be served upon the parties to the appeal in accordance with these rules.

## **30 Powers of Court of Appeal as to new trials.**

- (1) If upon the hearing of an appeal it shall appear to the Court of Appeal that a new trial ought to be had, it shall be lawful for that court, if it thinks fit, to order that the decision of the High Court be set aside and that a new trial shall be had.

- (2) A new trial shall not be ordered on the ground of improper admission or rejection of evidence unless in the opinion of the Court of Appeal some substantial wrong or miscarriage of justice has thereby been occasioned.
- (3) A new trial may be ordered on any question without interfering with the finding or decision on any other question; and if it appears to the Court of Appeal that any such wrong or miscarriage as is referred to in paragraph (2) affects part only of the matter in question, or one or some only of the parties, the Court of Appeal may order a new trial as to that part only, or as to that party or those parties only, and give final judgment as to the remainder.

### **31 Parties not appearing may file argument in writing.**

- (1) An appellant may embody in a record of appeal a statement that he does not intend to appear personally or by representation at the hearing together with a statement in writing of his arguments in support of the appeal; and in such event it shall not be necessary for him to attend or be represented at the hearing unless the Court of Appeal shall so order and the Court of Appeal shall have regard to such arguments.
- (2) Subject to the provisions of paragraph (1), if, on any day fixed for the hearing of an appeal, the appellant does not appear in person or by representation, the appeal may be dismissed.
- (3) If the appellant appears, and any respondent fails to appear, either in person or by representation, the appeal shall proceed in the absence of such respondent, unless the Court of Appeal for sufficient reason sees fit to adjourn the hearing thereof.
- (4) In answer to any appeal, a respondent may, instead of appearing in person or by representation before the Court of Appeal, file with the Registrar of the High Court not less than fourteen days before the date fixed for the hearing of the appeal, a statement to the effect that he does not intend to appear in person or by representation at the hearing together with a statement in writing of his arguments in answer to the appeal; and the Registrar of the High Court shall place the same on the appeal file and shall cause a copy thereof to be served upon the appellant, or his advocate, if any, and on every other respondent, or his advocate, if any, and in such event the Court of Appeal shall have regard to such arguments.
- (5) Where any argument in writing is advanced pursuant to the provisions of paragraphs (1) or (4) there shall be no right of reply in any opposing party, but the Court of Appeal may in its discretion call upon any party to the appeal to submit original or further argument in writing within such time as the Court of Appeal may direct.
- (6) Where any appeal is dismissed or allowed under the provisions of paragraph (2) or (3) the party who was absent may apply, within thirty days after the communication to him of the dismissal or allowance of the appeal, to the



Court of Appeal for the rehearing of the appeal and where it is shown that there was sufficient reason for the absence of such party the Court of Appeal may, in its discretion, order that the appeal be restored for hearing upon such terms as to costs or otherwise as the Court of Appeal shall think fit.

- (7) Notwithstanding anything contained in rule 14, where any decision of the Court of Appeal is made in the absence of all parties to the appeal, it shall not be necessary for the judgment of the Court of Appeal to be delivered in open court but it shall be sufficient if the judgment be reduced to writing and a copy thereof served upon each of the parties to the appeal or his advocate, if any.
- (8) The provisions of this rule shall apply mutatis mutandis to the hearing of any cross appeal.

### **32 Costs and witnesses allowances.**

- (1) The Court of Appeal shall order the costs payable in the appeal as a fixed sum at the time judgment is made.
- (2) The allowance for witnesses before the Court of Appeal shall be according to the scales for the time being in force in the High Court.

### **33 Notification of final determination of civil appeals.**

- (1) On the final determination of an appeal, or the determination of any interlocutory application, under this Part, the Registrar of the Court of Appeal shall —
  - (a) notify the Chief Justice of the decision of the Court of Appeal and also any orders or directions made or given by the Court of Appeal in relation to the appeal or to any matter connected therewith, in such manner, having regard to the urgency thereof, as he considers most convenient; and
  - (b) In any event place one certified copy of the judgment of the Court of Appeal in the appeal file.
- (2) Except where any party to an appeal was legally represented at the appeal or was himself present in person at the hearing of the appeal and at the delivery of judgment in the same, the Chief Justice shall, upon receipt of notice of the result of the appeal from the Registrar of the Court of Appeal, direct that the Registrar of the High Court shall notify each of the parties to the appeal in accordance with the notification so received.

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## PART IV - CRIMINAL APPEALS

### 34 Commencement of and time of appeal.

A person desiring, under the provisions of this Part, to appeal to the Court of Appeal shall commence his appeal by sending to the Registrar of the High Court a notice of appeal in Form I of the Second Schedule stating the grounds of his appeal within thirty days after the date of the conviction or order.

### 35 Determination of appeals in ordinary cases.

- (1) On any appeal against conviction, the Court of Appeal shall allow the appeal if it thinks that the conviction should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence or that the judgment of the court before which the appellant was convicted should be set aside on the ground of a wrong decision on any question of law or that on any ground there was a miscarriage of justice and in any other case shall dismiss the appeal:

Provided that the Court of Appeal may notwithstanding that it is of the opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred.

