

Statutory Instrument No. 172 of 2018

COURT OF APPEAL ACT
(Cap. 04:01)

COURT OF APPEAL RULES, 2018
(Published on 26th October, 2018)

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IN EXERCISE of the powers conferred on the President of the Court of Appeal by section 16 of the Court of Appeal Act, the following Rules are hereby made –

PART I – *Preliminary*

Citation
Interpretation
Cap. 04:01

1. These Rules may be cited as the Court of Appeal Rules.
2. (1) In these Rules, unless the context otherwise requires –
 - “Act” means the Court of Appeal Act;
 - “appeal” includes an application for leave to appeal;
 - “appellant” means a party appealing from a judgment or applying for leave in that behalf and includes the legal practitioner representing him or her;
 - “Court” means the Court of Appeal;
 - “day” means a day of the week, but excludes Saturdays, Sundays and public holidays;
 - “Judge” means a Justice of the Court appointed in terms of section 100 of the Constitution;
 - “month” means a calendar month, or where the commencement date is a day within a month, a period commencing on that date and ending on the day of the following month immediately preceding that date;

“President” means the President of the Court, and in his or her absence the senior resident Judge;

“record” means the aggregate of papers relating to an appeal (including the pleadings, proceedings, evidence, documentary exhibits, rulings and judgments) required or agreed to be laid before the Court on the hearing of the appeal;

“Registrar” means the Registrar of the Court, and includes any Deputy or Assistant Registrar of the Court;

“respondent” —

(a) in a civil appeal means any party (other than the appellant) cited or joined as a party to the appeal and includes the legal practitioner representing him or her; and

(b) in a criminal appeal, means the person who undertakes the defence of the judgment appealed against; and

“week” means any seven successive calendar days, including Saturdays, Sundays and public holidays.

(2) The application of these Rules shall be directed towards the fair and expeditious hearing of all legally competent appeals, and to this end the Court may in terms of rule 11(1) make such procedural orders as it deems proper in the interests of justice.

PART II — General

3. (1) The date, time and venue of the sittings of the Court and the of selection of the Judges of the Court required to attend at such sittings shall be determined by the President alone.

Sittings and
selection of
Judges

(2) Without prejudice to the generality of subrule (1), there shall, for the hearing of substantive appeals, be two full sessions of the Court, commencing in January and July of each year, or as determined by the President, which shall be attended by all the Judges then available, and two short sessions of the Court, commencing in April and October of each year, or as determined by the President which shall be attended by all resident Judges then available, and such non-resident Judges, if any, as the President may nominate.

(3) There shall in addition be four application sessions of the Court held in February, May, August and November of each year, or as determined by the President, which shall be attended by the Judges nominated for that purpose by the President and at which shall be heard subrule (6) applications and also such limited number of substantive appeals, if any, as the President may direct.

(4) The Registrar shall by no later than 30th November in each year cause to be published in the *Gazette* the proposed dates of each session for the following year.

(5) The Registrar shall in addition no later than three weeks before the start of each session other than application sessions cause to be published in the *Gazette* confirmed session dates, and the list of cases proposed to be heard in that session, and shall thereafter (or as soon as practical in the case of application sessions) cause to be delivered to all parties a Notice of Hearing for Roll-call and the roll showing dates of hearing of each appeal or application.

(6) Applications for leave, for condonation, for dismissal, for re-instatement, or for other permissible relief shall normally be listed for hearing at application sessions or as directed by the President.

(7) Urgent appeals may be enrolled for hearing between sessions with the leave of the Court for good cause shown.

(8) Save in exceptional circumstances applications for a stay of the execution of a judgment or decision pending appeal shall be made in the first instance to the court below, and may be made to this Court only following refusal by the court below.

(9) The President may, after consulting the Chief Justice, empanel one or more Judges of the High Court to sit in a session or in any part thereof, or in any urgent or other appeal, if he or she considers it appropriate to do so.

(10) Each session of the Court shall commence with a general roll-call to be attended by parties or their counsel at which hearing dates shall be confirmed by the Court for each appeal or application to be heard during that session.

(11) Any defects or omissions in the publication of any appeal or appeals under subrules (4) and (5) shall not affect the validity of the outcome of any such appeal.

