



Tonga

COURT OF APPEAL RULES 1990

GS 10 of 1990



COURT OF APPEAL RULES 1990

Arrangement of Rules

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COURT OF APPEAL RULES 1990

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COURT OF APPEAL

[28th August 1990]

IN EXERCISE of the powers conferred by section 9 of the Court of Appeal Act, I make these rules this 28th day of August 1990.

G.W. Martin
Chief Justice

ORDER 1 : CITATION

These rules may be cited as the Court of Appeal Rules 1990.

ORDER 2 : APPLICATION

Rule 1.

Subject to rule (2) of this order, these Rules shall apply to all proceedings before the Court of Appeal.

Rule 2.

Where there is no provision in these Rules the rules of procedure for the time being in England relating to appeals to the Court of Appeal shall apply.

ORDER 3 : INTERPRETATION

Rule 1.

The Interpretation Act shall apply to these Rules.

Rule 2.

“**The Act**” means the Court of Appeal Act; (Cap 9)

“**Court**” means the Court of Appeal;

“**Judge**” means a Judge of Appeal appointed pursuant to clause 85 of the Constitution;

“**Lawyer**” means a Law Practitioner enrolled and holding a valid practising certificate under the Law Practitioners Act 1989;

“**Registrar**” means the Registrar of the Court of Appeal;

“**Service Officer**” means any police officer or an officer of the Supreme Court authorised to effect service of documents;

“**Supreme Court**” means the Supreme Court of Tonga.

ORDER 4 : TIME

Rule 1. Extension or abridgment of time.

The Court or a single judge may, on such terms as he thinks just, order that the time within which a person is required to or authorised to do any act be extended or abridged.

Rule 2. Time when Court is closed.

Unless otherwise ordered by the Court, when the time for doing any act expires on a day when the Registrar's office is closed, the act shall be done in time if done on the next day when that office is open.

CIVIL AND LAND JURISDICTION

ORDER 5 : NOTICES

Rule 1. Leave to appeal

- (1) Where leave to appeal is required, application for such leave must be made within 42 days after the date of the judgment or order appealed.
- (2) If leave is granted, notice of appeal must be lodged within 14 days after the date when such leave was granted.

Rule 2. Notice of appeal

- (1) An appeal to the Court must be commenced within 42 days after the date of the judgment or order appealed by lodging with the Registrar notice of appeal, together with the prescribed fee.
- (2) Notice of appeal may be given in respect of the whole or any part of the judgment or order of the court below.
- (3) Notice of appeal must be substantially in Form 1, and must
 - (i) identify the judgment or order appealed against, stating whether appeal is made against the whole or part; if in part specifying which part;
 - (ii) state the form of the order which the appellant seeks; and
 - (iii) state Separately and concisely each ground of appeal, with particulars.
- (4) Except with the leave of the Court (which may be given by a single judge) an appellant shall not be entitled on the hearing of an appeal to rely on any grounds of appeal, or to apply for any relief, not specified in the notice of appeal.

Rule 3. Respondent's notice

- (1) A Respondent who is served with notice of appeal and who wishes
 - (a) to contend that the decision of the lower court should be varied, whether in any event or in the event of the appeal being allowed in whole or in part, or
 - (b) to contend that the decision of the lower court should be affirmed on grounds other than those relied upon by that court, or
 - (c) to contend by way of cross appeal that the decision of the lower court was wrong in whole or in part, —

must respond within 42 days after service on him of notice of appeal, by lodging with the Registrar a respondent's notice.

- (2) A respondent's notice must
 - (a) where paragraph (1)(a) or (1)(c) applies, state the form of the order sought, and
 - (b) state concisely the grounds of his contention.
- (3) Except with the leave of the Court (which may be given by a single judge) a respondent shall not be entitled on the hearing of an appeal to rely on any ground of appeal, or to apply for any relief, not specified in the Notice given under paragraph (1).

Rule 4. Supplementary notices.