- (2) Subject to the special provisions of these Rules, the Court of Appeal shall, if it allows an appeal against a conviction, either quash the conviction and direct that an acquittal be entered, or, if the interests of justice so require, order a new trial.
- (3) On an appeal against sentence, the Court of Appeal shall, if it thinks that a different sentence ought to have been passed, quash the sentence passed at the trial and pass such other sentence warranted in law (whether more or less severe) in substitution therefore as it thinks ought to have been passed, and in any other case it shall dismiss the appeal, or make such other order as it thinks fit.

### 36 Powers of the Court of Appeal in special cases.

- (1) If it appears to the Court of Appeal that an appellant, though not properly convicted on some count or part of the information has been properly convicted on some other count or other part of the information, it may either affirm the sentence passed on the appellant at the trial, or pass such sentence in substitution therefore as it thinks proper and as may be warranted in law by the conviction on the count or the part of the information in respect of which it considers that the appellant has been properly convicted.

- (2) Where an appellant has been convicted of an offence and the High Court could on the information have found the appellant guilty of some other offence, and on the finding of the High Court it appears to the Court of Appeal that the High Court must have been satisfied of the facts which proved the appellant guilty of that other offence, the Court of Appeal may, instead of allowing or dismissing the appeal, substitute for the conviction entered by the High Court a conviction in respect of that other offence and may pass such sentence in substitution for the sentence passed at the trial as may be warranted in law for that other offence, not being a sentence of greater severity.
- (3) If on an appeal it appears to the Court of Appeal that, although the appellant was guilty of the act or omission charged against him, he was insane at the time when the act was committed or the omission made so as not to be responsible according to law for his actions, the Court of Appeal may quash the sentence passed at the trial and order the appellant to be kept in custody as a criminal lunatic in such place and in such manner as it shall direct.

### **37 Suspension of orders for restoration or payment of compensation.**

- (1) The operation of any order made by the High Court, in any criminal case, for the payment of compensation or of any of the expenses of the prosecution or for the restoration of any property to any person and the operation of the provisions of any law revesting in case of any conviction in the original owner or his personal representative the property in stolen goods (unless the judge of the High Court by whom the conviction is entered directs to the contrary in any case in which in his opinion the title to such property is not in dispute) shall be suspended —
  - (a) in any case until the expiration of thirty days after the date of the conviction or order, as the case may be; and
  - (b) in cases in which notice of appeal is given within thirty days after such date, until the determination of the appeal;and in cases where the operation of any such order or provisions is suspended until the determination of the appeal, the order or provisions shall not take effect as to the property in question if the conviction is quashed on the appeal unless the Court of Appeal shall otherwise direct.
- (2) The Court of Appeal may by order annul or vary any order made at the trial for the payment of compensation or of any of the expenses of the prosecution or for the restitution of any property to any person, although the conviction is not quashed; and the order, if annulled, shall not take effect, and, if varied, shall take effect as so varied:

Provided that before the Court of Appeal shall make any order under this paragraph, any person who may be adversely affected thereby shall be given opportunity to be heard by the Court of Appeal either in person or by

representation or by submission in writing addressed to the Registrar of the High Court.

### **38 Appeals where fine is imposed.**

- (1) Where a person has, on his conviction, been sentenced to payment of a fine, and in default of payment to imprisonment, the person lawfully authorised to receive such fine shall on receiving the same retain it until the determination of any appeal in relation thereto.
- (2) If any person so sentenced remains in custody in default of payment of the fine, he shall be deemed for all purposes of these Rules, to be a person sentenced to imprisonment.
- (3) Where any person has been convicted and is thereupon sentenced to the payment of a fine, and, in default of such payment, to imprisonment, and he intimates to a judge of the High Court or to the Senior Magistrate, that he intends to appeal against his conviction the judge of the High Court or the Senior Magistrate, as the case may be, may, if he thinks right so to do, order such person to enter into a recognizance in Form 8 of the Second Schedule in such amount and with or without sureties in such amount as the judge or the Senior Magistrate may think right, to prosecute the appeal, and subject thereto, may order that the payment of the said fine shall be made at the final determination of the appeal if the same be dismissed.
- (4) An appellant who has been sentenced to the payment of a fine and who has paid the same in accordance with such sentence shall in the event of his appeal being successful be entitled, subject to any order of the Court of Appeal, to the refund of the sum or any part thereof paid by him.
- (5) If an appeal is dismissed, any appellant to whom paragraph (3) applies shall forthwith on receipt of notice of the result of the appeal abide by the judgment of the Court of Appeal; and if the appellant shall fail so to do the Registrar of the High Court shall report such omission to a judge of the High Court, or to the Senior Magistrate, and such judge or Senior Magistrate may summon, in Forms 9 and 10 of the Second Schedule as appropriate, the appellant and his sureties, if any, before him and may order the recognizance of the appellant and those of his sureties to be estreated and may issue a warrant for the apprehension of the appellant and may commit him to prison on default of payment of the fine or make such other order as may be necessary to enforce the order of the Court of Appeal.
- (6) Any recognizance taken under the provisions of this rule may be taken before a judge or the Senior Magistrate.