Court attire

4. Counsel appearing before the Court shall be soberly and neatly dressed, in dark suit, dark blazer and trousers or skirt, with white buttoned shirt or blouse, white bib and black gown, with or without waistcoat.

Postponements

5. (1) Postponements with the consent of all parties shall be entertained upon application from the bar at roll-call, with notification to be made to the Registrar as early as possible, before the roll-call date, to enable other appeals to be listed.

(2) Opposed applications for postponement shall be brought on affidavit and may be heard by the President or a single Judge nominated by the President on any day prior to the roll-call, failing which they shall be heard on the allocated date for the appeal, with all parties to be prepared to argue the appeal in person or by counsel on the filed heads of argument should postponement be refused.

(3) The unavailability of counsel, for reasons other than sudden emergency, shall not in the normal course be a ground for the postponement of an appeal save by consent, it being the responsibility of litigants to procure the services of counsel who are available to argue the appeal.

(4) Notwithstanding subrule (3), the Registrar shall make reasonable efforts to accommodate senior counsel as to hearing dates in complex matters provided that notification of dates convenient to all counsel is made to the Registrar at the earliest possible date, and in any event not less than one week before the roll-call.

Judgments

6. (1) The judgment of the Court shall be pronounced by the President or by such other Judge of the Court as the President may direct.

(2) Judgments shall be delivered either at the hearing, or on the final day of the session, or, exceptionally, may be reserved, but reserved judgments shall normally be delivered by no later than the roll-call date of the next session.

(3) In the absence of the compiling Judge, his or her judgment may be delivered by another Judge nominated by the President.

(4) Any Judge empanelled to hear an appeal may record his or her own opinion or comments either concurring or dissenting.

(5) A judgment or dissenting opinion shall be signed by the compiler and each member of the presiding panel who agrees therewith; and where a member of the panel is absent when the judgment or opinion is completed, he or she may signify his or her agreement or dissent after reviewing the draft by transmitting the signature page by electronic mail or by facsimile; or he or she may authorize another member of the panel to sign on his or her behalf.

7. (1) The Registrar's office shall be open for service of documents and other matters between 8.00 am and 12.30 pm, and between 2.00 pm and 3.00 pm on all days other than Saturdays, Sundays and public holidays.

Filing of documents

(2) In urgent or exceptional circumstances the Registrar may in his or her discretion or at the direction of a Judge accept documents for filing outside of the hours and days referred to in subrule (1).

(3) All documents filed at the Registrar's office shall be date stamped and endorsed with the time of receipt and the name and signature of the receiving officer.

(4) Save where the Rules otherwise dictate, the Registrar may refuse to accept any document tendered for filing which in his or her opinion does not comply with the Rules, but shall retain on the file a date stamped copy of such document endorsed by him or her with the fact of and his or her reason for non-acceptance:

Provided that if corrected and compliant documents are submitted within one week thereafter, such submission shall not be deemed by virtue only of the initial rejection to be out of time.

(5) The Court shall not be bound to admit or enforce non-compliant documents by reason only of their acceptance for filing by the Registrar.

(6) Documents filed for court purposes are public documents and may be inspected by any person in the presence of the Registrar, who may permit copies to be made in his or her presence and upon payment of the prescribed fees.

(7) No court record shall be removed from the court premises by any party save with the authority of the Registrar upon proper arrangements being made for its security.

(8) Documents filed as part of the court record shall not thereafter be destroyed or withdrawn from the official court file.

(9) Documents presented for filing shall be signed and dated by the presenting party or the legal practitioner representing him or her, save that a photocopy, a facsimile copy, or a printed electronic copy may be provisionally accepted, subject to replacement by an original within one week thereafter.

8. (1) The fees set out in Schedule 1 shall be payable in respect of the matters to which they relate, either in cash payable to the revenue office before filing or, where practicable, by affixing postage revenue stamps to the filed document.

Court fees and legal costs

(2) Neither the Attorney General, the Director of Public Prosecutions, nor their representatives shall be required to pay the fees set out in Schedule 1.

(3) No fees shall be chargeable in respect of criminal appeals and criminal applications.

