

THE COURT OF APPEAL RULES, 1971
(Under section 112 of the Constitution)

Date of Commencement: 3rd September, 1971.

Arrangement of Rules

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PART I
PRELIMINARY

Citation.

1. These rules may be cited as the Court of Appeal Rules, 1971.

Interpretation.

2. In these rules, unless the context otherwise requires —
 - “Act” means the Court of Appeal Proclamation (*Cap.* 18);
 - “appellant” means the party appealing from a judgment and includes his legal representative;
 - “counsel” includes an advocate and an attorney;
 - “Court of Appeal” means the Court of Appeal established by section 105 of the Constitution;
 - “judgment” includes decree, order, conviction, sentence and decision;
 - “party” means any party to the appeal and includes his legal representative;
 - “record” means the aggregate of 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;

“Registrar” means Registrar of the Court of Appeal and includes a deputy Registrar thereof;

“respondent” —

- (a) in a civil appeal means any party (other than the appellant) directly affected by the appeal;
- (b) in a criminal appeal means the Attorney-General or any person who appears on his behalf, and in the case of a private prosecution, the private prosecutor or his legal representative.

Sittings of Court of Appeal.

3. The date, time and place of a sitting of the Court of Appeal shall be determined by the Judge President, who shall select the judges to form the court at any sitting.

Delivery of judgment.

4. Every judgment of the Court of Appeal shall be delivered in open Court during the sittings at which the appeal was heard:

Provided that if a judgment is not ready for delivery before the conclusions of the sittings it may be read by any Judge of the Court of Appeal or the Registrar, and the Registrar shall enter judgment accordingly, and such judgment shall be as effective in all respects as if it had been delivered at a sitting of the Court of Appeal.

Register of appeals.

5. The Registrar shall keep separate registers of all civil and criminal appeals brought before the Court of Appeal.

PART II
GENERAL

Entry of appeal — Cri. Form 1 or 2; Civ. Form 1 or 2.

6. (1) Every appeal shall be instituted in the form of notice of appeal signed by the appellant or by a certificate issued under section 4, 6, or 15 of the Act, which shall constitute a notice of appeal.

(2) Subject to the proviso to rule 8(1), the appellant shall deliver such notice or cause it to be delivered to the Registrar within the period prescribed in rule 8, and shall at the same time serve a copy thereof on the respondent.

(3) The Registrar shall, subject to these rules, date and file such notice on receipt thereof.

(4) The notice of appeal shall set forth concisely and under distinct heads the grounds of appeal and such grounds shall be numbered consecutively.

Appellant confined to the grounds of appeal.

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

Time for filing notice of appeal.

8. (1) The notice of appeal shall be filed within four weeks of the date of the judgment appealed against:

Provided that if there is a written judgment such period shall run from the date of delivery of such written judgment:

And provided further that if the appellant is in gaol, he may deliver his notice of appeal and a copy thereof within the prescribed time to the officer in charge of the gaol, who shall thereupon endorse it and the copy with the date of receipt and forward them to the Registrar who shall file the original and forward the copy to the respondent. (Amended L.N.102/1976.)

(2) The Registrar shall not file any notice of appeal which is presented after the expiry of the period referred to in paragraph (1) unless leave to appeal out of time has previously been obtained.

Application for leave to appeal — Cri. Form 3; Civ. Form 3.

9. (1) An application for leave to appeal shall be filed within six weeks of the date of the judgment which it is sought to appeal against and shall be made by way of petition in criminal matters or motion in civil matters to the Court of Appeal stating shortly the reasons upon which the application is based, and where facts are alleged they shall be verified by affidavit.

(2) The appellant shall deliver such petition and its supporting documents to the Registrar, and serve a copy on the respondent forthwith:

Provided that if the appellant is in goal he may deliver the petition and supporting documents and a copy thereof to the officer in charge of the gaol who shall thereupon endorse them with the date of receipt and forward them to the Registrar who shall file the original and forward the copy to the respondent.

(3) Such motion accompanied by supporting documents shall be delivered to the Registrar and a copy thereof shall be served by the appellant on the respondent forthwith.

(4) The respondent may file an affidavit in reply to the petition or motion within seven days from the date of service or within such longer period as the Registrar may allow.

Petition or motion for leave to appeal to constitute notice of appeal.

10. If the Court of Appeal on a petition or motion for leave to appeal has given an appellant leave to appeal it shall not be necessary for him to file or serve a notice of appeal, the petition or motion constituting sufficient notice.

Declarations and arguments may be filed if appellant not to be present at hearing of appeal.

11. The appellant or, in the case of a civil appeal the respondent may, not less than ten days before the date on which the appeal has been set down for hearing, file with the Registrar a declaration in writing that he does not wish to be present in person or by counsel on the hearing of the appeal, and shall at the same time submit to the Registrar four copies of such argument as he desires to submit to the Court of Appeal and serve a copy of such declaration and a copy of his argument on the other parties to the appeal.

Amendment of notice of appeal.

12. The Court of Appeal may allow an amendment of the notice of appeal and arguments, and allow parties or their counsel to appear, notwithstanding any declaration made under rule 11 upon such terms as to service of notice of such amendment, costs and otherwise as it may think fit.

Abandonment of appeal — Cri. Form 6; Civ. Form 9.

13. (1) An appellant may at any time abandon his appeal by giving notice of abandonment thereof to the Registrar and upon such notice being given the appeal shall be deemed to have been dismissed by the Court of Appeal.

(2) In a civil appeal the respondent shall be entitled to costs up to the date on which he receives notice of such abandonment.

(3) The Registrar shall forthwith give notice of such dismissal to the respondent and the Registrar of the High Court.

(4) A respondent who has given notice under rule 35 shall be entitled to proceed with his application under such rule notwithstanding the abandonment of the appeal by the appellant.

Notice of hearing.

14. (1) The Registrar shall, after obtaining directions from the Judge President, cause notice of the date of hearing to be served upon the appellant and respondent.

(2) The Court of Appeal may hear and determine on appeal without giving notice of the date of hearing to any person who has declared under rule 11 that he does not wish to attend the hearing or whose presence is dispensed with by the Court of Appeal under rule 24.

Adjournment of hearing.