**39 Judges' discretion as to custody of exhibits.**

- (1) Unless the judge of the court of trial otherwise directs, any exhibits produced at a trial before the High Court shall be retained in the custody of that court for thirty days after the conclusion of the trial pending the possibility of an appeal therein and thereafter, or, in the event of an appeal, on the final determination of the appeal, shall be returned to the person producing the same.
- (2) The Registrar of the High Court shall keep a record of any order made by the trial judge thereof under this rule.

**40 Certified copies of record to be sent to Registrar of Court of Appeal.**

When the Registrar of the High Court has received a notice of appeal or when the Head of State has exercised powers under rule 54, the Registrar of the High Court shall prepare six copies of the record of the trial in question and shall certify each under his hand and the seal of the High Court as true copies of the original record and shall place them in the appeal file together with sufficient copies of the notice of appeal (except where the Head of State has exercised powers under rule 54) and any warrant of imprisonment or recognizance of bail or other process of the trial court which may be relevant to the appeal; but except by order of the Court of Appeal or of a judge thereof or of a judge of the High Court, or the Senior Magistrate, no original document shall be placed on the appeal file.

**41 Abandonment of Appeals.**

An appellant may at any time, after he has filed a notice of appeal, or made application for extension of time within which to appeal, abandon the appeal by giving notice thereof in Form 2 of the Second Schedule to the Registrar of the High Court and upon such notice being given the appeal shall be deemed to have been dismissed by the Court of Appeal.

**42 Notice of application for extension of time for appealing.**

An application to a judge of the High Court, or to the Senior Magistrate, for an extension of time within which notice of appeal may be given shall be in Form 11 of the Second Schedule and shall be sent to the Registrar of the High Court together with a notice of appeal appropriate to the ground or grounds upon which the applicant desires to question the conviction or sentence or other order, as the case may be.

**43 No right in appellant to be present at hearing of appeal.**

- (1) An appellant under this Part, other than an appellant who has been sentenced to the payment of a fine and has entered into a recognizance under rule 38(3)

and an appellant who, having been sentenced to the payment of a fine, has paid such fine, shall not be entitled to be present in person at any proceedings relating to his appeal before the Court of Appeal.

- (2) An appellant who has been sentenced to the payment of a fine and has either paid such fine or has entered into a recognizance under rule 38(3) may, at his own expense and on prior notification in writing to the Registrar of the High Court of his desire, be present in person at the hearing of his appeal, but nothing herein shall prevent the Court of Appeal from considering the appeal in his absence should it think fit so to do.
- (3) The power of the Court of Appeal to pass sentence under these Rules may be exercised notwithstanding that the appellant is not present.

#### **44 Costs of appeal.**

On the hearing and determination of any appeal under this Part no costs shall be allowed to either side.

#### **45 Supplemental powers of Court of Appeal.**

In exercise of its jurisdiction under this Part the Court of Appeal may if it thinks it necessary or expedient in the interests of justice —

- (a) order the production of any document, exhibit, or other thing connected with the proceedings, the production of which appears to the Court of Appeal to be necessary for the determination of the appeal; and
- (b) receive the evidence on deposition of any witnesses, whether they were or were not called at the trial, to be taken in such manner as the Court of Appeal may direct by any person appointed by that Court for that purpose; and
- (c) where any question arising in an appeal involves prolonged examination of documents or accounts or any scientific or local investigation which cannot in the opinion of the Court conveniently be conducted before the Court of Appeal, order the reference of the question, in such manner as that court may direct, for inquiry and report to a special commissioner to be appointed by the Court and the Court may act upon the report of such commissioner so far as it thinks fit to adopt it; and
- (d) appoint any person with special knowledge to act as an assessor to the Court of Appeal in any case where it appears to the Court that such special knowledge is required for the proper determination of the appeal;

and may exercise in relation to the proceedings any other powers which for the time being be exercised by the Court of Appeal on appeals in civil matters

and may issue any warrants necessary for enforcing the orders or sentences of that court:

Provided that in no case shall any sentence be increased by reason of or in consideration of any evidence which was not given before the court of trial.

#### **46 Powers which may be exercised by a judge of the Court of Appeal.**

The powers of the Court of Appeal under this Part to give leave to appeal, to extend time within which notice of appeal or an application for leave to appeal may be given, to assign legal aid to an appellant, and to admit an appellant to bail, may be exercised by any judge of the Court of Appeal in like manner as they may be exercised by the Court of Appeal and subject to the same provisions; but, if the judge refuses an application on the part of an appellant to exercise any such power in his favour, the appellant shall be entitled to have the application determined by the Court of Appeal as duly constituted for the hearing and determining of appeals under these Rules.