(4) The fees and allowances payable to legal practitioners in connection with appeals before the Court shall be as set out in Schedule 2:

Provided that the Taxing Master shall on every taxation allow such costs, charges and expenses as appear to him or her to have been necessary or proper for the attainment of justice or for defending the rights of any party, but, except as against the party who incurred them, no costs shall be allowed which appear to the Taxing Master to have been incurred or increased through duplication, over-caution, negligence or mistake, or by payment of a special fee to a legal practitioner or by other unusual expenses.

(5) Where, in the opinion of the Court, more than one legal practitioner has been necessarily engaged in the performance of any of the work covered by the tariff, then in such a case the Court shall allow full fees as set out in the tariff in respect of one legal practitioner, two-thirds of such fees for the second legal practitioner, and half of such fees for the third and any other legal practitioner:

Provided that each legal practitioner who has been necessarily engaged in the case shall be allowed his or her full travelling and subsistence allowances as set out in the tariff.

Registers

9. (1) The Registrar shall keep, both electronically and in a permanent bound volume —

(a) a Criminal Appeals Register; and

(b) a Civil Appeals Register.

(2) The following particulars shall be entered in the Civil Appeals Register —

(a) the number of the appeal and the names of the parties;

(b) the date and nature of the decision appealed against, including the name of the Judge a quo;

(c) the date of filing of the Notice of Appeal or application for leave to appeal;

(d) the date of filing of the notice to oppose or other response, any;

(e) the date of settlement of record and security for costs;

(f) the amount and deadline for payment of security for costs and costs of a record of appeal;

(g) the date of receipt of security and costs;

(h) the date of receipt of the duly assembled record for the appeal;

(i) the date of hearing of the appeal or application for leave to appeal with a note of any postponement; and

(j) the date of judgment, the name or names of the Judges of Appeal and the result of the appeal or application for leave to appeal.

(3) The following particulars shall be entered in the Criminal Appeals Register —

(a) the number of the appeal and the names of the parties;

(b) the date and nature of the decision appealed against, including the name of the Judge a quo;

(c) the date of filing of the notice of appeal or application for leave to appeal;

(d) the date of receipt of the transcribed record of proceedings;

(e) the date of hearing of the appeal or application for leave to appeal with a note of any postponement;

(f) the date of judgment, the name or names of the Judges of Appeal, and the result of the appeal or the application;

(g) where leave is given, the date of the hearing of the substantive appeal, with a note of any postponement, and the particulars of the Judges of Appeal and the outcome, as in paragraph (f) above; and

(i) in the case of confirmation of the imposition of the death penalty, the date of return of the record to the Judge a quo for his or her report under the Constitution.

(4) The Registrar may delegate the keeping of the registers but shall no later than one week after the close of each session audit and update the registers, and provide the President with aged lists of outstanding civil and criminal appeals, categorised as awaiting settlement of security for costs, awaiting transcription of the record, and awaiting hearing.

10. The forms set out in Schedules 3, 4 and 5 shall, with necessary adjustments according to the circumstances, be used in all cases where such forms are applicable.

Forms

11. (1) The Court may exceptionally, either *mero motu* or on application, extend the time set for doing of anything to which these Rules apply, or may direct or condone a departure from these Rules in the interest of justice.

Extension of time and departure from Rules

(2) Any application for the urgent hearing of an appeal, for leave to appeal, for extension of time, for condonation, for re-instatement, for stay of execution, for directions or for any other purpose permitted by these Rules, shall be made on notice to the other party or parties and shall be supported by an affidavit setting forth good and substantial reasons for the application and, where the application is for leave to appeal, for leave to file an appeal out of time or for an expedited appeal, the affidavit shall be accompanied by the proposed notice and grounds of appeal, which shall *prima facie* show reasonable prospects for success should leave be granted.

(3) Two copies of any application made in terms of subrule (2) shall be filed with the Registrar.

(4) The respondent to any such application may within two weeks of service (or such shorter time as may be indicated in urgent applications) file and serve a notice of opposition accompanied by an affidavit setting out his or her grounds for such opposition.

(5) Any application under this rule may be heard by the President or by a single Judge of the Court designated by the President.