15. If for any reason it appears right to adjourn an appeal or application, the Court of Appeal may do so upon such terms and for such time as it may deem fit.

Extension of time — Cri. Form 4; Civ. Form 4.

16. (1) The Judge President or any judge of appeal designated by him may on application extend any time prescribed by these rules:

Provided that the Judge President or such judge of appeal may if he thinks fit refer the application to the Court of Appeal for decision. (Amended L.N.102/1976.)

(2) An application for extension shall be supported by an affidavit setting forth good and substantial reasons for the application and where the application is for leave to appeal the affidavit shall contain grounds of appeal which *prima facie* show good cause for leave to be granted.

Condonation.

17. The Court of Appeal may on application and for sufficient cause shown, excuse any party from compliance with any of these rules and may give such directions in matters of practice and procedure as it considers just and expedient.

Taking of additional evidence — Cri. Form 5; Civ. Form 5.

18. Any additional evidence ordered by the Court of Appeal to be taken shall be either by affidavit or by oral examination before the Court of Appeal or before the High Court or before an examiner or commissioner, as the Court of Appeal may direct.

Judgments.

19. The Registrar shall draw up and sign all judgments of the Court of Appeal and shall transmit them together with a certified copy thereof to the Registrar of the High Court.

Service.

20. Service, where required in these rules, shall be effected in the same manner as is prescribed for service of process of the High Court:

Provided that any notice or other document which is required or authorized by these rules to be given or sent shall be deemed to be duly given or sent if forwarded by registered post addressed to the person to whom such notice or other document is so required or authorized to be given or sent.

PART III
CRIMINAL APPEALS

Varying order of restitution of property.

21. If an appeal is brought against the conviction or sentence of any person and at the trial of such person an order of restitution was made, the person in whose favour or against whom such order was made shall be entitled to be heard, and with leave of the Court of Appeal, any other person may be heard, before the Court of Appeal makes any order annulling or varying such order of restitution.

Bail — Cri. Forms 7, 8 and 9.

22. (1) If the Court of Appeal or the High Court admits an appellant to bail pending the determination of his appeal it shall specify the amounts in which the appellant and any surety shall be bound by recognizance, and such surety shall be approved by the Registrar or the Registrar of the High Court, as the case may be.

(2) The recognizances of the appellant and any surety shall be taken before the Registrar or the Registrar of the High Court, as the case may be.

Record in appeals against sentence and/or conviction.

23. (1) If an appeal is lodged against sentence only, the record to be placed before the Court of Appeal on the hearing of the appeal shall be prepared by the Registrar of the High Court and shall consist of a short transcript of the charges, pleas, judgment and all proceedings after judgment, inclusive of any representations by or on behalf of the convicted person or the Crown, and where there is a private prosecutor, by or on behalf of the prosecution:

Provided that other parts of the original record may be transcribed if especially so ordered by the Registrar or by a Judge of the Court of Appeal.

(2) If an appeal is against conviction the record shall be prepared by the Registrar of the High Court in the manner, so far as may be, set out in rule 30.

(3) One copy of the record referred to in paragraphs (1) and (2) shall be supplied by the Registrar of the High Court free of charge to each party to the appeal:

Provided that the Court of Appeal may in an appropriate case order a private prosecutor to pay for a copy of the record at the rate prescribed in item 18 of the Third Schedule.

Presence of appellant at hearing of appeal.

24. Notwithstanding that he is in custody an appellant shall be entitled to be present in person at the hearing of his appeal if he so wishes unless the Court of Appeal otherwise directs, but on an application for leave to appeal and on any proceedings preliminary or incidental to an appeal he shall not be entitled to be present in person unless the Court of Appeal otherwise directs.

Notification of appeal in capital cases.

25. (1) In the case of an appeal in relation to a conviction involving sentence of death, the Registrar shall, on receiving the notice of appeal, send copies thereof to the Attorney-General for the information of the Committee on the Prerogative of Mercy and the officer in charge of the prison where the appellant is in custody.

(2) On the determination of the appeal by the Court of Appeal the Registrar shall notify the result of such appeal to the appellant if he was not present in person at the hearing, the Attorney-General for the information of the said Committee and the officer in charge of such prison.

Notification of result of appeal.

26. (1) The Registrar shall, in such manner as he thinks most convenient, notify the Registrar of the High Court of the decision of the Court of Appeal on any appeal or application and of any order and direction made or given by the Court of Appeal in relation to such appeal or application.

(2) If the appellant is in custody the Registrar shall similarly notify the officer in charge of the prison in which the appellant is in custody.

(3) The Registrar of the High Court shall on receiving the notification referred to in this rule enter the particulars thereof on the records of the High Court and, if the appellant was convicted by a subordinate court, the Registrar of the High Court shall send a copy of such particulars to such subordinate court.

Assignment of counsel to appellants.

27. The Registrar may assign counsel to an appellant in any appeal in which it appears desirable in the interests of justice that the appellant should have legal aid.

Costs.

28. Subject to section 4A of the Act, no costs shall be allowed to any party on the hearing and determination of a criminal appeal or any proceedings preliminary or incidental thereto.

Forms.

29. The forms for use in criminal appeals set out in the First Schedule shall be used with such modifications as circumstances may require in all cases to which they are applicable.

PART IV
CIVIL APPEALS

The record.

30. (1) The appellant shall prepare the record on appeal in accordance with sub-rules (5) and (6) hereof and shall within 2 months of the date of noting of the appeal lodge a copy thereof with the Registrar of the High Court for certification as correct.

(2) If the Registrar of the High Court declines so to certify the record he shall return it to the appellant for revision and amendment and the appellant shall relodge it for certification within 14 days after receipt thereof.

(3) Thereafter the record may not be relodged for certification without the leave of the Chief Justice or the Judge who presided at the hearing in the court *a quo*.

(4) Subject to rule 16(1), if an appellant fails to note an appeal or to submit or resubmit the record for certification within the time provided by this rule, the appeal shall be deemed to have been abandoned.