- (1) Notice of appeal or a respondent's notice may be amended without leave, by lodging with the Registrar a supplementary notice setting out the amendments desired.
- (2) A supplementary notice may be lodged
 - (a) if the appeal is to be determined on written submissions under Order 8, not later than the date upon which the documents are sent to the members of the Court; and
 - (b) In any other case, not later than 28 days before the Court is due to commence sitting.

ORDER 6 : SERVICE OF DOCUMENTS

Rule 1. Who must be served.

Every document lodged with the Registrar, unless lodged in connection with an ex parte application, must within 14 days after it was lodged be served by the party lodging it on every party who is directly affected by the appeal, and on such other person as the Court or a single judge may direct.

Rule 2. Documents to be served personally.

Subject to the provisions of this order, every document required to be served must be served personally by delivering a sealed copy to the party to be served.

Rule 3. Service by or on Lawyer.

Where a lawyer has notified the Court that he represents any party:

- (a) service of any document by that party must be effected by that lawyer or one of his employees, and
- (b) service of any document on that party must be effected by delivering a sealed copy to his lawyer.

Rule 4. Service by or on party in person,

Where a party acts in person, service of any document —

- (a) by him, or
- (b) on him,

must be effected by a service officer, on payment of such fee as may be prescribed.

Rule 5. Substituted and dispensing with service

- (1) If it appears to the Registrar that it is impracticable for any reason to serve any document in accordance with rules 1 to 4, he may grant leave to substitute some other form of service which it appears to him is likely to bring that document to the notice of the person to be served.
- (2) If it appears to a judge that it is impracticable to serve a party in accordance with rules 1 to 4, or it is otherwise necessary or expedient to dispense with service of any document on any party, he may make an order dispensing with such service.
- (3) Application for an order under paragraphs (1) or (2) must be made ex parte supported by an affidavit showing what steps have already been taken to effect service and stating the grounds of the application. The applicant may be required to attend on the application.

Rule 6. Proof of service.

- (1) The person serving any document must forthwith endorse the original document with details of the time, date, place and mode of service, and the server's means of knowledge of the identity of the person served.
- (2) Such endorsement must be lodged promptly with the Registrar and shall be evidence that the document was duly served as stated thereon.

ORDER 7 : APPLICATIONS

Rule 1. Ex parte applications.

An application for leave to appeal or for leave to appeal out of time may be made ex parte supported by an affidavit, and may be determined by a single judge without a hearing.

Rule 2. Other applications.

- (1) Any other application relating to an appeal must be made on notice substantially in Form 2 supported by an affidavit.
- (2) Any part served with notice of application may lodge affidavit evidence in reply within 14 days after service of the notice on him.
- (3) If the Court is then sitting, the Registrar will notify the parties of the time and date when the application will be heard.
- (4) If the Court is not then sitting —
 - (i) after 14 days from the date of service of the notice of application the Registrar will send to a single judge
 - (a) the notice of application,
 - (b) the affidavit(s) filed in support, and
 - (c) any affidavits filed in reply.
 - (ii) The judge will determine the matter without a hearing and will notify the Registrar in writing of his order.
 - (iii) Upon receipt of the judge's order the Registrar will give notice to the parties in Form 3.

Rule 3. Renewal of applications.

If an application is refused by a single judge without a hearing, it may be renewed with the leave of the Court at its next sitting.

ORDER 8 : DETERMINATION OF APPEALS

Rule 1. General powers of the Court

- (1) Subject to paragraph (3), an appeal shall be by way of rehearing on the documents.
- (2) In relation to an appeal the Court shall have all the powers and duties of the court from which the appeal is brought.