(6) The President or such Judge may grant or refuse such application, or may refer it to the Court for determination, or may make such order or give such directions, including orders for costs, as he or she deems appropriate.

(7) Where leave is given for the urgent hearing of an appeal directions shall be given on expedited preparation of the record or necessary parts thereof, on time for response, on the filing of heads of argument, and on the allocation of a date for the hearing of the appeal.

12. (1) The President may *mero motu*, on request, or on application, issue practice directives from time to time, or give such directions on matters of practice, procedure, or relating to the disposal of any application or appeal or interlocutory matter as the President may consider just and expedient.

Powers of President

(2) The President may *mero motu*, on request, or on application, correct patent errors apparent on the face of any judgment or order of the Court.

(3) Any power or authority vesting in the President in terms of these Rules may be exercised by a Judge or Judges designated by the President for that purpose.

13. (1) Any reference in these Rules to an address for service means an address within Botswana where any notice, pleading, order, summons, warrant, proceeding or written communication, if not required to be served personally, may be left, or to which these may be sent, and shall, where this is available, include an electronic mail address and a facsimile number.

Service

(2) Where, under these Rules, any person has given an address for service, any signed and dated notice, pleading, order, summons, warrant, proceeding or other written communication which is not required to be served personally, shall be sufficiently served upon that person if it is left at that address or sent by registered post to that address (in which case it shall be deemed to have been received three days after dispatch), or if it is sent to that address by electronic mail or by facsimile transmission, in which case unless the contrary is proved, it shall be deemed to have been received on the date of dispatch.

Cap. 04:02
(Sub. Leg.)

Right of
audience

(3) Where, under these Rules, any notice, pleading, order, summons, warrant, proceeding or other application to the Court, or to the court below, is required to have an address for service endorsed on it, it shall not be deemed to have been properly filed unless such an address is endorsed on it.

(4) A person desiring to change his or her address for service shall notify in writing the Registrar and all other parties to the appeal.

(5) Where any person has given the address of a legal practitioner as his or her address for service and the legal practitioner is not, or has ceased to be, instructed by him or her for the purpose of the proceedings concerned, it shall be the duty of the legal practitioner to inform the Registrar and all other parties by written notice as soon as may be that he or she is not authorised to accept service on behalf of the client, and if he or she omits so to do he or she may be ordered to pay any costs occasioned thereby.

(6) Upon his or her withdrawal, a legal practitioner shall provide the Registrar and all parties to the appeal with a new and full address for service in respect of his or her client, and until he or she has done so service on the existing address for service shall be proper service under these Rules.

(7) No legal practitioner shall withdraw his or her representation in any appeal after publication of that appeal for hearing in terms of rule 3(4) unless he or she is replaced by a legal practitioner (or self-actor client) who is prepared to argue the appeal during the notified session.

(8) Where, under these Rules, any notice, pleading, order, summons, warrant, proceeding or other written communication is required to be served personally, it shall be sufficiently served if it is served in the manner prescribed for personal service under the Rules of the High Court.

14. (1) A natural person may appear and be heard in his or her appeal on his or her own behalf or by legal practitioners duly admitted to practise before the court, while companies and other artificial persons having capacity to litigate may appear only through duly admitted legal practitioners.

(2) A legal practitioner engaged to prosecute or defend an appeal shall file a power of attorney authorising his or her appearance together with his or her notice of appeal, notice of opposition, or notice of cross-appeal as the case may be, or thereafter if he or she is engaged after these steps have been taken.

(3) Where the appellant or respondent is not a natural person, the power of attorney shall be accompanied by a resolution authorising the appeal or defence, and the appointment of the legal practitioner.

(4) Notwithstanding subrules (2) and (3) —

(a) the Attorney General and the Director of Public Prosecutions and members of their litigation and prosecutions divisions, shall not be required to file resolutions or powers of attorney in their representation of the Government, the State, or public officers cited in their official capacity; and

(b) counsel appointed to represent appellants in criminal appeals on a *pro deo* basis shall not be required to file powers of attorney.

