

BERMUDA STATUTORY INSTRUMENT

SR&O 61/1971

CIVIL APPEAL RULES 1971

[made under section 18 of the Civil Appeals Act 1971 [title 8 item 85] and brought into operation on 25 September 1971]

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Interpretation

- 1 In these Rules, unless the context otherwise requires,—
"the Act" means the Civil Appeals Act 1971 [title 8 item 85];

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"record" means the aggregate of papers relating to an appeal (including the complaint, the summons, the pleadings, the record of proceedings in the case, the documents produced in evidence, the notes of evidence and the judgment appealed against) proper to be laid before the Court on the hearing of the appeal.

Application for leave to appeal

2 (1) Where an appeal lies only by leave of the court of summary jurisdiction or of the Court an application for leave to appeal shall be made by notice of motion to the court of summary jurisdiction within fourteen days of the date of the order.

(2) Where the court of summary jurisdiction refuses leave to appeal and the intending appellant desires to apply to the Court for leave to appeal, he shall file a notice of motion with the Registrar not later than seven days after such refusal.

(3) Every notice of motion filed in pursuance of the provisions of this Rule shall set out the grounds of the application and shall be accompanied by an affidavit in support thereof.

(4) An application under this Rule shall be in Form 1 of the First Schedule or as near thereto as circumstances admit.

Notice of intention to appeal

3 (1) Notice of intention to appeal shall be in Form 2 of the First Schedule or as near thereto as circumstances admit.

(2) The appellant shall cause a copy of the notice of intention to appeal to be filed in the Registry.

Address for service of respondent

4 Every person who by virtue of the service on him of a notice of Intention to appeal becomes a respondent to any appeal or intended appeal shall, within seven days after the service on him of the notice of intention to appeal file in the court of summary jurisdiction notice of a full and sufficient address for service and shall cause a copy thereof to be served on the appellant and on the Registrar.

Notice of appeal

5 (1) A notice of appeal shall be in Form 3 of the First Schedule or as near thereto as circumstances admit.

(2) The notice of appeal shall be signed by the appellant and shall—

(a) set forth specifically and concisely the grounds of appeal;

(b) state whether the whole or part only of the decision of the court of summary jurisdiction is complained of (in the latter case specifying such part);

(c) state the exact nature of the relief sought;

(d) state the names and addresses of the respondents;

(e) be endorsed with the address for service of the appellant,

and shall be served by the appellant on the respondent.

(2A) If the grounds of appeal allege misdirection or error in law the particulars and the nature of the misdirection or error shall be clearly stated.

(3) No ground which is vague or general in terms or which discloses no reasonable ground of appeal shall be permitted save the general ground that the judgment is against the weight of the evidence and any ground of appeal or any part thereof which is not permitted under this Rule may be struck out by the Court of its own motion or on application by the respondent.

(4) The appellant shall not without the leave of the Court urge or be heard in support of any ground of appeal not set out in the notice of appeal, but the Court may in its discretion allow the appellant to amend the grounds of appeal on payment of the prescribed fees and on such terms as the Court may deem just.

(5) Notwithstanding paragraphs (1) to (4), the Court in deciding the appeal shall not be confined to the grounds set forth by the appellant:

Provided that the Court shall not, if it allows the appeal, rest its decision on any ground set forth by the appellant unless the respondent has had sufficient opportunity of contesting the case on that ground.

Summons to settle record

6 Upon notice of appeal being served the magistrate may, in any cause where he considers it appropriate to do so, issue a summons in Form 4 of the First Schedule requiring the parties to attend before him

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for the purpose of settling the documents to be included in the record of appeal and other matters connected therewith.

Notice of hearing

7 After transmission of the record of appeal to the Registrar in pursuance of the provisions of section 10 of the Act, the Registrar shall, on the application of the appellant, enter the appeal, fix a day for the hearing of the appeal and give to the parties not less than ten days notice of the date on which the appeal will be heard:

Provided that the parties may accept such shorter period of notice as may be mutually agreed.

Control by Supreme Court

8 After an appeal has been entered by the Registrar and until it has been finally disposed of, the Court shall be seized of the whole of the proceedings as between the parties thereto and every application therein shall be made to the Court and not to the court of summary jurisdiction.

Judgement

9 (1) The judgment of the Court upon an appeal shall be pronounced in open court either on the hearing of the appeal or at any subsequent time of which notice shall be given by the Registrar to the parties to the appeal.

(2) Every judgment of the Court shall be embodied in an order.