#### **47 Bail.**

- (1) An appellant who is in custody may, after he has filed notice of appeal in accordance with these Rules, apply to a judge of the High Court or to the Senior Magistrate, to be released on bail pending the determination of his appeal. The application may be made in Form 3 of the Second Schedule. If the judge or the Senior Magistrate, as the case may be, shall decide to order the release of the appellant on bail he shall specify the amounts in which the appellant and his surety or sureties (if any be required) shall be bound by recognizance. The recognizance provided for in this rule shall be in Forms 4 and 5 of the Second Schedule as appropriate and may be taken before any judge or the Senior Magistrate.
- (2) If a judge of the High Court or the Senior Magistrate, shall have reason to believe that it is in the interests of justice so to do he may at any time revoke an order releasing an appellant on bail or he may summon the appellant and his sureties, if any, before him in Forms 6 and 7 of the Second Schedule as appropriate and may, upon proof that a breach of recognisance has occurred, order the recognisances of the appellant and his sureties, if any, to be estreated; and he may in addition thereto issue a warrant for the appellant to be brought before him and may commit him prison to abide the result of the appeal and may make such other order as he may consider appropriate.
- (3) Whenever bail is granted or revoked pursuant to the provisions of paragraph (1) or (2), the Registrar of the High Court shall forthwith add a notice to that effect on the appeal file.
- (4) Notwithstanding anything contained in this rule, the Court of Appeal may at any time of its own motion direct that an appellant shall be granted release on bail pending determination of an appeal or that any bail granted to an

appellant shall be enlarged or revoked, or the conditions of recognizance varied.

- (5) When an appellant is admitted to bail the time during which he is at large after being so admitted shall be disregarded in computing the term of any sentence to which he is for the time being subject.
- (6) Subject to the provisions of paragraph (5), the term of any sentence passed by the Court of Appeal in substitution for a sentence passed on the appellant in the proceedings from which the appeal is brought shall, unless the Court of Appeal otherwise directs, begin to run from the time when it would have begun to run if passed in those proceedings, and references in this rule to any sentence to which the appellant is for the time being subject shall be construed accordingly.

#### **48 Duties of Registrar of Court of Appeal with respect to notices of appeal.**

The Registrar of the Court of Appeal shall take all necessary steps for obtaining a hearing of the appeal under this Part of any appeal notice of which is given to him, and he shall obtain and lay before the Court of Appeal in proper form all documents, exhibits and other things relating to the proceedings in the court before which the appellant was tried which appear necessary for the proper determination of the appeal.

#### **49 Summary determination of appeals in certain cases.**

If it appears to the Registrar of the High Court that any notice of appeal against conviction purporting to be based on a ground of appeal which involves a question of law alone does not show any substantial ground of appeal, the Registrar may refer the appeal to a judge of the Court of Appeal for summary determination; and where the case is so referred, the judge may, if he considers that the appeal is frivolous or vexatious and can be determined without adjourning the same for a full hearing, dismiss the appeal summarily.

#### **50 Provisions of forms of notice of appeal for use of appellants.**

The Registrar of the High Court shall supply the appropriate forms and instructions in relation to notices of appeal under this Part to any person who demands the same to officers in charge of prisons and such other officers and persons as he thinks fit and the officers in charge of prisons shall cause such forms and instructions to be placed at the disposal of prisoners desiring to appeal and shall cause any such notice given by a prisoner in his custody to be forwarded on behalf of the prisoner to the Registrar of the High Court without delay and with the date it was so given endorsed on it by the officer or other person.



**51 Judgments in criminal appeals.**

- (1) In an appeal under this Part the Court of Appeal shall ordinarily give only one judgment, which may be given by the senior member of the Court present at the hearing of the appeal or by such other judge present at the hearing of the appeal as the senior member may direct:

Provided that —

- (a) if any judge dissents from the judgment of the Court it shall not be obligatory on him to sign the same; and
  - (b) separate judgments shall be given if the Court is of the opinion that it is convenient that there should be separate judgments.
- (2) The judgment of the Court of Appeal or of any judge present at the hearing of the appeal shall be in writing with the reasons for the decision and for any order or direction and shall be delivered in open court either at the hearing of the appeal or at any subsequent time of which notice shall be given by the Senior Magistrate or Registrar of the High Court to the parties to the appeal or their representatives.
- (3) The judgment of the Court of Appeal or of any judge present at the hearing of the appeal may be read in open court by any judge, whether present at the hearing on that appeal or not, or by the Senior Magistrate or Registrar of the High Court.