(5) Subject to rule 13 (7) —

(a) save in exceptional circumstances, no legal practitioner representing an appellant or a respondent in an appeal in any session shall withdraw his or her services after the publication of the roll for that session in the *Gazette*; and

(b) any withdrawal thereafter shall be permissible only with the leave of the Court, which may be granted by a single Judge, for good cause shown.

15. (1) Any party with a substantial interest in any appeal before the Court may, with the written consent of all parties to the appeal, and with the leave of the President, be admitted to the case as an *amicus curiae* on such conditions as the parties or the President may impose.

Amicus curiae
submissions

(2) The President may grant such leave if he or she is satisfied that the applicant has sufficient interest in the case and has useful legal arguments to advance which do not duplicate those of the parties to the appeal.

(3) An application for admission as an *amicus curiae* shall be made in writing to the President no later than three weeks before the hearing of the appeal and shall —

- (a) briefly describe the interest of the applicant in the proceedings;
- (b) identify the position to be adopted by the *amicus curiae* in the proceedings;
- (c) briefly set out the legal submissions to be advanced, their relevance, why they will be useful to the Court, and how they differ from the submissions of other parties; and
- (d) be accompanied by the written consent of all other parties to the appeal to the applicant's admission.

(4) An order granting leave to be so admitted shall specify the date by which written submissions are to be filed and served on the other parties, and any conditions of such admission.

(5) An *amicus curiae* shall be limited to and shall not add to the record on appeal, shall not present oral argument unless ordered or permitted to do so by the Court; and shall not repeat arguments already advanced by parties to the appeal.

(6) An *amicus curiae* shall not be entitled to any costs for arguments presented but any costs incurred by a successful party arising from the intervention of the *amicus curiae* may be recovered from the *amicus curiae* if so ordered by the Court.

(7) Notwithstanding the provisions of this rule, the Court may at any time request the Attorney General or any legal practitioner to appear or provide a brief as an *amicus curiae* on a *pro deo* basis.

PART III – *Civil Appeals*

16. This Part shall apply to appeals from the High Court, the Industrial Court or any other tribunal from which appeals lie to the Court in civil cases, and to matters related thereto.

Application

17. (1) Where an appeal lies to the Court as of right, such appeal shall be instituted in the form of a notice of appeal signed by the appellant or the legal practitioner representing him or her, and the appellant shall deliver, or cause to be delivered, such notice to the Registrar of the court below and shall immediately thereafter serve a court stamped copy of such notice on the Registrar of this Court and on each respondent.

Appeals as of
right

(2) The Registrar shall, subject to the provisions of these Rules, date and register such notice on receipt thereof.

18. (1) A notice of appeal shall set forth the grounds of appeal and shall state the exact nature of the relief sought and the names and addresses of all parties directly affected by the appeal, and shall also have endorsed on it an address within Botswana for service.

Notice of
appeal

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

(3) The notice of appeal shall set forth concisely and under distinct heads the grounds upon which the appellant intends to rely at the hearing of the appeal without any argument or narrative, and these shall be numbered consecutively.

(4) No ground which is vague or general in terms or which discloses no reasonable ground of appeal shall be permitted, and any ground of appeal or any part thereof which is not permitted under this rule may be struck out by the Court on its own motion or on application by the respondent.

(5) Notwithstanding subrule (4), where a judgment or decision is handed down and the reasons therefor are reserved, holding grounds couched in general terms may be filed, and shall not be rejected or struck out provided that these are supplemented by fully compliant grounds of appeal thereafter in terms of rule 25(1).

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

(7) Notwithstanding the foregoing provisions, 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 not set forth by the appellant unless the respondent has had sufficient opportunity of contesting the case on that ground.

Time for filing
of notice

19. (1) A notice of appeal shall be filed within six weeks of the date of the judgment or decision appealed against.

(2) Neither the Registrar of the court below nor the Registrar shall accept or register any notice of appeal which is presented after the expiration of the said period unless leave to appeal out of time has been previously obtained from this Court.

(3) A notice of appeal which is presented out of time without leave shall be endorsed as being out of time, shall be date stamped, and shall be returned to the presenter, with a similarly endorsed and date stamped copy to be retained on the file of the court below.

