

[LEGAL NOTICE NO. 150]

COURT OF APPEAL ACT
(CAP. 12)

COURT OF APPEAL (AMENDMENT) RULES 1999

IN exercise of the powers conferred on me by section 39 of the Court of Appeal Act I make the following Rules—

Citation

1. In these Rules "principal Rules" means the Court of Appeal Rules.

Commencement

2. These Rules come into force on the date on which they are published in the *Gazette*, except that in respect of any appeal commenced but not concluded before that date, they come into force on the day after the appeal is concluded.

Substitution of "High" for "Supreme"

3. The term "Supreme Court" is replaced by the word "High Court" wherever it appears in the principal Rules.

Amendment of Rule 2

4. Rule 2 of the principal Rules is amended in the definition of "Supreme Court" by deleting "of Fiji" and substituting "of the Fiji Islands".

Replacement of Rule 13

5. Rule 13 of the principal Rules is repealed and replaced by the following—

"Fees"

- 13 (1) The fees set out in the First Schedule are the fees payable in respect of applications and hearings in the Court of Appeal.
- (2) Where the hearing of an interlocutory application or the hearing of an appeal is adjourned and the Court is satisfied that the cause of the adjournment is the default of a party or that party's legal practitioner, the Court may order that party or legal practitioner to pay a wasted hearing fee as set out in the First Schedule.
- (3) Failure to comply with wasted hearing fee order within the time specified by the Court debars that party or legal practitioner from taking any further part in the proceedings.
- (4) The Court may for good cause waive all or part of a hearing fee or wasted hearing fee and may increase the time previously specified for the payment of such fee."

New Rule 13A

6. The following new rule is inserted in the principal Rules after Rule 13—

"Composition of Court

13A. The Court of Appeal is duly constituted if it consists of not less than 2 judges in the following classes of cases—

- (a) an appeal against sentence brought under section 21(1)(c) of the Act;
- (b) the determination of an application to the Court under section 35(3) or (4) of the Act;
- (c) an appeal against an interlocutory order, judgement or decision of a judge of the High Court in a civil cause or matter.”.

Replacement of Rule 17

7. Rule 17 of the principal Rules is repealed and replaced by the following—

"Security for payment of costs

17 (1) The appellant must—

- (a) within 7 days after service of the notice of appeal—
 - (i) file a copy endorsed with a certificate of the date the notice was served; and
 - (ii) apply to the Registrar to fix the amount of the security to be given by the appellant for the prosecution of the appeal, and or the payment of all such costs as may be ordered to be paid;
- (b) within such time as the Registrar directs, being not less than 14 days and not more than 28 days, deposit with the Registrar the sum fixed as security for costs.

(2) If paragraph (1) is not complied with, the appeal is deemed to be abandoned, but a fresh notice of appeal may be filed before the expiration of—

- (a) in the case of an appeal from an interlocutory order—21 days; or
- (b) in any other case—42 days,

calculated from the date the appeal is deemed to be abandoned.

(3) Except with the leave of the Court of Appeal, no appeal may be filed after the expiration of time specified in paragraph (2).”.

New Rule 18A

8. The following new rule is inserted in the principal Rules after Rule 18—

- 18A. *“Documents required on appeal*
The following documents must be filed before an appeal will be listed for hearing—
- (a) notice and grounds of appeal;
 - (b) a copy of the judgment or order appealed from;
 - (c) a certified copy of the record of the proceedings appealed from.”.

Replacement of Rule 18

9. Rule 18 of the principal Rules is repealed and replaced by the following—

- 18 (1) *“Preparation and costs of record*
- (a) The primary responsibility for the preparation of the record on appeal rests with the appellant, subject to directions given the Registrar.
 - (b) The Registrar is responsible for the preparation of the transcript of the Judge’s notes.
- (2) The record consists of the following documents—
- (a) the notice and the grounds of appeal;
 - (b) the respondent’s notice (if any);
 - (c) any supplementary notice served under Rule 20;
 - (d) the judgement or order of the Court below;
 - (e) the originating process by which the proceedings in the court below were begun and any interlocutory or other related process which is the subject of the appeal and the pleadings;
 - (f) the official transcript of the Judge’s notes or record, if any, of such of the evidence given in the court below as is relevant to any question at issue on the appeal;
 - (g) any list of exhibits made under Order 35, Rule 8 of the High Court Rules 1988;
 - (h) any affidavits, exhibits, or parts of exhibits, which were in evidence in the Court below and are relevant to any question at issue on the appeal.

