



**BERMUDA  
1971 : 38**

**CIVIL APPEALS ACT 1971**

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[8 June 1971]

[preamble and words of enactment omitted]

**Interpretation**

1 In this Act, unless the context otherwise requires—

"appeal" means an appeal from a judgment of a court of summary jurisdiction in any civil cause or matter (including

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matrimonial proceedings), and cognate expressions shall be construed accordingly;

"appellant" means a person desiring to appeal or in the course of appealing to the Supreme Court from a judgment of a court of summary jurisdiction;

"Court" means the Supreme Court;

"judgment" includes a decision or order;

"magistrate" means a magistrate of the court of summary jurisdiction whose decision is appealed against and includes a magistrate sitting as chairman of a Special Court whose decision is appealed against;

"prescribed" means prescribed by this Act or rules made thereunder;

"respondent" means any party other than the appellant directly affected by the appeal.

### **Appeals from court of summary jurisdiction to Supreme Court**

2 Subject to any other provision of law which restricts the right of appeal from a court of summary jurisdiction, and subject to this Act and any rules made thereunder, any person aggrieved by a judgment of a court of summary jurisdiction in any civil cause or matter (including matrimonial proceedings) may appeal to the Court.

### **Appeals; as of right or only with leave**

3 Subject to this Act and of any rules made thereunder, an appeal against a final judgment of a court of summary jurisdiction shall lie as of right, and an appeal against—

(a) an interlocutory order; or

(b) an order for costs,

made by a court of summary jurisdiction shall only lie with the leave of such court, or, if such leave is refused, with the leave of the Court.

### **Notice of intention to appeal**

4 (1) The appellant shall file in the court of summary jurisdiction a notice of intention to appeal and he shall serve a copy thereof on any person who might be affected by the appeal.

(2) In the case of a final judgment of a court of summary jurisdiction or an order for costs made by such court, the notice of intention to appeal shall be filed within thirty days of the delivery of the judgment or the making of the order; and in the case of an interlocutory

order such notice shall be filed within fourteen days of the making of the order.

(3) The filing of a notice of intention to appeal in accordance with this section shall not operate as a stay of proceedings under the judgment unless the magistrate, on application, so orders.

(4) On the filing in the court of summary jurisdiction of a notice of intention to appeal, the appellant shall pay to the magistrates' senior clerk such sum as, in the opinion of that officer, may be necessary to defray the cost of the preparation of the record of the proceedings; and that officer shall deliver a copy of the record to the appellant within fourteen days of such payment, or as soon thereafter as circumstances permit.

(5) The amount payable to defray the cost of the preparation of the record shall, on the application of the appellant, be subject to confirmation or variation by the magistrate.

#### **Security**

5 (1) Upon receipt of the notice of intention to appeal, the magistrate may order the appellant to give security in the manner provided in this section where, on cause shown, the magistrate considers such an order appropriate.

(2) Where a magistrate has made an order for the payment of money or of costs against him, the appellant shall either pay into the court of summary jurisdiction such sums as he may have been ordered to pay or he shall give security for the same, and such security shall be given in such manner as may be approved by the magistrate making the order.

(3) *[omitted] [spent]*

(4) *[omitted] [spent]*

(5) When making an order under subsection (1), the magistrate shall specify the time within which the security shall be given.

#### **Conditions of appeal**

6 (1) Subject to section 7, an appeal shall not lie unless —

(a) the notice of appeal is given within fourteen days after the date of the delivery to the appellant of a copy of the record of the proceedings in the court of summary jurisdiction and such notice is served upon the magistrate and also upon the respondent or respondents within the above-mentioned time;

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- (b) the appellant has complied with any order for security made under section 5; and
- (c) the appellant, in the case of an appeal under the Friendly Societies Act 1868 [*title 13 item 11*], complies with such order as is mentioned in section 9.

(2) A notice of appeal shall state specifically and concisely the grounds of the appeal and upon the hearing of the appeal no ground other than one appearing in the notice shall, without the leave of the Court, be relied on by the appellant.

### **Extension of time**

7 (1) Where it appears to a magistrate on application made in accordance with subsection (2), that the appellant has failed to give notice of appeal within the time specified in section 6(1)(a), he may for good cause direct that any such notice of appeal previously given by the appellant after the expiration of the said period, or any such notice that may be given by him within such further time as may be specified in the direction, shall be treated as if it had been given within the said period.

(2) An application for a direction under subsection (1), if not made in open court, shall be made by summons and supported by affidavit, and such summons shall be served on the respondent or respondents at least two clear days prior to the hearing thereon

(3) The provisions contained in this section relating to the extension of time within which notice of appeal shall be given shall apply equally to an application to extend the period within which security shall be given,

### **Stay of proceedings pending appeal**

8 Upon the appellant fulfilling the conditions as to appeal hereinbefore set forth, all proceedings under the judgment shall, pending the hearing or abandonment of the appeal, be stayed.

### **Appeal under Friendly Societies Act 1868**

9 When in any cause under the Friendly Societies Act 1868 [*title 13 item 11*], the custody of any books, papers or securities is in question, the magistrate may make and enforce such order respecting such custody pending the appeal as the court deems expedient.