- (3) The Court shall not receive further evidence on questions of fact, (other than as to matters which have occurred since the trial in the lower court) without leave, which shall only be granted on special grounds.
- (4) The Court may draw inferences of fact and give any judgment or make any order which ought to have been given or made, and may make such further order as the case may require.
- (5) The Court may exercise the powers under the foregoing paragraphs in respect of any part of the decision of the Court below even though that matter has not been raised in the notice of appeal or respondent notice as the case may be; and the Court may make any order, on such terms as it thinks just, to ensure the determination on the merits of the real question in issue between the parties.
- (6) On the hearing of an appeal the Court may make any order which could be made on application for a new trial or to set aside a verdict, finding or judgment of the court below.
- (7) The Court shall not be bound to order a new trial on the ground of misdirection, or improper admission or rejection of evidence, unless in the opinion of the Court some substantial wrong or miscarriage was caused thereby.
- (8) Where damages awarded by a judge are found to be excessive or inadequate, or damages awarded by a jury are found to be perverse, the Court may substitute such sum as appears to it to be proper.

Rule 2. Transcripts

- (1) A transcript of proceedings in the lower court will not be prepared unless requested by a party when lodging his notice of appeal or respondent's notice, as the case maybe.
- (2) A party may request that a specified part of .the transcript be prepared.
- (3) The party requesting a transcript shall pay to the Registrar a charge for its preparation of 30 seniti per page.

Rule 3. Determination of appeals on written submissions,

- (1) This rule applies to appeals to be determined on written submissions in accordance with section 15 of the Act.
- (2) An appeal shall be determined in this manner if
 - (i) it is an appeal from any interlocutory order, judgment or decision;
 - (ii)

- (a) the appellant includes in his notice of appeal a notice that he consents to his appeal being determined in this manner, and
 - (b) the respondent within 14 days after service of the notice of appeal on him lodges with the Registrar his consent in Form 4; or
- (iii) at any time before the appeal is set down for an oral hearing, all parties: lodge with the Registrar their consent in Form 4.
- (3) The appellant must, within 28 days after service on him of the respondent's consent, lodge with the Registrar written arguments in support of his appeal.
- (4) Every respondent must, within 28 days after service on him of the appellant's written arguments, lodge with the Registrar written arguments in opposition to the appeal.
- (5) The appellant may, within 14 days after service on him of the respondent's written arguments, lodge with the Registrar further written arguments in reply.
- (6) Any party may, at any time before the time for lodging written arguments in reply under paragraph (5), withdraw his consent to the appeal being dealt with on written submissions and the appeal shall thereupon proceed in accordance with Rule 4.
- (7) On expiry of the time for lodging written arguments in reply under paragraph (5) the Registrar will send to each member of the Court a copy of
 - (a) the notice of appeal and any respondent's notice and supplementary notice;
 - (b) every written submission;
 - (c) the pleadings and orders in the action;
 - (d) if requested, a transcript of the evidence in the lower court;
 - (e) all documentary exhibits relevant to the stated grounds of appeal;
 - (f) a list of all other exhibits relevant to the stated grounds of appeal; and
 - (g) the judgment appealed;and will notify the parties when this has been done,
- (8) The members of the Court are not required to meet together but they may communicate with each other as they deem fit.
- (9) Each member of the Court will consider the documents and give his final determination on the appeal in writing, either in the form of a judgment or

by concurring with one or both of the judgments of the other members of the Court.

- (10) Each member of the Court will sign and date his judgment which shall thereupon become his final judgment.
- (11) The judgment of the majority of the members of the Court shall be the judgment of the Court on that appeal.
- (12) Upon receipt of the judgments of all members of the Court the Registrar shall notify the parties of the time and place where such judgments shall be read.
- (13) The judgments shall be read in open court by a judge or a judge of the Supreme Court, or the Registrar.

Rule 4. Determination of appeals on oral hearing.