(5) The appellant in preparing the record shall, in consultation with the opposite party, endeavour to exclude therefrom documents not relevant to the subject matter of the appeal and to reduce the bulk of the record so far as practicable. Documents which are purely formal shall be omitted and no document shall be set forth more than once. The record shall include a list of documents omitted. Where a document is included notwithstanding an objection to its inclusion by any party, the objection shall be noted in the index of the record.

(6) All copies of the record shall be clearly typed on one side of the paper only on stout foolscap paper, double-spaced, in black ink, and every tenth line of each page of the record shall be numbered, and at the top of each page there shall be typed the name of the witness whose evidence is recorded thereon. Photostats of original documents are permissible only if they be clearly legible. The pages of the record must be consecutively numbered. The record must be properly indexed and securely bound in suitable covers. Bulky records must be divided into separate conveniently sized volumes.

(7) The Registrar of the High Court shall satisfy himself that the provisions of sub-rule (6) hereof have been complied with before furnishing the certificate required by sub-rule (1) hereof.

(8) When the Registrar of the High Court has certified the record the appellant shall forthwith lodge with the Registrar five copies thereof and deliver to the respondent or

respondents such number of copies as may reasonably be required by them. One of the copies of the record lodged with the Registrar shall be certified as correct by the Registrar of the High Court.

(9) Upon receipt of the record the Registrar shall transmit one copy thereof to the Judge President who will thereupon assign a date for the hearing of the appeal not less than six weeks ahead and notify the Registrar thereof. Upon receipt of such notification the Registrar shall immediately inform the parties to the appeal of such date.

(Replaced L.N.102/1976.)

Heads of argument to be filed.

31. (1) In every civil appeal and in every criminal appeal the appellant shall, not later than 28 days before the hearing of the appeal, file with the Registrar six copies of the main heads of argument to be presented on appeal, together with a list of the main authorities to be quoted in support of each head. (Amended L.N.37/1983; L.N.77/1989.)

(2) A copy of such main heads of argument and list shall be served within the same period on the respondent.

(3) The respondent shall, not later than 18 days before the hearing of the appeal similarly file with the Registrar six copies of the main heads of his argument and supporting authorities to be presented on appeal and shall serve a copy thereof upon the appellant. (Amended L.N.37/1983; L.N.77/1989.)

(4) Notwithstanding anything to the contrary herein an appellant or respondent who is not to be represented by an attorney or counsel at the hearing of the appeal shall be excused from compliance with the provisions of this rule. (Replaced by L.N.102/1976.)

(5) The foregoing time limits may be abridged with leave of a single judge of the Court of Appeal authorised by the Judge-President. (Added L.N.77/1989.)

Pauper appellants.

32. (1) If an appellant alleges that he is unable to pay the fees on appeal, the Registrar of the High Court, upon application being made for that purpose, shall enquire into the question of the poverty of the applicant and for that purpose may require the applicant to give evidence on oath, either in person or by affidavit.

(2) The decision of the Registrar of the High Court shall be final as to whether the applicant is a pauper or not, and if the Registrar of the High Court is satisfied as to the applicant's lack of means he shall refer the case to counsel for consideration.

(3) If counsel certifies that he has considered the case and that he believes the applicant has good grounds of appeal the Registrar of the High Court shall forward the record of the appeal, counsel's certificate and a statement of the proportion of the fees which the applicant is able to pay, to the Registrar.

(4) No fees, other than those in such statement shall be payable by the applicant.

(5) The Registrar shall thereupon assign counsel and, if necessary an attorney, to the applicant, who shall not take any fee from the applicant for anything done in the conduct of the appeal.

(6) The applicant shall be responsible at his own cost for the preparation of the record in terms of rule 31, but he shall not be required to deposit or find security for the prosecution of the appeal or for the payment of costs.

(7) If a pauper appellant succeeds in any appeal which results in an order for payment to him of any sum of money from the other side, whether by way of costs or otherwise, the Court of Appeal may order that the appeal fees shall be a first charge on any moneys recovered under such order and from the balance of such moneys recovered counsel for the pauper appellant and his attorney, if any, shall be entitled to such costs as may be allowed on taxation.

Power of Court of Appeal to amend, admit further evidence, or draw inference of fact — Civ. Form 5.

33. (1) No party to an appeal shall have the right to adduce new evidence in support of his original case; but for the furtherance of justice, the Court of Appeal may where it thinks fit allow or require new evidence to be adduced.

(2) A party may, by leave of the Court of Appeal, allege any facts essential to the issue that have come to his knowledge after the decision from which the appeal is brought and adduce evidence in support of such allegations.

(3) Even where the notice of appeal seeks to have part only of the judgment reversed or varied, the Court of Appeal may draw any inference of fact, give any judgment, and make any order which ought to have been made and may make such further or other order as the case may require, and such powers may be exercised in favour of all or any of the respondents or parties whether or not they have appealed from or complained of the decision under appeal.

(4) The Court of Appeal may make such order as to the whole or any part of the costs of the appeal as may be just.

Power to order new trial.

34. If upon hearing of an appeal it appears to the Court of Appeal that a new trial ought to be had, the Court of Appeal may order that the judgment be set aside, and a new trial be had.

Respondent applying to vary order appealed against — Civ. Form 6.

35. (1) It shall not be necessary for a respondent to give formal notice in terms of rule 6 of a cross appeal but every respondent who intends to apply to the Court of Appeal for a variation of the order appealed against shall within the time specified in rule 36, or such time as the Court of Appeal may order, give notice of such intention to any parties who may be affected by such variation.

(2) The respondent shall deliver such notice together with four copies thereof to the Registrar of the High Court and shall serve a copy thereof on the appellant.

(3) On receipt of such notice the Registrar of the High Court shall forward it together with three copies thereof to the Registrar.

(4) The respondent shall state fully in such notice the particulars in respect of which he seeks a variation of the order and the grounds therefor.

(5) The omission to give such notice shall not diminish the power of the Court of Appeal to vary such order but it may, in the discretion of the Court, be a ground for an adjournment of the appeal, or for a special order as to costs.

Time limit under rule 33.

36. Subject to any special order which may be made, notice by a respondent under rule 35 shall be given —

(a) in the case of an appeal from a final judgment, not less than twenty-one days; and

(b) in the case of an appeal from an interlocutory order, not less than fourteen days,

before the date on which the appeal has been set down for hearing.

