

JAMAICA

No. 21 – 2021

I assent,

[L.S.]

Governor-General.

AN ACT to Amend the Judicature (Parish Courts) Act.

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BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:—

1.—(1) This Act may be cited as the Judicature (Parish Courts) (Amendment) Act, 2021, and shall be read and construed as one with the Judicature (Parish Courts) Act (hereinafter referred to as the principal Act) and all amendments thereto.

Short title
and
construction.

Insertion of
new section
292B in
principal
Act.

2. The principal Act is amended by inserting next after the heading "*Criminal Appeals*" the following section—

"Appeal by
prosecutor.

292B.—(1) In this section—

"administration of justice offence" means any offence of—

- (a) perverting the course of justice;
- (b) bribery or intimidation of, or interference with—

- (i) a witness or judicial officer; or

- (ii) a family member of a witness or judicial officer (and "family member" in this subparagraph includes a relative by marriage, a relative through adoption, and a spouse as defined in the Maintenance Act);

- (c) perjury,

and for the avoidance of doubt, includes aiding, abetting, or conspiring, in any offence specified in paragraph (a), (b) or (c);

"Judge" means a Judge of a Parish Court, and includes a Judge constituting the Parish Court Division of the Gun Court established under the Gun Court Act;

"judicial officer" means—

- (a) a Judge of the Supreme Court or Court of Appeal;
- (b) a Master of the Supreme Court;

- (c) the Registrar of the Court of Appeal, Supreme Court or Revenue Court;
- (d) a Deputy Registrar of the Court of Appeal, Supreme Court or Revenue Court;
- (e) a Judge of a Parish Court; or
- (f) a prosecutor;

“prosecutor”, in relation to a case, means—

- (a) the Director of Public Prosecutions, an attorney-at-law employed in the office of the Director of Public Prosecutions or an attorney-at-law to whom the Director of Public Prosecutions has granted a fiat to prosecute the case;
- (b) a Clerk of the Courts;
- (c) the Director of Corruption Prosecutions, appointed under the Integrity Commission Act, or an attorney-at-law pursuant to an instrument of delegation under section 34(6) of that Act;
- (d) the Director-General of the Major Organized Crime and Anti-Corruption Agency, appointed under the Major Organized Crime and Anti-Corruption Agency Act, or a prosecuting officer appointed under section 19 of that Act; or
- (e) a person who has initiated a private prosecution of the case;

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“Supreme Court” includes the High Court Division and the Circuit Court Division of the Gun Court established under the Gun Court Act.

(2) Subject to subsections (3) and (5), in any case tried before a Judge of a Parish Court on indictment or on information by virtue of a special statutory summary jurisdiction, the prosecutor may appeal to the Court of Appeal against—

(a) a decision of the Judge—

- (i) on any point of law; or
- (ii) on the ground that there has been an administration of justice offence,

where the decision results in an acquittal, the quashing or staying of an indictment, the withdrawal of a case, the upholding of a no-case submission, or any other termination of the case without a verdict of conviction; or

(b) sentence imposed by the Judge on conviction, if the appeal is on the grounds that—

- (i) the Judge did not have the power to impose the sentence; or
- (ii) the sentence imposed is manifestly inadequate or unduly lenient (unless the sentence imposed is the maximum sentence permitted under the applicable laws).

(3) Where a prosecutor intends to appeal under subsection (2), or to obtain the leave of the Court of Appeal to do so, the prosecutor shall give

notice thereof, in such manner as may be directed by the rules of court, within fourteen days after the date of the decision or sentence (as the case may be) or such longer period as the Court of Appeal may allow.

(4) Leave of the Court of Appeal—

- (a) is not required for an appeal under subsection (2)(a)(i) or (2)(b)(i);
- (b) is required for an appeal under subsection (2)(a)(ii) or (2)(b)(ii).

(5) An appeal under subsection (2) in any case where the Director of Public Prosecutions is not the prosecutor may only be made with the consent of the Director of Public Prosecutions, and the Director of Public Prosecutions may give consent to the making of the appeal if the Director of Public Prosecutions is satisfied—

- (a) in the case of a decision referred to in subsection (2)(a)(i), that the appeal is warranted;
- (b) in the case of a decision referred to in sub-paragraph (ii) of subsection (2)(a), as to the ground specified in that sub-paragraph; or
- (c) in the case of a decision referred to in paragraph (b) of subsection (2), as to the ground specified in sub-paragraph (i) or (ii) of that paragraph.