- (1) This rule applies to appeals to be determined at an oral hearing.
- (2) The Registrar may set down an appeal for hearing at any time after expiry of the time for lodging a respondent's notice.
- (3) The Registrar shall
 - (a) prepare the Court list and notify the parties of the date of hearing;
 - (b) prepare a bundle of documents for the Court comprising those documents listed in Rule 2(7) and supply a copy to each party.
- (4) Counsel should, not later than 7 days before the date of hearing, lodge with the Registrar 4 copies of
 - (a) skeleton arguments, and
 - (b) where appropriate, a chronology of events.
- (5) The Court may give directions as to the order in which the parties shall be heard; but if no such direction is given
 - (i) the appellant shall present his case;
 - (ii) each respondent in turn shall present his case;
 - (iii) the appellant may reply.
- (6)
 - (i) The judgment shall be the opinion of the whole or a majority of the members of the Court; and
 - (ii) only one judgment shall be given; but any member of the Court who dissents may briefly state his reasons for so doing.

ORDER 9 : EFFECT OF APPEAL

Unless otherwise ordered by the Court or the Supreme Court, an appeal shall not operate as a stay of execution or of proceedings in the court below.

CRIMINAL JURISDICTION

ORDER 10 : COMMENCEMENT OF APPEAL

Rule 1. Leave to appeal

- (1) Where leave to appeal is required, application for such leave must be made within 42 days of after the date of the decision appealed.
- (2) Application for leave to appeal or for leave to appeal out of time must be made ex parte supported by an affidavit.
- (3) The Registrar shall refer any such application to a single judge who may determine the matter without a hearing.
- (4) If an application is refused by a single judge without a hearing, it may be renewed with the leave of the Court at its next sitting.

Rule 2. Notice of appeal

- (1) An appeal to the Court in its criminal jurisdiction must be commenced by lodging with the Registrar notice of appeal, together with the prescribed fee.
- (2)
 - (i) If leave to appeal is granted, notice of appeal must be lodged within 14 days after the date when such leave was granted.
 - (ii) If no leave is required, notice of appeal must be lodged within 42 days after the date of the decision appealed.
- (3) Notice of appeal may be given in respect of conviction or sentence, or both conviction and sentence.
- (4) Notice of appeal must be substantially in Form 5, and must state separately and concisely each ground of appeal, with particulars.

Rule 3. Action by Registrar

On receipt of notice of appeal the Registrar will

- (i) cause a copy to be served on the respondent;

- (ii) prepare a transcript of any part of the proceedings in the lower court relevant to the stated grounds of appeal;
- (iii) obtain a report from the trial judge pursuant to section 21 of the Act; and
- (iv) prepare a bundle of documents for the Court comprising
 - (a) the indictment;
 - (b) the report of the trial judge;
 - (c) the transcript;
 - (d) all documentary exhibits relevant to the stated grounds of appeal;
 - (e) a list of all other exhibits relevant to the stated grounds of appeal; and
 - (f) if the appeal is against sentence, details of previous convictions cited to the lower court.

ORDER 11 : DETERMINATION OF APPEALS

Rule : 1. General powers of the Court

The provisions of Order 8 Rules 1(1) to 1(7) inclusive shall apply.

Rule 2 : Determination of appeals without a hearing

- (1) This rule applies to appeals to be determined without a hearing in accordance with section 24 of the Act.
- (2) An appeal shall be determined in accordance with this rule
 - (a) if the Chief Justice so directs; or
 - (b) if the appellant so requests in writing.
- (3) If the Chief Justice so directs
 - (a) The Registrar shall notify all parties in Form 6, and
 - (b) The appellant must within 28 days after service of such notice lodge written arguments in support of his appeal;
- (4) If the appellant so requests
 - (a) he must do so in his notice of appeal; and
 - (b) he must within 28 days after lodging notice of appeal lodge written arguments in support of his appeal;
- (5)

- (i) The respondent may, within 28 days after service on him of the appellant's arguments, lodge with the Registrar written arguments in opposition to the appeal; and if he does
 - (ii) the appellant may, within 14 days after service on him of the Respondent's arguments, lodge with the Registrar further written arguments in reply.
- (6) On expiry of the time for lodging written arguments in reply under paragraph (5)(ii) the Registrar will send to each member of the Court a copy of
- (a) the documents listed in Order 10 Rule 3(iv), and
 - (b) all written submissions
- and will notify the parties when this has been done. Thereafter the provisions of Order 8 Rule 3(8) to (13) shall apply.