Security for costs — Civ. Form 7.

37. The appellant shall, within such time as the Registrar of the High Court shall fix, and subject to rule 32, deposit with him two hundred rand or such other greater sum as may be determined by such Registrar, or give security therefor by bond with one or more sureties to his satisfaction for the due prosecution of the appeal and for the payment of any costs which may be ordered to be paid by the appellant:

Provided that this rule shall not apply to the Government.

Non-compliance with rule 37.

38. If the appellant fails to comply with rule 37, the Registrar of the High Court shall so inform the Registrar and the Court of Appeal may thereupon order that the appeal be dismissed with or without costs.

Costs.

39. (1) Where costs are allowed in a civil appeal they shall be taxable according to the rules for the taxation of costs for the time being in force in the High Court but according to the scale contained in the Second Schedule:

Provided that costs allowed in respect of proceedings prior to the institution of the appeal shall be taxable according to the rules for the taxation of costs for the time being in force in the High Court.

(2) The Registrar shall be the taxing officer.

(3) Any person aggrieved by any order, decision or ruling of the taxing officer may apply in chambers to a Judge of the Court of Appeal to set aside such order, decision or ruling and to make such further order as he may think fit.

Stay of proceedings on appeal — Civ. Form 8.

40. (Repealed L.N.132/1999.)

Applications to a single Judge.

41. Every application to a Judge of the Court of Appeal shall be by petition.

Forms.

42. The forms for use in civil appeals set out in the First Schedule, with such modifications as circumstances may require, shall be used in all cases to which such forms are applicable.

Fees.

43. (1) Save as provided in this rule, and subject to rule 32, the fees prescribed in the Third Schedule shall be charged in respect of the civil matters to which they are respectively assigned and shall be paid to the Registrar of the High Court or the Registrar, as the case may be, by means of adhesive stamps duly approved as revenue stamps for use under the Stamp Duties Act, No. 37 of 1970.

(2) Every such stamp shall be affixed to the document in respect of which the court fee is payable and shall be defaced by the public officer responsible for so affixing it.

(3) Every such stamp shall be defaced by writing or impressing in ink on or across the stamp the name or initials of the public officer affixing it to the document together with the true date of defacement in such manner as effectually and permanently to render the stamp incapable of being used for stamping any other document.

(4) In the circumstances and subject to the condition mentioned in section 33 of the Stamp Duties Act, No. 37 of 1970, the Accountant-General with the approval of the Registrar may make a refund of any court fee payable under this section, as if such court fee was a duty payable under such Act.

(5) No fee shall be payable in respect of any matter where such fee would be payable by the Government.

Repeal.

44. The Swaziland Court of Appeal Rules 1955 (published at p. 213 of Vol. I of the Laws of Swaziland) are hereby repealed.

FIRST SCHEDULE
CRIMINAL FORM NO. 1
THE SWAZILAND COURT OF APPEAL RULES
(RULE 6)
NOTICE OF APPEAL AGAINST CONVICTION OR
SENTENCE BY HIGH COURT

- (1) To the Registrar of the Court of Appeal
- (2) To the Attorney-General

I
having been convicted of the crime of
and being now a prisoner in the goal at
(or now living at).....

DO HEREBY GIVE NOTICE OF APPEAL against my conviction and/or sentence (particulars of which hereinafter appear) to the Court of Appeal on the following grounds:

(Signed).....

Appellant

(Or mark)

Witness attesting mark:

Signature:

Address

Dated this day of 20.....

PARTICULARS OF TRIAL AND CONVICTION

- 1. Date of trial
- 2. In what Court tried
- 3. Sentence

The Court of Appeal will, if you desire it, consider your case and argument if put into writing by you or on your behalf, instead of your case and argument being presented orally in Court. If you desire to present your case and argument in writing, set out on a separate sheet of paper attached to this form your case and argument in support of your appeal.

CRIMINAL FORM NO. 2
THE SWAZILAND COURT OF APPEAL RULES
(RULE 6)

JUDGE'S CERTIFICATE
In the High Court of Swaziland

Rex
vs

..... (Appellant)

WHEREAS the appeal of the said appellant from the Subordinate Court at
..... was dismissed by me in the High Court of Swaziland sitting at Mbabane on the.....

day of20

I DO HEREBY CERTIFY that the case is a fit case for an appeal upon the following grounds:

Dated atday of 20.....

.....
Judge

CRIMINAL FORM No. 3
THE SWAZILAND COURT OF APPEAL RULES
(RULE 9)

PETITION FOR LEAVE TO APPEAL

- (1) To the Registrar of the Court of Appeal
- (2) To the Attorney-General

WHEREAS I (Appellant)
was convicted by the Subordinate Court at
of the crime of
on theday of 20.....

AND WHEREAS my appeal was dismissed by the High Court of Swaziland sitting at Mbabane on
the
day of20

I, the said appellant, HEREBY PETITION the Court of Appeal for leave to appeal on the following
questions of law, that is to say:

(Signed).....
Appellant

(Or mark)

Witness attesting mark:

Signature:

Address

Dated thisday of 20.....

CRIMINAL FORM No. 4
THE SWAZILAND COURT OF APPEAL RULES
(RULE 16)

NOTICE OF APPLICATION FOR EXTENSION OF TIME
WITHIN WHICH TO APPEAL

- (1) To the Registrar of the Court of Appeal
- (2) To the Attorney-General

I
having been convicted of the crime of.....
by the High Court of Swaziland at Mbabane on the.....
(or now living at).....

HEREBY GIVE NOTICE that I apply to the Court of Appeal for an extension of time within which I may give notice of appeal (or notice of application for leave to appeal) on the grounds set forth in my attached affidavit.

Dated atday of 20.....

(Signed).....

Appellant

(Or mark)

Witness attesting mark:

Signature:

Address

.....

NOTE — The affidavit should set out reasons for extending the time and also the grounds of appeal.

CRIMINAL FORM No. 5

THE SWAZILAND COURT OF APPEAL RULES

(RULE 18)

APPELLANT’S APPLICATION FOR FURTHER WITNESSES

Rex

vs.