(6) The Court may grant an application for leave to appeal under subsection (2)(a)(ii) if the Court is satisfied that—

- (a) but for the commission of the administration of justice offence, it is more likely than not that the accused person would have been convicted of the offence charged in the

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proceedings in which the decision sought to be appealed was made;

- (b) there has not been a lapse of time greater than twelve months after the date of the decision that is the subject of the appeal, or any other factor that would make it contrary to the interests of justice to permit the appeal to be made by the prosecutor; and
- (c) the respondent has been given a reasonable opportunity to make written representation to the Court in connection with the application for leave to appeal,

and the Court may, in any case where such leave is granted, proceed to hear the matter accordingly.

(7) The Court may grant an application for leave to appeal under subsection (2)(b)(ii) if the Court is satisfied that the sentence concerned is materially less than the generally expected and accepted level of sentence for the offence committed, having regard to the sentencing guidelines (if any) applicable to the offence, and the circumstances surrounding the offence.

(8) Upon hearing an appeal under this section, the Court of Appeal may—

- (a) in the case of an appeal against sentence—
 - (i) quash the sentence imposed by the trial Judge and substitute such sentence as the Court considers appropriate; or
 - (ii) affirm the sentence of the trial Judge and dismiss the appeal;

- (b) in the case of any decision referred to in subsection (2)(a)—
- (i) quash the decision and substitute such other decision as the Court considers appropriate; or
 - (ii) affirm the decision and dismiss the appeal,

but where a decision to acquit is quashed, the Court shall not substitute a guilty verdict but shall order a new trial of the case.

(9) Where, under this section—

- (a) an application for leave to appeal is granted, the Court shall hear the appeal within twelve months after the date on which the application was made;
- (b) an appeal is brought in any case where leave to appeal is not required, the Court shall hear the appeal within twelve months after the date on which the appeal is brought; or
- (c) on an appeal, the Court orders a re-trial of the case, the re-trial shall commence within six months after the date on which the order for re-trial is made.”.

3. The principal Act is amended by repealing sections 293 to 305 and substituting therefor the following—

“Right of appeal by accused person.

293.—(1) An accused person in any case tried before a Judge of a Parish Court on indictment, or on information by virtue of a special statutory summary jurisdiction, may appeal to the Court of Appeal in respect of the judgment of the Judge of the Parish Court thereon.

Repeal and replacement of sections 293 to 305 of principal Act.

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(2) Nothing in subsection (1) shall be construed as applying to any case adjudicated by any Judge of a Parish Court, whether associated with other Judges of the Parish Courts or not, which is within the cognizance of a Lay Magistrate's Court, but an appeal may be made in any such case in accordance with the law regulating appeals from Lay Magistrate's Courts.

Grant of bail
to accused
pending
appeal.

294.—(1) When a notice of appeal has been lodged in respect of an *appeal* under section 293, it shall be lawful for the Judge of the Parish Court, or in the absence of the Judge the Clerk of the Courts, to grant bail to the accused in accordance with the Bail Act.

(2) Nothing in subsection (1) prevents a constable at any time without warrant from arresting the accused person if the accused person attempts to leave Jamaica, and—

- (a) an accused person so arrested shall be detained, in any jail, lockup or correctional institution appointed for the purpose by the Minister, until the hearing of the appeal; and
- (b) the attendance of the accused person shall be secured by the Commissioner of Police if the accused person is detained in any jail or lockup, or by the Commissioner of Corrections if the accused person is detained in a correctional institution.

(3) If the accused person fails to attend the hearing of the appeal personally or by counsel, the appeal shall be dismissed unless the Court is satisfied that the accused person's non-appearance is not due to willful default.

Judge may order attendance of accused at hearing of appeal.

295.—(1) When any accused person who has appealed under section 293 is confined in any jail, lockup or correctional institution awaiting the hearing of the appeal, the Court of Appeal may issue an order, under the seal of the Court, for the accused person to be brought before the Court to be present during the hearing of the appeal.

(2) An accused person in respect of whom an order is made under subsection (1) shall be brought before the Court of Appeal under the same care and custody, and be dealt with in like manner in all respects, as a prisoner brought upon a writ of *habeus corpus* may be dealt with.

Powers of Court on appeal by accused person.

296.—(1) On an appeal under section 293, the Court of Appeal may dismiss the appeal or may allow the appeal and quash the conviction, or may allow the appeal and order a new trial.

(2) In any case in which a new trial is ordered under subsection (1)—

- (a) the accused person may be released on bail on such terms as the Court thinks fit, and the case shall not be heard by the same Judge who presided at the first trial;
- (b) no greater punishment shall be imposed, in the event of a conviction at the new trial, than was inflicted at the first trial; and
- (c) in the event of a conviction on the new trial, any term of imprisonment already undergone under the conviction on the first trial shall be reckoned as imprisonment already undergone for the purpose of any term of imprisonment imposed under a conviction on the new trial.

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(3) The Court of Appeal shall, if it thinks that a different sentence should have been passed, quash the sentence passed at the first trial and pass such other less severe sentence warranted in law by the judgment in substitution therefor as it thinks ought to have been passed.