### **Magistrate to transmit documents to Registrar**

10 (1) Upon notice of appeal being served upon the magistrate, and upon the appellant complying with the provisions of this Act as to security and payment of costs, and with any order made under section 5, the magistrate shall, within seven days thereafter, transmit under his hand to the Registrar the complaint, the summons, the pleadings, if any,

and the record of proceedings in the case, the notes of evidence taken on the hearing thereon and the documents, if any, produced in evidence, and the judgment appealed against.

(2) The Court shall have power, if the notes of evidence are not produced, to hear and determine the appeal upon any other evidence or statement of what occurred before the court of summary jurisdiction which the Court may deem sufficient.

**Magistrate's report**

11 Where a judge deems it desirable to have a report in respect of any particular matter from the magistrate, the Registrar shall transmit to the magistrate concerned a request for such report (stating the number of copies required) and upon receipt of the magistrate's report, the Registrar shall lay the same before the Court or judge and shall forward a copy of such report to the parties concerned in the appeal.

**Setting down for hearing**

12 It shall be the duty of the appellant, within ten days after service of the notice of appeal upon the magistrate, unless the Court or a judge for good cause extends the period for compliance with this section, to apply to the Registrar for a date to be fixed for the hearing of the appeal, and on receipt of such application the Registrar shall enter the appeal and (after consultation with the Chief Justice) shall fix a day for the hearing of the appeal and he shall forthwith give written notice thereof to the appellant and to the respondent or respondents.

**Dismissal on default; abandonment of appeal**

13 (1) Where the appellant has failed to comply with the duty imposed upon him under section 12, the respondent may apply to the Court or a judge by summons for the appeal to be dismissed, or, if the appellant has been notified in writing by the Registrar that he has failed in such duty, the appellant shall be deemed to have abandoned the appeal five days after the date specified in such notification.

(2) Without prejudice to subsection (1), the appellant may at any time file in the Registry a notice whereby he abandons his appeal and a copy of such notice shall be served by him on the respondent or the respondents.

**Determination of appeals**

14 (1) Subject to any other provision of law, upon the hearing of an appeal the Court may allow the appeal in whole or in part or may remit the case to the court of summary jurisdiction to be retried in whole or in part and may make such other order as the Court may consider just.

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(2) All appeals to the Court shall be by way of re-hearing on the record, and shall be by notice of appeal, and no writ of error or other formal proceedings other than such notice of appeal shall be necessary.

(3) The Court shall have power to draw all inferences of fact which might have been drawn in the court of summary jurisdiction and to give any judgment and make any order which ought to have been made.

(4) No appeal shall succeed on the ground merely of misdirection or improper reception or rejection of evidence unless in the opinion of the Court substantial wrong or miscarriage of justice has been hereby occasioned in the court of summary jurisdiction.

(5) The Court shall, on the hearing of an appeal, have all the powers as to amendment and otherwise possessed by the Court in the exercise of its original jurisdiction, together with full discretionary power to receive further evidence upon questions of fact, either orally or by affidavit or deposition.

### **Enforcement of judgment, decree or order**

15 The judgment, order or decree of the Court upon an appeal may either be enforced by the Court, or by the court of summary jurisdiction, as the Court may direct, in the same manner as any original judgment, decree or order of the Court, or of the court of summary jurisdiction, may be enforced.

### **Costs**

16 The costs of and incidental to all proceedings upon an appeal, including the costs of and incidental to the proceedings in the court of summary jurisdiction, shall be in the discretion of the Court.

### **Application for release of security**

17 (1) If any judgment appealed against is affirmed on appeal, or if the appeal is abandoned, then the respondent may apply to a judge in a summary way for an order for the payment to him in whole or in part of any sums of money for which security has been given under section 5 and the judge may make an order allowing the application in whole or in part or refusing the application.

(2) The respondent shall serve a copy of his application on all the parties to the appeal who might be affected by any order made.

### **Rules**

18 (1) Subject to subsection (2), the Chief Justice may make rules for carrying this Act into effect and, in particular, but without prejudice to the generality of the foregoing, for all or may of the following matters, that is to say:

- (a) for regulating the practice and procedure of the Court, including all matters connected with the forms to be used and the fees payable;
- (b) for the form and content of the notice of appeal;
- (c) for the consequences which may follow upon the failure of any party to comply with any of the rules, as to time or otherwise;
- (d) for the scales of costs (including fees payable to barristers and attorneys and to witnesses) and the taxation of costs.

(2) Section 6 of the Statutory Instruments Act 1977 [*title 1 item 3*] shall not apply to rules made under this section.

**Service**

19 Any document to be served on any person under this Act may be served —

- (a) by delivering it to that person; or
- (b) by leaving it at the usual or last known place of abode of that person; or
- (c) by sending it by prepaid post addressed to that person at his usual or last known place of abode; or
- (d) in the case of a body corporate, by delivering it, or sending it by prepaid post, to the secretary or clerk of that body at its registered office or other place of business; or
- (e) as may be prescribed or in such manner as the magistrate may in any particular case order.

**References to former Act**

20 [*omitted*]

**Transitional**

21 [*omitted*]

**Repeal**

22 [*omitted*]

**Commencement and transitional**

23 [*omitted*]

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*[this Act was brought into operation on 18 September 1971 by GN 60/1971]*

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*[Amended by:*

1977 : 35]