(1) To the Registrar of the Court of Appeal

(2) To the Attorney-General

I.....having appealed to the Court of Appeal, hereby make application that I desire that the said Court shall order the witnesses hereinafter specified to attend the Court of Appeal and be examined on my behalf.

Dated atday of 20.....

(Signed).....

Appellant

(Or mark)

Witness attesting mark:

Signature:

Address

.....

You are required to fill up the following and sign the same:

1. Names and addresses of witnesses

.....

2. Whether such witnesses have been examined at trial

3. If not, state reason why they were not so examined

4. On what matters do you wish them to be examined on the appeal? State shortly the evidence you think they will give.

CRIMINAL FORM No. 6

THE SWAZILAND COURT OF APPEAL RULES

(RULE 13)

NOTICE OF ABANDONMENT OF APPEAL AGAINST
CONVICTION OR SENTENCE

Rex
vs.

- (1) To the Registrar of the Court of Appeal
- (2) To the Attorney-General

I
having been convicted of the crime of.....
.....
by the High Court of Swaziland on the
day of 20 and having been desirous of
appealing and having duly sent Notice to that effect to the Court of Appeal against my conviction (or
sentence of passed upon me on my conviction).

DO HEREBY GIVE NOTICE that I do not intend further to prosecute my appeal, but that I hereby
abandon all further proceedings in regard thereto from the date hereof.

Dated at day of 20.....

(Signed).....

Appellant

(Or mark)

Witness attesting mark:

Signature:

Address

CRIMINAL FORM No. 7

THE SWAZILAND COURT OF APPEAL RULES
(RULE 22)

NOTICE OF APPLICATION BY APPELLANT FOR BAIL
PENDING APPEAL

To the Registrar of the High Court, or
To the Registrar of the Court of Appeal and
To the Attorney-General

I
having been convicted of the crime of.....
.....
and being now a prisoner in the gaol at
.....
and having given Notice of Appeal/been granted leave to appeal do

DO HEREBY GIVE NOTICE that I desire to apply to the High Court/Court of Appeal for bail
with/without sureties on the following grounds:

Dated at day of 20.....

(Signed).....

Appellant

(Or mark)

Witness attesting mark:

Signature:

Address

CRIMINAL FORM No. 8
THE SWAZILAND COURT OF APPEAL RULES
(RULE 22)
RECOGNISANCE OF BAIL OF APPELLANT

Be it remembered that whereas.....
was convicted of the crime of.....
on the.....day of 20.....
and was thereupon sentenced to
and is now in lawful custody in gaol at

and has duly appealed against his conviction (and sentence) to the Court of Appeal/High Court for bail pending the determination of his appeal, and the Court of Appeal/High Court has granted him bail on entering into his own recognisance in the sum of E (with sureties each in the sum of E) the said..... personally comes before me the undersigned being the Registrar of the Court of Appeal /High Court and acknowledges himself to owe to His Majesty the King the said sum of E..... of good and lawful money to be made and levied on his goods, chattels, lands and tenements to the use of His Majesty if he the said..... fail in the conditions endorsed.

Taken and acknowledged this..... day of20 before me.

(Signed).....

Appellant

Registrar, High Court
Registrar, Court of Appeal

CONDITION

The condition of the written recognisance is such that he, the said shall personally appear and surrender himself at and before the Swaziland Court of Appeal at each and every hearing of his appeal to such Court and at the final determination thereof and then and there abide by the judgment of the said Court and not depart or be absent from such Court at any hearing without the leave of the said Court and in the meantime not to depart out of the kingdom, then this recognisance to be void, otherwise of full force and effect.

When released on bail my residence, to which any Notices etc., are to be addressed will be as follows: —

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

(Signed).....

Appellant

CRIMINAL FORM No. 9
THE SWAZILAND COURT OF APPEAL RULES
(RULE 22)
RECOGNISANCE OF BAIL OF APPELLANT'S SURETIES

Be it remembered on this..... day of 20, of

.....and
 of
 came
 before me the undersigned, being Registrar of the Court of Appeal/High Court, and severally
 acknowledged themselves to owe to His Majesty the King the several sums following, that is to say, the
 said
 the sum of E and the said
 the sum of E
 of good and lawful money, to be made and levied of their goods, chattels, lands and tenements to the use
 of His Majesty and successors, if
 now in lawful custody in the gaol at
 fail in the condition hereon endorsed.
 Taken and acknowledged this..... day of
 20 before me.

(Signed).....
 First Surety

 Second Surety

 Registrar, High Court
 Registrar, Court of Appeal

CONDITION

The condition of the within written recognisance is such that whereas the
 said.....
 having been convicted of the crime of.....
 and now in lawful custody as above
 mentioned (under sentence of..... for such crime) has duly appealed to the Court
 of Appeal against his said conviction (and sentence), and having applied to the Court of Appeal/High
 Court for bail, pending the determination of his appeal, has been granted bail on his entering into
 recognisances in the sum of E with sureties, each in the
 sum of E if the said
 shall appear and surrender himself at and before the Court of Appeal at each and every hearing of his said
 appeal to such Court and at the final determination thereof, and to there and then abide by the judgment
 of the said Court and not to depart from the said Court at any such hearing without the leave of the Court,
 and in the meantime not to depart out of the kingdom, then this recognisance to be void, otherwise of full
 force and effect.

(Signed) (1) Surety.....
 Address.....

 (Signed) (2) Surety.....
 Address.....

CIVIL FORM No. 1

THE SWAZILAND COURT OF APPEAL RULES
 (RULE 6)

NOTICE OF APPEAL FROM FINAL DECISION OF HIGH COURT
 IN ITS ORIGINAL JURISDICTION

Between.....Appellant
 and
Respondent

TAKE NOTICE that the Appellant, who was the plaintiff/defendant in the High Court of Swaziland, being dissatisfied with the judgment of the said Court contained in the order dated the _____ day _____ of _____

20 _____, doth hereby appeal to the Court of Appeal on the following grounds:

Dated at _____ day of _____ 20.....