**52 Power to reserve questions of law for the Court of Appeal.**

In addition to and without prejudice to any right of appeal, a judge of the High Court, at the conclusion of the hearing by him of any appeal or case stated from a magistrate's court in any criminal cause or matter, may reserve, on a case stated by him, any question of law which seems to him to be of general public importance and which may have arisen during such hearing, for consideration by the Court of Appeal, and shall give his judgment subject to the opinion of the Court of Appeal on such point of law; and the Court of Appeal shall have power, after hearing the appellant or his representative, if he appears, or after considering his arguments in writing if any be submitted, and the respondent or his representative, if he appears, or after considering his arguments in writing if any be submitted, to determine every such question, and shall notify the High Court of its decision, and the judge of the High Court shall make such order, conformable with the decision of the Court of Appeal, as may be necessary:

Provided that in the event of such judge dying or departing from Tuvalu or being otherwise incapacitated from acting, another judge of the High Court may make such order.

**53 Notification of final determination of criminal appeals.**

- (1) On the final determination of an appeal under this Part, the Registrar of the High Court —
  - (a) shall notify in such manner, having regard to the urgency thereof, as he considers most convenient to the Chief Justice and Senior Magistrate the decision of the Court of Appeal in relation thereto and also any orders or directions made or given by the Court of Appeal in relation to such appeal or any matter connected therewith; and
  - (b) shall in any event place one certified copy of the final judgment of the Court of Appeal on the appeal file.
- (2) Upon receipt of notification of the result of an appeal the Registrar of the High Court shall forthwith notify the result to the appellant and the respondent respectively, and if the appellant is in custody, shall also notify the officer in charge of prisons.

**54 Prerogative of mercy.**

Nothing in these Rules shall effect the power of mercy, but the Head of State, in considering the exercise of such power with reference to the conviction of a person by the High Court or to the sentence passed upon a person so convicted, whether or not the person so convicted has petitioned in that behalf, may, if he thinks fit, at any time after giving notice of his intention so to do to the Registrar of the High Court either —

- (a) refer the whole case to the Court of Appeal and the case shall then be heard and determined by the Court of Appeal as in the case of an appeal by the person convicted, who shall be deemed to be an appellant for the purposes of these Rules; or
- (b) if he desires the assistance of the Court of Appeal on any point arising in the case, refer that point to the Court of Appeal for its opinion thereon, and the Court shall consider the point so referred in private, unless it otherwise determines, and shall furnish the Head of State, with their report thereupon accordingly.

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## **PART V - APPEALS FROM HIGH COURT IN EXERCISE OF APPELLATE JURISDICTION**

### **DIVISION (A) - CIVIL JURISDICTION**

#### **55 Appeals from High Court in exercise of its appellate jurisdiction in civil cases.**

Subject to the provisions of this Part, the provisions of Parts I, II and III shall apply mutatis mutandis to appeals from decisions of the High Court in exercise of its appellate jurisdiction in civil cases.

#### **56 Notice of appeal from High Court in appellate jurisdiction in civil cases.**

- (1) The notice of appeal, shall be filed with the Registrar of the High Court in accordance with rule 18 and shall be served upon the proper officer of the court of trial and upon all parties to the proceedings in that court who are directly affected by the appeal:

Provided that a judge of the Court of Appeal may in any case direct that notice of appeal be served upon any party to the proceedings in the trial court upon whom it has not be served or upon any person not a party to those proceedings.

- (2) In any case in which a judge of the Court of Appeal directs the notice of appeal to be served upon any party or person, the judge may also direct that any respondent's notice by which that party or person is directly affected shall be served upon him.
- (3) The judge of the Court of Appeal may in any case where a direction is given under this rule —
  - (a) postpone or adjourn the hearing of the appeal for such period and upon such terms as may be just; and
  - (b) give such adjournment and make such order on the appeal as might have been given or made if the persons served in pursuance of the direction had originally been parties.
- (4) The notice of appeal shall state precisely the questions of law, and fact if any, upon which the appeal is brought.

#### **57 Time for appealing from High Court in appellate jurisdiction in civil cases.**

In relation to any appeal from a decision or order of the High Court in exercise of its civil jurisdiction, rule 19 shall have effect as if for the words “the date on which the judgment or order of the High Court was signed, entered or otherwise perfected”

there were substituted the words “the date of the judgment or order of the court below”.

**58 Preparation of record in appeals from High Court in its appellate jurisdiction.**

The provisions of rule 24 shall apply to the preparation of the record in appeals from the High Court in exercise of its appellate jurisdiction under this Part subject to the inclusion in the record for submission to the Court of Appeal the record of proceedings in the court of trial at first instance as well as the record of proceedings in the High Court upon the appeal thereto.

**59 Stay of proceedings or execution on appeal from High Court in its appellate jurisdiction.**

Paragraph (1)(a) of rule 25 shall not apply in the case of appeals from the High Court acting in exercise of its appellate jurisdiction in civil cases; but the appeal shall not operate as a stay of proceedings in the High Court or in the court of trial unless a judge of the High Court or the Senior Magistrate, so orders, or unless, within twenty-one days after the date of the judgment or order appealed from, the appellant deposits with the court such sum fixed by the judge from whose decision the appeal is brought, not exceeding the amount of money or the value of the property affected by the judgment or order, or gives such security for the said sum as the judge may direct.