Execution of judgement by court of summary jurisdiction

10 When the Court directs any judgment to be enforced by the Court of summary jurisdiction, a certificate in Form 5 of the First Schedule under the seal of the Court setting forth the judgment shall be transmitted by the Registrar to the court of summary jurisdiction and the latter shall enforce such judgment in terms of the certificate.

Fees

11 (1) Subject to paragraph (2), the fees prescribed in the Second Schedule shall be charged in respect of the matters to which they are respectively assigned, and shall be paid to the Registrar or to the magistrates' senior clerk as the case may be.

(2) No fee shall be payable in respect of any matter where such fee would be payable by the Crown or any Government Department:

Provided that when any person is ordered to pay the costs of the Crown or any Government Department in any case, all fees which would have been payable but for this paragraph shall be taken as having been paid and shall be recoverable from such person.

(3) The Court may, on the application of any party to an appeal, dispense with payment of fees or order the remission of fees paid prior to the date of such order if on account of the poverty of that party or other sufficient reason the Court is satisfied that the circumstances of the case so require:

Provided that if any such party succeeds in any appeal which results in an order for payment to him of any costs, all fees which would have been payable but for the provisions of this paragraph shall be as having been paid and shall be recoverable from the person against whom the order for costs has been made, and such fees shall be a first charge on any moneys recovered under such order.

Costs

12 Where the costs of an appeal are allowed they may either be ordered to be taxed (in which event the provisions of Order IV of the Rules of the Court of Appeal for Bermuda [*title 8 item 4(a)*] shall apply mutatis mutandis) or be fixed at the time when judgment is given.

Taxation

13 All bills of costs incurred in proceedings in the Court and in proceedings in the court of summary jurisdiction preparatory or incidental to, or consequential upon, proceedings in the Court shall be taxable according to the scales in the Third Schedule.

Application of Court of Appeal Rules

14 In respect of matters not expressly provided for the Rules of the Court of Appeal for Bermuda [*title 8 item 4(a)*] (except Order II rules 33 and 34), in so far as they are not inconsistent with the provisions of the Act or these Rules, shall apply mutatis mutandis to appeals under these Rules.

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**FIRST SCHEDULE
FORMS**

FORM 1

NOTICE OF MOTION FOR LEAVE TO APPEAL

RULE 2

Between [blank]

Plaintiff

and

[blank]

defendant

TAKE NOTICE that the court of summary jurisdiction/Supreme Court* will be moved on the [blank] day of [blank] 19 [blank] at o'clock in the forenoon or as soon thereafter as counsel can be heard on the hearing of an application for leave to appeal against the interlocutory order/order for costs made by the court of summary jurisdiction on the [blank] day of [blank] 19 [blank]. AND further take notice that the grounds of this application are:

Dated this [blank] day of [blank] 19 [blank]

.....
Applicant or his legal
representative whose
address for service is
*.....

To the Senior Magistrate/Registrar Supreme Court

And
Respondent

* Delete as applicable

FORM 2

NOTICE OF INTENTION TO APPEAL

RULE 3

Between [blank] and [blank]
[blank] Plaintiff
[blank] defendant

TAKE NOTICE that plaintiff/defendant* intends to appeal to the Supreme Court against the judgment of the court of summary jurisdiction dated the [blank] day of [blank] 19 [blank]

Dated this [blank] day of [blank] 19 [blank]

.....
Appellant or his legal
representative whose
address for service is
.....
respondents

To

FORM 3

NOTICE OF APPEAL

RULE 4

Between [blank] and [blank]
[blank] Plaintiff
[blank] defendant

TAKE NOTICE that the plaintiff/defendant* being dissatisfied with the decision/ that part of the decision more particularly stated in paragraph

* Delete as applicable

* Delete as applicable

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2* [blank] of the court of summary jurisdiction dated the [blank] day of [blank] 19 [blank] doth hereby appeal to the Supreme Court upon the grounds set out in paragraph 3 and will at the hearing of the appeal seek the relief set out in paragraph 4.

AND the appellant further states that the names and addresses of the respondents are those set out in paragraph 5.

2 Part of decision of court of summary jurisdiction complained of*

3 Grounds of appeal

(1)

(2)

(3), etc.

4 Relief sought from the Supreme Court

5 Respondents:

Name

Address

(1)

(2)

(3), etc.

Dated this [blank] day of [blank] 19 [blank]

.....
Appellant or his legal
representative whose
address for service is

* If appealing against the whole decision insert "whole decision".