(4) An application for leave to appeal out of time may be filed on notice at any time within three months of the date of the judgment or decision appealed against but shall not be granted unless in the accompanying affidavit an acceptable reason for the delay is advanced and unless the appeal has reasonable prospects of success.

(5) No application for leave filed thereafter shall be granted unless there are exceptional circumstances accounting for the delay, and very strong prospects of success are shown.

(6) An application for leave to appeal out of time shall be accompanied by the proposed notice and grounds of appeal.

(7) When leave to appeal out of time is granted, a copy of the order granting such leave shall be annexed to the notice of appeal, and the notice and grounds of appeal filed with the application shall stand as being duly filed.

(8) The officer receiving a notice of appeal or an application for leave shall notify the Judge whose decision is intended to be appealed, of such appeal, for his or her information.

20. (1) Where an appeal lies only by leave of the Court or of the court below an application shall be made on notice of motion stating shortly the grounds upon which the application is made, such application shall be supported by an affidavit deposing to all relevant facts, and shall be accompanied by the proposed notice and grounds of appeal.

Appeals by
leave

(2) Where the application is to this Court, the affidavit shall in addition state, where applicable, that leave has been refused by the court below, and shall have annexed the judgment of the court below and the order or ruling refusing leave.

(3) Any respondent wishing to oppose such application shall file and serve a notice of opposition accompanied by an affidavit setting out his or her grounds of opposition within two weeks of receipt of the notice of motion.

(4) If leave to appeal is granted, a copy of the order granting leave shall be annexed to the notice of appeal, and the notice and grounds of appeal filed therewith shall stand as if duly filed and served on the date upon which leave is granted.

21. (1) Every person who by virtue of service on him or her of a notice of appeal becomes a respondent to any appeal shall within three weeks of such service file with the Registrar of the court below, and serve on the Registrar of this Court, on the appellant, and on any further respondents a notice of his or her intention to oppose the appeal, or to abandon the judgment appealed against, or to cross-appeal, or to raise preliminary points, or to abide the decision of the Court, as the case may be, and shall include in such notice a full and sufficient address for service and, where applicable, grounds of cross-appeal, or reasons why the judgment appealed should be varied or affirmed on different grounds, or particulars of preliminary points to be raised.

Notice in
response

(2) If any respondent fails or omits to file such notice or to provide an address for service, it shall not be necessary to serve on him or her any other proceedings in the appeal or any notice of hearing thereof:

Provided that if a respondent is present thereafter at the appeal either in person or by counsel, the Court may, if in its view the interests of justice so require, permit the presentation of oral argument in opposition to the appeal.

(3) Save as otherwise provided, the provisions of these Rules relating to appeals shall mutatis mutandis apply to cross-appeals.

22. (1) Upon the expiry of the time for response granted in terms of rule 21(1) or upon receipt of the response, whichever may be earlier, the Registrar of the court below shall —

Registrar's
summons

(a) in the case of appeals from any court or tribunal sitting in the southern region of Botswana forthwith forward the full original file of proceedings to the Registrar of this Court; and

(b) in the case of appeals from any court or tribunal sitting in the northern region of Botswana forthwith forward the full original file of proceedings to the Registrar of the Francistown High Court assigned to settle Court of Appeal records.

(2) The Registrar of this Court or the assigned Registrar, as the case may be, shall, within two weeks of receipt of the file of proceedings, summon the parties upon reasonable notice to appear before him or her to —

(a) settle the documents to be included in the record of appeal;