**DIVISION (B) - CRIMINAL JURISDICTION**

**60 Appeals from High Court in appellate jurisdiction in criminal cases.**

Subject to the provisions of this Part, the provisions of Parts I, II and IV shall apply mutatis mutandis to appeals from the High Court in exercise of its criminal jurisdiction.

**61 Time for appealing from High Court in appellate jurisdiction in criminal cases.**

Rule 34 shall apply as though for the words “within thirty days after the date of the conviction or order” there were substituted the words “within thirty days after the date of the judgment or order of the High Court issued upon the appeal from the court of trial”.

**62 Record to be sent to Registrar of Court of Appeal on appeal from High Court in appellate jurisdiction in criminal cases.**

The record to be forwarded to the Registrar of the Court of Appeal under Rule 41 shall include a copy of the record of the proceedings in the court of trial as well as a record of the proceedings before the High Court upon the appeal thereto.

## **PART VI - TRANSITION AND REVOCATION OF PREVIOUS RULES**

**63 Transition.**

Any appeal commenced under the Court of Appeal Rules (No.2), 1956, or the Court of Appeal Rules, 1973, shall be deemed for all purposes to have been commenced under these Rules and the provisions of these Rules shall apply thereto.

**64 Revocation of previous Rules.**

The Court of Appeal Rules (No.2), 1956 and the Court of Appeal Rules, 1973, are revoked.

**FIRST SCHEDULE**

(rule 10)

**FEES (CIVIL APPEALS).**

	\$ Australian
1. On filing a notice of appeal from a final decision (including setting down and notice of hearing).....	60.00
2. On filing a notice of appeal from an interlocutory decision (including setting down, notice thereof and hearing).....	40.00
3. On an application for —	
(a) enlargement of time;	
(b) fixing or dispensing with security;	20.00
(c) leave to amend;	
(d) directions for service;	
(e) stay of execution; or	
(f) any interim or other order .....	
4. On filing respondent's notice .....	40.00
5. On every bond or deposit .....	5.00
6. On filing any affidavit or any other document unless otherwise provided .....	2.00
7. For copies of the record of the appeal for the use of the Court of Appeal for every page —	2.00
(a) of the certified copy .....	1.00
(b) of each of the uncertified copies .....	
8. For copies of the record of the appeal for any party - for every page .....	1.00
9. For a copy of a judgment - for each page .....	2.00
10. On entering or sealing the judgment made on the hearing of an appeal .....	25.00
11. On entering or sealing any other order made by the Court of Appeal or a judge thereof or a judge of the High Court including orders for security of costs and enlargement of time	10.00

.....

12. On certifying a copy of a judgment or order as a true copy - for each page .....	2.00
13. On any certificate by the Registrar of the Court of Appeal or a Registrar of the High Court	5.00

.....

Note: A page of any size shall be deemed to be a page.

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**SECOND SCHEDULE**

**FORM 1. (RULE 34)**

Court of Appeal Rules 2009

**NOTICE OF APPEAL AGAINST CONVICTION OR SENTENCE.**

To: The Registrar of the Court of Appeal, through the Registrar of the High Court.  
[Name of Appellant] convicted before the High Court at ..... of the offence of  
..... and sentenced to ..... on the ..... day of ..... 20.... and detained in  
Gaol at ..... [or now living at ..... ].

I, the abovenamed appellant, hereby give you notice of appeal to the Court of  
Appeal against: —

(a) my conviction;

(b) my sentences;

on the following grounds: —

Dated at ..... this ..... day of ..... 20....

Appellant.  
or his advocate.

\_\_\_\_\_



**FORM 2. (RULE 41)**

Court of Appeal Rules, 2009.

Regina v.

**NOTICE OF ABANDONMENT OF APPEAL**

To: The Registrar of the Court of Appeal, through the Registrar of High Court.  
I, ..... having been convicted by the High Court on the ..... day of  
..... 20.... of the offence of ..... and having been desirous of appealing  
and having duly sent notice of that appeal to the Court of Appeal against my  
conviction (or sentence of ..... passed upon me on my said conviction) do hereby  
give you notice that I do not intend to prosecute my appeal but that I hereby  
abandon all further proceedings in regard thereto as from the date hereof.

Dated this ..... day of ..... 20....

Appellant.  
or his advocate.

\_\_\_\_\_

**FORM 3. (RULE 47(1)).**

Court of Appeal Rules 2009.

**NOTICE OF APPLICATION BY APPELLANT FOR BAIL PENDING APPEAL.**

To: The Registrar of the High Court

I, ..... having been convicted the crime of ..... and being a prisoner in the goal at ..... and having given Notice of Appeal do hereby give notice that I desire to apply to the Judge of the High Court [Senior Magistrate] for bail with/without sureties on the following grounds: —

The undermentioned persons are willing to become sureties on my behalf to the amount of \$ ..... each.

Name:

Address:

Name:

Address:

Dated this ..... day of ..... 20.....