- (3) Before preparing the case record the appellant must lodge any copies of documents referred to in sub-rule (2) for certification by the Registrar as a true copy of the documents of which they purport to be a copy
- (4) If there are any errors or deficiencies in the bundle of documents, the Registrar must within 7 days require the appellant to remedy them within 21 days.
- (5) On preparation of the record, the appellant must consult all other parties directly affected by the appeal as to its contents.
- (6) Any documents which a party objects to being included must be so indicated in the record for the purpose of adjustment of costs.
- (7) Within 7 days of the expiry of the 21 day period mentioned in subrule (4) the Registrar must certify the record as being correct.
- (8) The appellant must within 28 days of certification of the record serve a notice on all parties named in the notice of appeal that the case record is ready of collection from the appellant and must lodge 4 copies of the record with the Registrar.
- (9) Following lodgement of the case records the Registrar must forthwith list the appeal for the next or any subsequent call-over date.
- (10) If any provision of this Rule is not complied with, paragraphs (2) and (3) of Rule 17 apply as if the non-compliance were non-compliance with sub-rule (1) of that Rule.
- (11) The fees for preparation, certification and copying of the record are as prescribed in Part I of the First Schedule.”.

Repeal of Rule 25

10. Rule 25 of the principal Rules is repealed.

Amendment of Rule 29

11. Rule 29(1) of the principal Rules is amended by deleting “paragraph (a)” and substituting “paragraph (c).”

Replacement of Rule 43

12. Rule 43 of the principal Rules is repealed and replaced by the following—

“Filing fees

- 43.—(1) The appellant must—
- (a) upon filing the notice of appeal or application for leave to appeal pay the filing fee prescribed in Part II of the First Schedule; and

(b) within 7 days after service of the notice of appeal or application for leave to appeal, file a copy endorsed with a certificate of the date the notice was served.

(2) An appellant in person or who is receiving legal aid is exempted from the fee payable under sub-rule (1)(a)."

New Rule 43A

13. The following new rule is inserted in the principal Rules after Rule 43—

"Documents required on appeal

43 A. The following documents must be filed before an appeal will be listed for hearing—

(a) the notice and grounds of appeal or application for leave to appeal;

(b) a copy of the judgement or decision appealed from;

(c) a certified copy of the record of the proceedings appealed from."

Replacement of Rule 44

14. Rule 44 of the principal Rules is repealed and replaced by the following—

"Preparation of record

44(1)(a) The primary responsibility for the preparation of the record on appeal rests with—

(i) in the case of an appellant in person—the Registrar;

(ii) in any other case—as directed by the Registrar.

(2) The Registrar is responsible for the preparation of the transcript of the judge's notes.

(3) The record consists of the following documents—

(a) the notice and grounds of appeal or application for leave to appeal;

(b) any amendments to the notice and grounds of appeal or application for leave to appeal;

(c) the judgement or decision of the court below;

(d) a certified copy of the Magistrate's Court proceedings on committal, if relevant to the subject matter of the appeal;

(e) in the case of an appeal filed under section 22 of the Act, a certified copy of the Magistrate's Court proceedings at the trial and a certified copy of the record of the appeal in the High Court;

- (f) the information and any other related document connected with the proceedings;
 - (g) any documents, exhibits or parts of exhibits that were in evidence in the court below and are relevant to any question at issue on the appeal;
 - (h) where applicable, the official transcript of the judge's notes or record, if any, of such of the evidence given in the High Court as is relevant to any question at issue on the appeal.
- (4) Before preparing the case record the appellant must lodge any copies of documents referred to in sub-rule (3) for certification by the Registrar as a true copy of the documents of which they purport to be a copy.
 - (5) If there are any errors or deficiencies in the bundle of documents, the Registrar must within 7 days require the appellant to remedy them within 21 days.
 - (6) On preparation of the record, the appellant must consult the Director of Public Prosecutions and any other party to the appeal as to its contents.
 - (7) Any documents which a party objects to being included must be so indicated in the record for the purpose of adjustment of costs.
 - (8) Within 7 days of the expiry of the 21 day period mentioned in sub-rule (5) the Registrar must certify the record as being correct.
 - (9) The appellant must within 28 days of certification of the record serve a notice on all parties named in the notice of appeal or application for leave to appeal that the case record is ready for collection from the appellant and must lodge 4 copies of the record with the Registrar.
 - (10) Following lodgement of the case records the Registrar must forthwith list the appeal for the next or any subsequent call-over date.
 - (11) This Rule, except for sub-rules (4) and (5), applies with necessary modifications to preparation of the record by the Registrar.
 - (12) The fees for preparation, certification and copying of the record are as mentioned in Part II of the First Schedule, except that no fee is payable for any records prepared under sub-rule (1)(a).
 - (13) If Rule 43 or this Rule (except the provisions relating to preparation of the record by the Registrar) is not complied with, the notice of appeal or application for leave to appeal is deemed to be abandoned, but a fresh notice of appeal or application for leave to appeal may be filed before the expiration of 3 months from the date the notice of appeal or application for leave to appeal is deemed to be abandoned.