(4) The Court of Appeal may, notwithstanding it is of the opinion that the point raised in the appeal might be decided in favour of the accused person, dismiss the appeal, if the Court considers that no substantial miscarriage of justice has actually occurred.

Notice of
Appeal.

297.—(1) Any person who intends to appeal under section 293 shall, either—

- (a) during the sitting of the Court at which the judgment is delivered, give verbal notice of appeal; or
- (b) within fourteen days after the delivery of the judgment, give written notice of the intention to appeal, to the Clerk of the Courts of the parish.

(2) For the purposes of this section—

- (a) every written notice of appeal by an accused person shall be sufficiently signed if signed by or on behalf of the accused person either with that person's name or mark or the name of the person's attorney-at-law, but if signed with the person's mark the mark shall be attested by a subscribing witness;
- (b) "judgment" includes a decision, or sentence, referred to in section 292B(2).

Failure to
give notice
of appeal.

298. If an appellant fails to give notice of appeal in accordance with section 297, the appellant's right to appeal shall cease.

Filing of
grounds of
appeal.

299.—(1) Notwithstanding anything contained in any law regulating appeals from the judgment of a Judge of a Parish Court in any case tried by that Judge on indictment, or on information by virtue of a special statutory summary jurisdiction, the appellant shall within twenty-one days after the date of the judgment draw up and file with the Clerk of the Courts for transmission to the Court of Appeal the grounds of appeal, and on the appellant's failure to do so the appellant shall be deemed to have abandoned the appeal.

(2) Notwithstanding subsection (1), the Court of Appeal may in any case, for good cause shown, hear and determine the appeal notwithstanding that the grounds of appeal were not filed within the time specified in subsection (1).

(3) The grounds of appeal shall set out concisely the facts and points of law (if any) on which the appellant intends to rely in support of the appeal and shall conclude with a statement of the relief prayed for by the appellant.

(4) The Court of Appeal may dismiss without a hearing any appeal in which the grounds of appeal do not comply with the provisions of subsection (3).

Transmission
of record of
Court of
Appeal.

300. The Clerk of the Courts shall, not later than fourteen days after the receipt of the notice of appeal, forward to the Registrar of the court of appeal the record of the case together with—

- (a) the notes of evidence or a copy thereof certified in accordance with section 301;
- and

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- (b) all documents which have been received as evidence or copies thereof certified in accordance with section 301.

Evidence on appeal.

301.—(1) The notes of evidence taken by the Judge of a Parish Court or Clerk of the Courts, or a copy thereof certified by the Clerk of the Courts as being a true copy, and the documents received in evidence before the Judge or copies thereof certified by the Clerk of Courts as being true copies, shall be read and received by the Court of Appeal as evidence in the case.

(2) Notwithstanding subsection (1), the Court may in any case require the production of the original documents, or any of them, or the original notes of evidence.

Limitation of hearing by grounds of appeal.

302. On the hearing it shall not be competent for the appellant to argue, or to give evidence of, any other grounds of appeal than those filed with the Clerk of the Courts pursuant to section 299 unless the Court of Appeal otherwise orders and on such terms as the Court of Appeal deems fit.

Amendment by Court of Appeal.

303. The Court of Appeal may amend any defect or error in any proceeding in a case tried by a Judge of a Parish Court on indictment, or information by virtue of a special statutory summary jurisdiction, whether there is anything in writing to amend or not, and whether the defect or error is that of the party applying to amend or not, and all such amendments may be made as the Court thinks fit.

Error or defect in form or substance of indictment or information not raised at trial.

304. No appeal shall be allowed for any error or defect in form or substance appearing in any indictment, or information, referred to in section 292B(2) or 293, on which there has been a conviction, unless the point was raised at the trial, or

the Court is of the opinion that the error or defect has caused or may have caused, or may cause, injustice to the person convicted.

Error or
mistake in
form or
substance of
judgement
order or
conviction.

305. No judgment or order made, or conviction imposed, by a Judge of a Parish Court shall be reversed or quashed on appeal for any error or mistake in the form or substance of such judgment, order or conviction, unless the Court is of the opinion that such error or mistake has caused, or may have caused, or may cause injustice to the party against whom such judgment, order, or conviction has been given or made.”.

Passed in the Honourable House of Representatives this 21st day of July, 2021 with twelve (12) amendments.

M. DALRYMPLE PHILIBERT, CD, MP
Speaker.

Passed in the Senate this 8th day of October, 2021.

THOMAS TAVARES-FINSON, OJ, CD, QC, JP
President.

This printed impression has been carefully compared by me with the authenticated impression of the foregoing Act, and has been found by me to be a true and correct printed copy of the said Act.

Clerk to the Houses of Parliament.