Rule 3. Determination of appeals on oral hearing

The provisions of Order 8 Rule 3 shall apply, save that the documents for the Court shall be those listed in Order 10 Rule 3(iv).

FORMS

FORM 1 - 0.5 r.2(3)

NOTICE OF APPEAL - CIVIL/LAND

IN THE COURT OF APPEAL OF TONGA

Appeal No

On appeal from the Supreme/Land Court of Tonga

BETWEEN

A.B.

Appellant

and

C.D.

Respondent

NOTICE OF APPEAL

TAKE NOTICE that the Court of Appeal will be moved as soon as Counsel can be heard on behalf of the above named Appellant on appeal from the judgment/order of Mr Justice given/made at the trial of

this action on 19 whereby it was adjudged/ordered that

[set out terms of judgment of order]

FOR AN ORDER that

[set out terms of the order sought]

ON THE GROUNDS that

[set out grounds of appeal]

*** AND FURTHER TAKE NOTICE** that the appellant consents to the appeal being determined on written submissions in accordance with section 15 of the Court of Appeal Act.

Dated 19

(Signed)

Lawyer for the Appellant

of [address]

To: [the respondent or his lawyer]

of [address]

* (delete as appropriate)

FILED the [date]

Registrar.

Form 2 - 0.7 r.2(1)

NOTICE OF APPLICATION

[Heading as in Form 1]

To: [name]

of : [address]

TAKE NOTICE THAT

1. The [party] has applied to a single judge for an order that

[set out terms of order sought]

in support of which he has lodged an affidavit a copy of which is attached.

2. If you object to the order sought you must lodge an affidavit in reply within 14 days from the date of service of this application on you.

3. After the said period of 14 days has elapsed the application will be determined by the judge without a hearing.

Dated

19

SEAL

Form 3. - 0.7. r.2(4)

NOTICE OF ORDER OF SINGLE JUDGE

[Heading as in Form 1]

TAKE NOTICE THAT the application of the

[party]

made on [date]

has been referred to a single judge who has ordered that:

[set out terms of judge's order]

Dated

19

Registrar

Form 4. - 0.8 r.3(2)

**CONSENT TO DETERMINATION OF APPEAL ON
WRITTEN SUBMISSIONS**

[Heading as in Form 1]

TAKE NOTICE THAT the _____ Respondent consents to this appeal being determined on written submissions in accordance with section 15 of the Court of Appeal Act.

Dated _____ 19

(Lawyer for) _____ Respondent

FILED the _____ [date]

Registrar

Form 5 - 0.10 r.2(4)

NOTICE OF APPEAL - CRIMINAL

On appeal from the Supreme/Land Court of Tonga

BETWEEN

A.B. Appellant

and

Rex Respondent

NOTICE OF APPEAL

TAKE NOTICE that I wish to appeal to the Court of Appeal against my conviction/sentence/conviction and sentence before the Supreme Court

on

for the offence(s) of

for which I was sentenced to

ON THE GROUNDS that

* **AND FURTHER TAKE NOTICE** that I request that this appeal be determined without a hearing ,m open court in accordance with section 24 of the Court of Appeal Act.

Dated 19

(Signed)

Lawyer for the Appellant

* (delete as appropriate)

FILED the [date]

Registrar.

Form 6 - 0. 11 r.2(3)

NOTICE OF CHIEF JUSTICE'S DIRECTION

[Heading as in Form 5]

To The Appellant and the Respondent

TAKE NOTICE that the Chief Justice has directed that this appeal be determined in the manner provided for in section 24 of the Court of Appeal Act.

Dated

Registrar