- (b) fix the amount to be paid by the appellant to cover the estimated cost of transcribing (where necessary), making up and forwarding the record of appeal, calculated at the prescribed rates, being the full cost of one copy for the appellant and one fifth of the cost of each of the further five copies required to be produced, provided that photocopying charges shall be met in full at the prescribed rates;
 - (c) fix the amount to be provided by the appellant as security for the respondent's costs of the appeal, and determine the manner in which this is to be provided; and
 - (d) set a date by which security is to be so provided and by which the cost of the record is to be paid.
- (3) No security for costs nor transcription costs shall be required from any respondent who cross-appeals.
- (4) The Registrar shall, whether any of the parties attend or not, provided that notice has been duly served upon each of the parties who filed an address for service, proceed to settle and determine these matters in accordance with the Rules.
- (5) The Registrar shall forthwith issue an order stating his or her determination of the cost of the record, the amount of security required, and the manner in which this is to be provided, together with the deadline date for compliance and shall deliver such order to the party or parties attending for settlement.
- (6) If either or both parties fail to attend, and the determination is made in their absence, the Registrar shall forthwith serve a copy of the order upon the parties to the appeal who failed so to attend.
- (7) In settling the record the Registrar and the parties shall endeavour to exclude all documents and parts thereof (if lengthy) which are not relevant or required for the determination of the appeal and shall avoid duplication of documents, so as to minimize the bulk of the record.
- (8) No record need be kept or transcribed of oral exchanges between counsel, or between the Court and counsel or of oral arguments made or presented by either side in the Court below, or in any Court or tribunal of origin, unless a contemporaneous electronic or mechanical record has been kept.
- (9) The Registrar shall ensure that the record and all documents included therein are in the English language, and that any documents in any other language are accompanied by true translations thereof into the English language, such to be provided by and at the cost of the party who introduced such document into the record.
- (10) If the Registrar or any party objects to the inclusion of any document on the grounds that it is unnecessary and any other party insists upon its inclusion, such document shall be included, but shall be endorsed as having been objected to as unnecessary, and such endorsement may be considered in any taxation of costs consequent on the appeal.

Record of
appeal

23. (1) No record of appeal shall be transcribed or made up before the estimated costs thereof (which shall be a final charge) have, where payable, been paid in full and due security for costs has, where ordered, been provided in the manner directed by the Registrar.

(2) Upon receipt of the cost of the record and upon provision of the required security (or forthwith, upon determining that these do not apply), the Registrar shall, where evidence was taken in the court below, return the full file of proceedings together with a list of the documents required to be included in the record of appeal to the Registrar of the court below, for the record to be transcribed and compiled by the Court Reporter who recorded the trial, and shall make a note on the Civil Register of the date upon which, and the responsible Court Reporter to whom the record was returned.

(3) The Registrar of the court below shall notify the concerned Judge of the appeal, and the Judge and such Registrar shall procure that one copy of the record in such a case is transcribed, made up and returned to the Registrar of this Court by no later than six months after the delivery to him or her of the file of proceedings, and shall return therewith the full file of proceedings in the court below.

(4) Where no evidence was taken in the court below the Registrar of this Court shall cause the record as settled to be assembled forthwith upon due receipt of security for costs and costs of the record.

(5) After compilation, or upon receipt of the transcription from the court below, the Registrar of this Court shall forthwith procure that the record is completed by —

- (a) assembling the record as agreed in the case of a received transcription;
- (b) inserting a certificate under his or her hand that due security has been provided, that the costs of the record have been paid, and that the record is, so far as he or she is aware, complete as settled with the parties, and adding a note of any information which may be useful to the court relating to delay or difficulties encountered in preparing for the appeal;
- (c) inserting any relevant documents or pleadings duly filed after settlement of the record, endorsed with the date of such insertion and the name of the party requiring their insertion;
- (d) paginating the record, and dividing this, where necessary, into manageable binders, each containing no more than 250 pages, but all such binders to be marked with volume numbers, and to have continuing pagination referring back to a single index in the first volume, and sub-indices in subsequent volumes;
- (e) including a full index, and any necessary sub-indices; and
- (f) preparing the necessary number of copies required for this Court and all parties.

(6) Upon completion and binding of the record the Registrar shall forthwith cause one copy thereof to be delivered to the appellant and to each of the other parties to the appeal:

Provided that only one copy of the record need be delivered to more than one appellant represented by the same lawyer or to more than one respondent represented by the same lawyer.

(7) The Registrar shall, upon completion of the record, and subject to rule 27, list the appeal for hearing in its turn, or as directed by the President.

(8) Legitimate additions to the record may be made at the request of the parties or any of them or at the direction of a Judge at any time before the hearing of an appeal, and in each case copies of the added page or pages and an amended index shall be delivered to all parties to the appeal and shall be included in all court copies of the record:

Provided that no evidential matter that was not before the court below shall be so added, save with the leave of the Court granted in terms of rule 32.