- (14) Except with the special leave of the Court of Appeal, no appeal or application for leave to appeal may be filed after the time specified in sub-rule (13).

New Part IV

15. The following new Part IV is added to the principal Rules—

“Part IV—APPEAL TO THE SUPREME COURT

Application for leave to appeal

65. (1) An application for leave to appeal to the Supreme Court must be made by way of notice of motion filed with the Registrar within 28 days for the final judgment against which leave to appeal is to be sought.
- (2) All other parties to the appeal in the Court of Appeal must also be served with the notice of motion.
- (3) The notice of motion must—
- (a) state precisely the question to be certified by the Court under the provisions of Section 122(2)(a) of the Constitution;
- (b) state succinctly and clearly the relevant facts;
- (c) be signed by the appellant or the appellant’s legal practitioner.
- (4) A notice of motion must be supported by an affidavit verifying any facts included in the motion.
- (5) Notwithstanding sub-rule(1), the Court may grant leave to appeal upon an oral application made immediately after delivery of its final judgement if it is satisfied that there is a question of significant public important which ought to be submitted to the Supreme Court.

Extension of time

66. The Court may extend the time for filing an application for leave to appeal on such terms as it thinks just.”

Replacement of First Schedule

16. The First Schedule to the principal Rules is repealed and replaced by the following—

“FIRST SCHEDULE
(Rule 13)”

Part 1—FEES IN CIVIL APPEALS

NOTE – The fees prescribed in this Part are payable in all causes and matters unless different fees are prescribed for the same item in any other part of this Act or by any other Act or rule.

The Court or the Registrar may, on good cause being shown, waive the whole or part of the fees prescribed.

	\$
	(Excluding VAT)
1. On filing a notice of appeal from any decision, final or interlocutory (this fee includes the fees for setting down, notice of hearing and hearing	200.00
2. on filing an application for— (a) leave to appeal; (b) enlargement of time; (c) fixing or dispensing with security; (d) leave to amend; (e) directions for service; (f) stay of execution; or (g) any other interim order	50.00
3. On filing a respondent's notice (including a cross-appeal)	50.00
4. For supplying a photocopy of any document, per page	1.00
5. (a) For supplying a typed, carbon or duplicated copy of judgement, order decree, document or proceedings-per page	1.00
(b) For a copy, other than a photocopy, in a foreign Language or for a copy of a plan, map, section, drawing, photograph or diagram	
The reasonable cost thereof as certified by the Chief Registrar	
6. For supplying a transcript of the Judge's notes of proceeding per typed page	5.00
7. For certifying any copy, per page (with a minimum fee of \$1.00 and maximum fee of \$20.00)	0.20
8. On any certificate by the Registrar (other than certification of a copy or of taxed costs)	5.00

9.	On filing a bill of costs and obtaining an appointment to tax—	
	For a bill not exceeding \$100	20.00
	For a bill exceeding \$100 but not exceeding \$200	30.00
	For a bill exceeding \$200	40.00
	(This fee is to be paid on the amount claimed in the bill. No additional fee is payable for taxation)	

10.	Wasted hearing fee—	
	(i) In Court – not exceeding	200.00
	(ii) In Chambers – not exceeding	50.00

11.	Late filing fee	20.00
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Part II—FEES IN CRIMINAL APPEALS

12.	On filing a notice of appeal (this fee includes the fees for setting down, notice of hearing and hearing)	200.00
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13.	On an application for—	
	(a) leave to appeal;	
	(b) enlargement of time; or	
	(c) any other determination under section 35 of the Act	50.00

14.	For supplying the photocopy of any document per page	1.00
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15.	(a) For supplying a typed, carbon or duplicated copy of any judgment, order decree, document or proceedings— per page (with minimum fee of \$0.50)	0.50
	(b) For a copy, other than a photocopy, in a foreign language or for a copy of a plan, map, section, drawing, photograph or diagram	

The reasonable cost
thereof as certified
by the Chief Registrar

16.	For supplying a transcript of the Judge's notes of proceeding per typed page	4.00
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17.	For certifying any copy, per page (with minimum fee of \$1.00 and a maximum fee of \$20.00)	0.20
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18.	Wasted hearing fee—	
	(i) In Court – not exceeding	200.00

(ii) In Chambers – not exceeding	50.00
19. Late filing fee	20.00."

Made at Suva this 30 day of November 1999.

M. TIKARAM
President, Court of Appeal