.....
Appellant

To the Registrar of the Court of Appeal

And to (Respondent)

CIVIL FORM NO. 2
THE SWAZILAND COURT OF APPEAL RULES
(RULE 6)
JUDGE'S CERTIFICATE

In the High Court of Swaziland

Between..... Appellant

and

..... Respondent

WHEREAS the appeal of the said.....
from the Subordinate Court at
was dismissed by me in the High Court of Swaziland sitting at Mbabane on the.....
..... day of 20.....

I DO HEREBY CERTIFY that the case is a fit one for appeal on the following grounds:

Dated at Mbabane the..... day of 20.....

.....
Judge

CIVIL FORM NO. 3
THE SWAZILAND COURT OF APPEAL RULES
(RULE 9)
NOTICE OF MOTION FOR LEAVE TO APPEAL

Between..... Appellant

and

..... Respondent

TAKE NOTICE THAT the Court of Appeal will be moved at Mbabane on the
..... day of 20.....
at o'clock in the forenoon or as soon as possible thereafter by the appellant
(who was the plaintiff/defendant or appellant/respondent in the High Court of Swaziland) or his counsel
on the hearing of an application for leave to appeal against the judgment of the said High Court given on
the day of 20.....

And further take notice that the grounds of this application are as follows:—

Dated at day of 20.....

(Signed).....

Appellant or his Counsel

To the Registrar, Court of Appeal

And to (Respondent)
.....
.....

CIVIL FORM No. 4
THE SWAZILAND COURT OF APPEAL RULES
(RULE 16)
NOTICE OF MOTION FOR EXTENSION OF TIME WITHIN
WHICH TO APPEAL

Between.....Appellant
and
.....Respondent

TAKE NOTICE THAT the Court of Appeal will be moved at Mbabane on the day of 20..... at o'clock in the forenoon or as soon as possible thereafter by the appellant (who was the plaintiff/defendant in the High Court of Swaziland) or his counsel on the hearing of an application for an order that notwithstanding that the time limited by the Rules of the Court of Appeal for doing so has expired, the appellant may be at liberty to appeal/apply for leave to appeal from the judgment of the High Court of Swaziland dated the.....day of 20....., on the grounds set forth in the attached affidavit of the appellant.

(Signed).....
Appellant or his Counsel

Dated atday of 20.....

To the Registrar, Court of Appeal

And to (Respondent)
.....
.....

CIVIL FORM No. 5
THE SWAZILAND COURT OF APPEAL RULES
(RULES 18 AND 33)
NOTICE OF INTENTION TO APPLY FOR LEAVE TO PRODUCE
FRESH EVIDENCE AT HEARING OF APPEAL

Between.....Appellant
and
.....Respondent

TAKE NOTICE that the above-named appellant/respondent intends at the hearing of the appeal herein to apply to the Court of Appeal for leave to produce, in addition to the evidence produced at the trial of the action, the following evidence:

(Here state shortly the fresh evidence desired to be produced)

Dated thisday of 20.....

(Signed).....
Appellant/Respondent or his Counsel

To the Registrar, Court of Appeal

And to (Respondent/Appellant)
At

CIVIL FORM No. 6

THE SWAZILAND COURT OF APPEAL RULES
(RULES 35 AND 36)

NOTICE OF INTENTION TO CONTEND THAT THE JUDGMENT
OF THE HIGH COURT SHOULD BE VARIED

Between..... Appellant
and
..... Respondent

TAKE NOTICE that the above-named respondent intends upon the hearing of the appeal to apply to vary the judgment of the High Court of Swaziland dated the day of 20, in the following respect:
(Here specify variation required)

Dated this day of 20.....

(Signed).....
(Respondent or his Counsel)

To the Registrar, Court of Appeal

And to (Appellant)
At

CIVIL FORM No. 7

THE SWAZILAND COURT OF APPEAL RULES
(RULE 37)

BOND FOR COSTS OF APPEAL

Know all men by these presents that we

..... of (Appellant)
and..... of
and..... of (Sureties)
are jointly and severally bound to.....
..... of (Respondent)
in the sum of E of lawful money to be paid to the said
respondent, his executors, administrators or assigns, for which payment well and truly to be made, we
bind ourselves and each of us for himself, in the whole and every one of our heirs, executors and
administrators, firmly by these presents.

Sealed with our seals.

Dated the day of 20.....

Whereas a judgment was given in the High Court at Mbabane on the.....
..... day of 20 for the said respondent and the said appellant
has appealed to the Court of Appeal from the said judgment:

And whereas it is by law provided that the party appealing shall give security to the satisfaction of
the Registrar of the Court of Appeal for the due prosecution of the appeal and for the payment of any
costs which may be ordered to be paid by the appellant.

And whereas the above-named.....
(Appellant) and (Sureties) at the request of the said appellant

have agreed to enter into this obligation for the purposes:
Now the condition of this obligation is such, that if the said (appellant)
shall duly prosecute the appeal and if the above bounden
..... (Sureties) any or either of them shall pay
any costs which may be ordered to be paid by the appellant this obligation shall be void, otherwise
remain in full force and effect.

(Signed) Appellant
..... Surety
..... Surety

Signed, sealed and delivered in the presence of

.....
Registrar of the
Court of Appeal

CIVIL FORM NO. 8
THE SWAZILAND COURT OF APPEAL RULES
(RULE 40)

NOTICE OF MOTION TO STAY PROCEEDINGS PENDING APPEAL

Between..... Appellant
and
..... Respondent

TAKE NOTICE THAT the Court of Appeal will be moved at Mbabane on the
..... day of 20.....
at o'clock in the forenoon or as soon as possible thereafter by the appellant
that (execution and) all further proceedings on the judgment of the High Court dated the.....
..... day of 20 may be stayed pending the hearing
of the appeal therefrom, of which the appellant has given notice dated the.....
..... day of 20 (or such other order may be made
as the Court of Appeal may think fit) and that the costs of this application be
Dated this day of 20.....

(Signed).....
Respondent or his Attorney

To the Registrar of the Court of Appeal

And to (Respondent)

At
.....

CIVIL FORM NO. 9
THE SWAZILAND COURT OF APPEAL RULES
(RULE 13)

NOTICE OF ABANDONMENT OF APPEAL

Between..... Appellant
and
..... Respondent

TAKE NOTICE THAT the appellant doth hereby wholly withdraw his appeal against the respondent
(Signed).....