FORM 4

SUMMONS TO PARTIES TO SETTLE RECORD

RULE 8

Between [blank] and [blank]
[blank] Plaintiff
[blank] defendant

TAKE NOTICE that all parties concerned are required to attend before me at the court of summary jurisdiction on [blank] the [blank] day of [blank] at the hour of in the [blank] noon to proceed with settling the record of appeal herein.

Dated this [blank] day of [blank] 19 [blank]

.....
Magistrate

FORM 5

CERTIFICATE OF THE ORDER OF THE SUPREME COURT

RULE 10

Civil Appeal Case No. [blank] of 19 [blank]

Original Civil Case No. [blank] of 19 [blank] in the court of summary jurisdiction

Appellant
v.
Respondent

WHEREAS [blank] has appealed to the Supreme Court against the decision of THE WORSHIPFUL [blank] dated the [blank] day of [blank] 19 [blank]

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AND WHEREAS THE HONOURABLE [blank]
has ordered that [blank]

NOW THEREFORE the decision and order of the Supreme Court are
hereby certified to the Court below.

Dated this [blank] day of [blank] 19 [blank]

.....
Registrar

To the Worshipful Senior Magistrate.

SECOND SCHEDULE

FEES

1	On filing in the court of summary jurisdiction an application for leave to appeal:	10.00
2	On filing an application for leave to appeal in the Court:	15.00
3	On filing notice of appeal where leave granted:	10.00
4	On filing notice of intention to appeal:	10.00
5	On filing notice of appeal against a final judgment or decision:	25.00
6	On filing motion or application for extension of time:—	
	If the time has not yet expired:	10.00
	If the time has already expired:	20.00
7	On filing any motion or application not otherwise provided for:	10.00
8	On filing additional or amended grounds of appeal with the leave of the Court:	15.00
9	On amending or adding to grounds of appeal by leave or direction of the Court at the hearing:	15.00
10	On application for the fixing of hearing date:	10.00
11	Hearing fee payable in advance:	50.00

Laws of Bermuda

- | | | |
|----|---|-------|
| 12 | On filing notice of abandonment of appeal: | 5.00 |
| 13 | On every certificate of the order of the Court made on the final determination of appeal: | 15.00 |

In respect of matters not specifically provided for above the fees set out in the Third Schedule to the Rules of the Court of Appeal for Bermuda [*title 8 item 4(a)*] shall apply *mutatis mutandis* to appeals under these Rules.

THIRD SCHEDULE

SCALES OF FEES PAYABLE TO BARRISTERS AND ATTORNEYS

Instructions

- | | | |
|---|--|-------|
| 1 | Instructions to file notice of intention to appeal: | 25.00 |
| 2 | Instructions to act for a respondent: | 25.00 |
| 3 | In any case where notice of intention to appeal is filed but no appeal is subsequently lodged, the respondent shall be entitled to an inclusive sum of costs of: | 25.00 |
| 4 | Instructions to file any application: | 25.00 |
| 5 | Instructions to appear for the respondent on any application: | 25.00 |
| 6 | Instructions to appeal or to oppose an appeal - such sum as the Registrar may allow as reasonable having regard to all the relevant circumstances of the case. | |

If another legal representative is retained to act as counsel the sum allowed under this item shall be appropriately reduced having regard to the brief fee and other fees to counsel which may be allowed so that the total amount of the bill shall not exceed the amount which would have been allowed if only one legal representative had acted throughout.

- | | | |
|---|---|-------|
| 7 | Drawing, filing and service of notice of intention to appeal: | 15.00 |
| 8 | Notice of motion and relative motion paper: | 15.00 |
| 9 | Affidavit, per foolscap page: | 45.00 |

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10	Notice of address for service:	10.00
11	Drawing, filing and serving of notice of appeal or cross-appeal:	25.00
12	Bill of costs, per page:	10.00
13	Proof of witnesses, per page:	5.00
14	Index of record, per page:	5.00
15	Order, per page:	15.00
16	Any other necessary document to be filed or used in Court, per page:	1.50
17	Preparation for hearing, per 1/2 hour:	30.00
18	Copy of record or other document—	
	(a) printed or carbon per page:	.50
	(b) photographic copy per sheet:	discretionary

Attendances

19	On the magistrate or the Registrar in Chambers, per 1/2 hour:	25.00
20	On a Judge in Chambers, per 1/2 hour:	25.00
21	In Court, on the hearing of any application or appeal, per 1/2 hour:	30.00
22	In Court to hear judgment:	30.00

[Amended by:
BR 8/1986]