Appellant.  
or his advocate

\_\_\_\_\_

**FORM 4. (RULE 47(1)).**

Court of Appeal Rules 2009

**RECOGNIZANCE OF BAIL OF APPELLANT.**

Be it Remembered that whereas ..... was convicted of ..... on the ..... day of .... 20.... and was thereupon sentenced to ..... and is now in lawful custody in the goal at ..... and has duly appealed against his conviction (and sentence) to the Court of Appeal and has applied to the Judge of the High Court [Senior Magistrate] for bail pending the determination of his appeal And Whereas the said Judge [Senior Magistrate] has granted him bail on his entering into his own recognizance in the sum of \$ ..... and with surety/ies each in the sum of \$ ..... the said ..... personally comes before me and acknowledges himself to owe to Her Majesty the Queen the said sum of \$..... of good and lawful money to be made and levied of his goods, chattels, lands and tenements to the use of Her Majesty the Queen, her heirs and successors, if he the said ..... fail in the condition hereon endorsed.

Taken and Acknowledged this ..... day of ..... 20.... at ..... before me.  
Judge/Registrar of the High Court/Magistrate.

**Condition.**

The condition of the above written recognizance is such that if he the said ..... shall reside within and not depart from the ..... district of ..... until the determination of his appeal without the prior permission of a Judge of the High Court [Senior Magistrate] and shall personally appear and surrender himself at and before the High Court [or the said Senior Magistrate] at a date and place to be notified to him and shall there and then abide by the judgment of the Court of Appeal, then this recognizance to be void or else to stand in full force and effect. /The following to be filled up by the appellant and signed by him or his advocate/. When released on bail my residence, to which any notices, etc., are to be addressed, will be as follows: —

Appellant.  
or his advocate.

\_\_\_\_\_

**FORM 5. (RULE 47(1)).**

Court of Appeal Rules 2009

**RECOGNIZANCE OF BAIL OF APPELLANT'S SURETIES.**

Be it Remembered that on this ..... day of ..... 20..... of ..... and ..... of ..... personally came before me and severally acknowledged themselves to owe to Her Majesty the Queen the several sums following, that is to say the said ..... the sum of \$..... and the said ..... the sum of \$.....of good and lawful money to be made and levied of their goods and ..... chattels, lands and tenements, respectively, to the use of Her Majesty the Queen, her heirs and successors, if ..... now in lawful custody in the goal at ..... fail in the condition hereon endorsed. Taken and Acknowledged before me the undersigned the day and year first above mentioned.

Judge/Registrar of the High Court/Magistrate

**Condition.**

The condition of the above written recognizance is such that the said ..... having been convicted of ..... and now in such lawful custody as before mentioned under a sentence of ..... for such offence and having duly appealed to the Court of Appeal against his said conviction (and sentence) and having applied for bail, pending the determination of his said appeal, has been granted bail on his entering into recognizance in the sum of \$..... with sureties each in the sum of \$..... if the said ..... shall reside within and not depart from the ..... district of ..... until the ..... determination of his appeal without the prior permission of a Judge of the High Court [the Senior Magistrate] and shall personally appear and surrender himself at and before the High Court [or the said Senior Magistrate] at a date and place to be notified to him and shall there and then abide by the judgment of the Court of Appeal, then this recognizance to be void or else to stand in full force and effect.

\_\_\_\_\_

**FORM 6. (RULE 47(2)).**

Court of Appeal Rules 2009

[Senior Magistrate's Court.]

Held at.....

Before ..... Criminal Jurisdiction.

**NOTICE TO APPELLANT RELEASED ON BAIL OF BREACH OF HIS  
RECOGNIZANCE.**

To the above named ..... appellant.

Whereas you were convicted on the ..... day of ..... 20....of the  
offence of ..... and were sentenced to ..... imprisonment, and you entered into  
recognizances in the sum of \$..... with sureties in the sum of \$..... each and  
were released on bail pending the determination of your appeal.

And whereas there is reason to believe that breach of the condition of such  
recognizance has occurred, now I give you notice that unless you attend at the  
sitting of this Court to be held at ..... on the ..... day of .... 20.... at ..... o'clock  
in the ..... noon and then show good cause to the contrary, the Court may order  
an estreat of your recognizances and those of your sureties and may issue a warrant  
for your apprehension and committal to prison pending the result of your appeal, or  
may otherwise deal with you according to law.

Dated this.....day of ..... 20.....

Registrar of the High Court

\_\_\_\_\_

**FORM 7. (RULE 47(2)).**

Court of Appeal Rules 2009

[Senior Magistrate's Court.]

Held at .....  
Before ..... Criminal Jurisdiction.  
Regina v.

**NOTICE TO SURETY OF APPELLANT RELEASED ON BAIL OF BREACH OF HIS RECOGNIZANCE.**

To: ..... of .....

Whereas you, the above named, became duly bound on recognizance as surety in the sum of \$..... for that the said ..... having been convicted of .....and sentenced to ..... imprisonment was released on bail pending the determination of his appeal.