Appellant

Before me the

Registrar of the Court of Appeal

To the Registrar of the Court of Appeal

SECOND SCHEDULE
(Replaced L.N.95/1994.)

Attorney's Fees.

The following fees shall be allowed to attorneys conducting appeals or other matters before the court:

A. Taking Instructions.

1. (a) to note an appeal or cross-appeal when leave to appeal is not required E40.00
- (b) to prosecute or defend an appeal, including continuation of a cross-appeal..... E95.00 to E300.00
- (c) to make or oppose an application E60.00 to E200.00
2. To draft any petition or affidavitHalf the charge allowed under item E1 for drafting

B. Preparation of Records.

1. Making, for the purpose of preparing copies of the record on appeal (except where a charge is made under sub-paragraph 5 hereof), a copy of such particulars of the record as were not in the possession of the appellant or his attorney at the time when the order appealed from was made, per folio..... E1.30
2. Arranging record for printing or typing, excluding unnecessary documents therefrom, and preparing index and list of documents not included in record on appeal, per hour or part thereof..... E130.00
3. Correcting printer's proof or typed or roneoed copy, per hour or part thereof E130.00
4. Attending at the office of the registrar or officer of the court appealed from to peruse or authenticate the record, per hour or part thereof..... E80.00
5. (a) Making typed copies of record on appeal and heads of arguments, per folio E1.30
- (b) Where copies are made other than by typewriter, the charge shall be for the first copy, E1.30 per page, for the next four copies, 60c per page and for further copies, per page..... E0.50

(NOTE I — In the calculation of the number of folios the total number of words of all necessary documents is to be divided by 100. i.e. the entire record is to be treated as one document.)

(NOTE II — In the calculation of the number of pages, the total number of words of all necessary documents is to be divided by at least 250, i.e. the entire record is to be treated as one document:

Provided that in the case of printed documents or forms, for example publications, bonds, contracts, credit agreements and special procurations, each page thereof is to be treated as only one page.)

C. Perusal.

1. (a) Perusing judgment of court *a quo* when taking instructions for the continuation of an appeal or cross-appeal, where leave to appeal is not required, per page..... E19.00
- (b) Perusing record on appeal, for each page or part thereof..... E0.50
- (c) Perusing judgment of court *a quo* by which leave to appeal was denied, when instructions are taken to address a petition to the Chief Justice, per page..... E12.00

(NOTE — The minimum fee under items (a) and (b) shall be E100.00).

- | | | |
|----|---|-------------------|
| 2. | Perusing any plan, diagram, photograph or other annexure to the record to which the remuneration herein before set out cannot be applied..... | E20.00 to E100.00 |
| 3. | (a) Attendance on and perusal of any petition or affidavit or any other document not elsewhere provided for, per page | E12.00 |
| | (b) Attendance on and perusal of any annexure to a petition and answering affidavit, per page..... | E0.50 |
| | (c) Attendance on and perusal of a petition or affidavit composed or corrected by counsel, per page | E1.30 |

(NOTE I — The minimum fees under item (a) shall be as follows: For formal affidavits, E12.00; for affidavits other than formal affidavits, E25.00).

(NOTE II — In the calculation of the number of pages the total number of words of all necessary annexures, judgments of court or copies of publications attached as confirmation of heads of arguments, for every 10 pages or portion thereof

E25.00

(NOTE —The minimum fee under this item shall be E50.00).

D. Attendance.

- | | | |
|----|---|----------------------|
| 1. | Any formal attendance on an acknowledgement, receipt, etc..... | E5.00 |
| 2. | Attendance on any letter, telegram, document or telephone call, or any other necessary attendance not otherwise provided for | E7.00 to E15.00 |
| | (NOTE — A composite fee shall be charged for all letters received: Provided that a short summary of the contents of such letters be attached to the bill of costs before taxation.) | |
| 3. | (a) Attendance at office of registrar to deliver a letter or document, or to uplift an order etc. | E5.00 |
| | (b) Attendance on business other than formal business per hour or part thereof | E100.00 |
| 4. | (a) Attendance at any consultation with counsel or client, per hour or part thereof | E100.00 to E150.00 |
| | (b) A comprehensive fee for attendance, obtaining and payment of counsel for noting of judgment..... | E40.00 |
| 5. | Attendance at court to enter judgment if counsel employed | |
| | (a) by an attorney..... | E50.00 |
| | (b) by a clerk..... | E20.00 |
| 6. | Attendance at court on hearing or application, per hour or part thereof - if counsel employed | |
| | (a) by attorney | E100.00 to E150.00 |
| | (b) by a clerk..... | E60.00 |
| 7. | If counsel not employed and attorney appearing on hearing or application | |
| | (a) Preparing for trial per hour | E200.00 to E400.00 |
| | (b) Appearance 1st day | E1200.00 to E2500.00 |
| | (c) Refresher 2/3 of fee in 7(b) above | |

E. Drawing up of documents.

- | | | |
|----|--|-------------------|
| 1. | Any petition or affidavit, per folio | E15.00 |
| | (NOTE — In the calculation of the number of folios, the taxing master shall deduct, but treat as annexures, any relevant portion consisting of quotations from other documents.) | |
| 2. | Instructions to counsel, whether written or verbal — | |
| | (a) on appeal..... | E60.00 to E250.00 |

(b) on petition	E60.00 to E250.00
(c) in justifiable cases, for the drawing up or correcting of petition or affidavit for an application for leave to appeal or disputing thereof	E40.00 to E80.00
3. Drawing up notices of appeal or other necessary notices, per folio	E12.00
4. Letters and telegrams, per folio, including copy to keep	E8.00
(NOTE — A composite fee shall be charged for all letters written: Provided that a short summary of such letters to be attached to the bill of costs before taxation.)	
5. Drawing up power of attorney, per folio	E8.00
6. Drawing up short brief to counsel	E8.00
7. Drawing up bond of security, per folio	E16.00

F. Copying.

Other documents not specially provided for:

(a) First copy, per page	E1.40
(b) Each further necessary copy, per page	E0.50

G. Bill of Costs.

In connection with a bill of costs for work done or service rendered by an attorney, such attorney shall be entitled to charge the following:

1. For drawing up the bill of costs, making the necessary copies and attending settlement: 5 per cent of the amount of attorney's fees, either as charged in the bill if not taxed, or as allowed on taxation.
2. For arranging and attending taxation: 5 per cent of the fees allowed.
(NOTE I — The minimum fee under each of these items shall be E50.00)
(NOTE II — The Fees under each item are calculated on the same amount.)
3. For perusal of the other party's bill of costs, as submitted for taxation, including preparation for taxation, per folio E6.50.
4. For attending taxation of the other party's bill of costs: 5 per cent on fees appearing in the bill of costs as submitted before taxation.
(NOTE — The minimum fee under this item shall be E50.00)
5. Before the taxing master taxes the bill of costs, he shall be convinced that the party who has to pay the account, or his legal representative, was properly notified of the time and place of such taxation and of his right to be present: Provided that such notice is unnecessary where the person liable for payment of costs has consented, in writing, to taxation in his absence.

(NOTE I — With a view to affording the party who has been awarded an order for costs full indemnity for all costs reasonably incurred by him in relation to his claim or defence and to ensure that all such costs shall be borne by the party against whom such order has been made, the taxing master shall on every taxation allow such costs, charges and expenses as appear to him to have been necessary or proper for the attainment of justice or for defending the rights of any party, but, save as against the party who incurred them, no costs shall be allowed which appear to the taxing master to have been incurred or increased through overcaution, negligence or mistake, or by payment of a special fee to counsel or by other unusual expenses.)

(NOTE II — The taxing master shall be entitled in his discretion at any time to depart from any of the provisions of this tariff in extraordinary or exceptional circumstances where the strict execution thereof will be unjust, and in this regard shall take into account the time necessarily taken, the complexity of the matter, the nature of the subject matter in dispute, the amount in dispute and any other factors he considers relevant.)

(NOTE III — In order to diminish as much as possible the costs arising from the copying of the record or of documents to accompany the briefs of counsel, the taxing master shall not allow the costs of any unnecessary duplication.)

(NOTE IV — Where in the opinion of the taxing master more than one attorney has been necessarily engaged in the performance of any of the work covered by this tariff, each such attorney shall be entitled to be remunerated, on the basis set out in this tariff, for the work necessarily done by him. In each such instance the bills of costs shall be taxed jointly and at the same time.)

(NOTE V — A folio shall contain 100 words, four figures to be counted as a word, and any fraction of less than 25 words shall not be allowed as an additional folio.)

(NOTE VI — A page shall consist of at least 250 words and any fraction of less than 250 words shall not be allowed as an additional page. This provision bears no relevance to a document which in totality consists of less than 250 words.)

(NOTE VII — When the services of a cost consultant are used to draft the bill of costs, a certificate from the attorney shall accompany the bill of costs and shall indicate:

- (a) that the bill was properly perused and found correct after receipt thereof;
- (b) that each description therein with reference to work, time and numbers is in concurrence with what was necessarily done by him; and
- (c) that the items and tariff are drafted and claimed strictly according to party and party practice rules.

The taxing master may, where it is evident from the bill of costs that the requirements of the above-mentioned (a), (b) and (c), or parts thereof, are not complied with, refuse to tax such bill.

The taxing master may also, when he is convinced that a party and party bill of costs is claimed for work not done, or for work which belongs in an attorney and client bill of costs or that excessive fees are being charged, deny the attorney the remuneration mentioned in item G.1 if more than 20% of the numbers of items or the total of fees of the bill are taxed off.)

Counsel's Fees	Senior	Junior
1. Motion for leave to appeal unopposed	E600.00	E400.00
	to	to
	E900.00	E600.00
2. Motion for leave to appeal opposed	E900.00	E600.00
	to	to
	E1200.00	E900.00
3. Drawing and settling grounds of appeal or cross appeal	E450.00	E300.00
	to	to
	E600.00	E400.00
4. Attending Court of Appeal arguing Appeal	E3000.00	E2000.00
	to	to
	E4500.00	E3000.00
5. Refresher for each day	two thirds of fee on brief	
6. Consultations per half hour	E360.00	E240.00
	to	to
	E600.00	E400.00

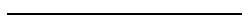
Provided that on application the Court of Appeal may increase these maxima in any appeal of special difficulty.

Travelling and Subsistence Allowances.

7. (1) A travelling allowance for advocates and attorneys shall be allowed at the rate of E1.50 per kilometer, where the advocate or attorney travels to court by car:

Provided that the kilometerage shall not, unless for special cause shown, be greater than the distance there and back, between the courthouse and the nearest place where there is an advocate or attorney available.

(2) A subsistence allowance for advocates and attorneys shall be allowed at the rate of E300.00 for every night it is necessary for the advocate or attorney employed to remain at the place where the Court of appeal is situated.



THIRD SCHEDULE
FEES IN CIVIL MATTERS
(RULE 43)

	E.c.
1. On filing Notice of Appeal against a final judgment or decision	10.00
2. On Respondent's Notice of intention to contend that decision of Court below be varied	10.00
3. On filing Notice of Appeal against an interlocutory order or decision	4.00
4. On filing motion for leave to appeal.....	10.00
5. On filing Notice of Appeal where leave granted	2.00
6. On settling record of appeal	2.00
7. On bond to secure costs of appeal	2.00
8. On filing motion for extension of time.....	10.00
9. On filing any motion not otherwise provided for	4.00
10. On filing motion for stay of execution	4.00
11. On filing amended or additional grounds of appeal:	
If filed at least three weeks before the date fixed for the commencement of the sitting for which the appeal is set down.	2.00
If filed less than three weeks but at least two clear days before such date.....	6.00
If filed later but before the hearing of the appeal.....	12.00
12. On amending or adding to grounds of appeal by leave or direction of the Court at the hearing	20.00
13. Hearing fee payable in advance.....	10.00
14. On filing summons in chambers to set aside the Taxing Officer's decision or order	2.00
15. On every certificate of the order of the Court of Appeal	4.00
16. On filing every document or exhibit20
17. On inspection of any document or judgment.....	.20
18. On office copies of any documents: for every folio or part thereof10
19. All bills of costs, one per cent of the amount allowed.	