And whereas there is reason to believe that breach of the condition of such recognizance has occurred, now I give you notice that at the sitting of this Court to be held at ..... on the .....day of ..... 20..... at .....o'clock in the ..... noon your recognizances may be estreated unless you show good cause to the contrary.

Dated this ..... day of ..... 20.....

Registrar of the High Court

\_\_\_\_\_

**FORM 8. (RULE 38(3)).**

Court of Appeal Rules 2009

**RECOGNIZANCE OF APPELLANT SENTENCED TO PAYMENT OF A FINE.**

Be it Remembered that whereas ..... of ..... was on the ..... day of ..... 20.... convicted of ..... and was thereupon sentenced to pay the sum of \$..... as a fine for his said offence and in default of such payment to imprisonment for a term of ..... and has intimated that he desires to appeal against the said conviction and has duly served notice of appeal And Whereas a Judge of the High Court [Senior Magistrate ] considers the said appellant may in lieu of payment at and upon his conviction of the said sum be ordered to enter into recognizance's of bail himself in the sum of \$..... and with ..... surety/ies each in the sum of \$..... to prosecute his said appel before the Court of Appeal.

The said ..... and ..... of ..... and ..... of..... personally come before me this ..... day of ..... 20... and severally acknowledge themselves to owe to Her Majesty the Queen the several sums following that is to say the said ..... the sum of \$..... the said ..... the sum of \$..... of good and lawful money to be made and levied of their goods and chattels, lands and tenements respectively to the use of Her Majesty the Queen, her heirs and successors if ..... fail in the conditions endorsed herein.

Taken and Acknowledged before me the day and year abovementioned.

Appellant:

Surety:

Surety:

Judge/Registrar of the High Court/Magistrate

**Condition**

The condition of the above-written recognizance is such that if the said ..... shall prosecute his appeal before the Court of Appeal and abide by the judgment of the said Court then this recognizance to be void, or else to stand in full force and effect.

[The following to be filled by the appellant and signed by him/ When released on bail, my residence to which any notices, etc., are to be addressed, will be as follows:

Appellant

\_\_\_\_\_

**FORM 9. (RULE 38(5)).**

Court of Appeal Rules 2009

[Senior Magistrate's Court]

Held at .....  
Before ..... Criminal Jurisdiction.  
Regina v.

**NOTICE TO APPELLANT SENTENCED TO A FINE OF BREACH OF  
RECOGNIZANCE.**

To the above-named ..... appellant.  
Whereas you were convicted on the ..... day of ..... 20..... of the  
offence of ..... and were sentenced to the payment of a fine of \$..... and in default  
of such payment to imprisonment for a term of ..... and whereas you entered into  
recognizance in the sum of \$..... with sureties in the sum of \$..... each to  
prosecute your appeal and abide by the judgement of the Court of Appeal.  
And Whereas the Court of Appeal ordered on the ..... day of ..... 20..... that —  
And Whereas you have failed to abide by the order of the Court of Appeal, now I  
give you notice that unless you attend at the sitting of this Court to be held at .....  
on the ..... day of ..... 20... at ..... o'clock in the ..... noon and then show  
good cause to the contrary, the Court may order an estreat of your recognizance  
and those of your sureties and may issue a warrant for your apprehension and may  
commit you to prison on default of payment of the fine or may otherwise deal with  
you according to law.

Dated this ..... day of ..... 20.....  
Registrar of the High Court

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**FORM 10. (RULE 38 (5)).**

Court of Appeal Rules 2009

[Senior Magistrate's Court]

Held at .....

Before ..... Criminal Jurisdiction.

Regina v.

**NOTICE TO SURETY FOR APPELLANT SENTENCED TO A FINE OF BREACH OF RECOGNIZANCE.**

To: .....of .....

Whereas you, the above named, became duly bound on recognizance as surety in the sum of \$..... for that the said ..... having been convicted of ..... and for his said offence fined the sum of \$..... should prosecute his appeal in relation to his conviction before the Court of Appeal and abide the judgment of the said Court.

And Whereas the Court of Appeal ordered on the ..... day of ..... 20..... that —  
And Whereas the said ..... has failed to abide by the order of the Court of Appeal, now I hereby give you notice that at the sitting of this Court to be held at ..... on the .....day of ..... 20..... at ..... o'clock in the ..... noon your recognizance may be ordered to be estreated unless you then show good cause to the contrary.  
Dated this ..... day of ..... 20.....

Registrar of the High Court

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**FORM 11. (RULE 41)**

Court of Appeal Rules 2009

**NOTICE OF APPLICATION FOR EXTENSION OF TIME WITHIN WHICH TO  
APPEAL**

To: The Registrar of the High Court.

I, ..... having been convicted of the offence of ..... by the High Court at .....  
on the ..... day of ..... 120... and being now a prisoner in the gaol at ..... [or now  
living at ..... ] give you notice that I hereby apply for an extension of time within  
which I may give notice of appeal on the grounds following: —

Dated this ..... day of .....20.....

Appellant.  
or his advocate.

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