(9) No additions to or amendment of the record shall be made at the request of the parties later than one week after receipt thereof from the Registrar, save with the leave of a Judge.

Security for costs

24. (1) The appellant shall, within such time as the Registrar shall fix, provide security for costs in the manner directed by him or her, being either by a cash deposit of the required sum, or by the lodging of a bond, with or without sureties, acceptable to him or her properly securing the unconditional payment on demand of the sum so secured upon the dismissal or withdrawal of the appeal:

Provided that no security for costs or costs of preparation of the record shall be required from the Attorney General or from the Director of Public Prosecutions or from the Law Society of Botswana or from a person who has leave to appeal as a pauper in respect of appeals brought by any of these in their official or permitted capacity.

(2) If the appellant fails to provide the required security for costs or to pay the estimated cost of the record by the date set by the Registrar for such provision or payment the Registrar shall, on notice to the parties, list the appeal for dismissal at the next session of the Court.

(3) The Registrar shall not, unless leave has been granted by the Court, accept or receive any security for costs or record costs tendered after the deadline date set by him or her but shall endorse on the order setting that date that lodgement or payment was tendered and declined out of time, recording the date of such tender.

(4) On the calling of an appeal for dismissal in terms of subrule (2) the Court may, if it is satisfied that the appellant was aware of the security or sum required and of the deadline date, and no application for condonation of late tendering, or for extension of time for lodgement or payment has been filed, dismiss the appeal; or, if not so satisfied may strike it from the roll; or it may make such other order as justice demands, including an order for costs.

(5) An order dismissing the appeal shall, subject to subrule (6) be final, while an appeal which has been struck from the roll may be re-installed upon good cause being shown in an application brought on notice to all other parties to the appeal.

(6) No application for reinstatement filed more than six weeks after the striking out of an appeal, or filed at any time following dismissal, shall be entertained save in exceptional circumstances and where no fault is attributable either to the appellant or to his or her legal representative.

(7) Where an application for condonation of late filing of security for costs or for reinstatement of an appeal is refused, the Judge may, if he or she considers this to be in the interests of justice, dismiss the appeal, with or without costs.

Amendment, settlement, abandonment

25. (1) An appellant may amend his or her grounds of an appeal and a respondent may amend his or her notice in response, at any time within two weeks of the filing of the notice in response or of the expiration of the time allowed for such response or of the furnishing of written reasons for its judgment or decision by the Court below, whichever shall be later, by filing with the Registrar of the court below and with the Registrar of this Court, and serving on all other parties a notice of such amendment.

(2) No amendment of the grounds of appeal or of the notice in response shall be allowed thereafter save with leave of the Court or of a single Judge designated by the President on good cause shown.

(3) An appellant may at any time abandon or withdraw his or her appeal upon notice to the Registrar and to the other parties, in which event the appellant shall be liable for all costs up to the date of service of such notice on the respondent or respondents, and the appeal shall be deemed to be dismissed, such dismissal to be entered by a Judge in Chambers, or by the Court if the withdrawal is made at roll-call or at the hearing.

(4) The abandonment or withdrawal of an appeal shall not bar the pursuit by the respondent of a duly filed cross-appeal.

(5) The parties may at any time settle an appeal by filing a joint memorandum of settlement signed by them which may include abandonment or withdrawal of the appeal, or cross-appeal, abandonment of the judgment of the court below or any part thereof, agreement as to costs and disposal of the filed security, and any other lawful matter, in which event the parties may have the memorandum made an order of court by the President or a Judge designated by him or her and the appeal and any cross-appeal or other response shall be deemed to be concluded.

26. At any time before the hearing of an appeal or an application any party to the appeal or application may file with the Registrar and serve upon the other parties a notice that he or she does not wish to be present in person or by a legal practitioner at the hearing of the appeal or application, which notice shall be accompanied by the arguments (if any) that he or she desires to submit to the Court, the appeal or application shall thereupon be dealt with as if the party had appeared.

Notice of
non-appearance

27. (1) In every civil appeal the appellant shall, as soon as possible after delivery to him or her of the record of appeal, but in any event no later than six weeks after such delivery (unless an earlier date is directed by the Registrar), serve on the respondent his or her full heads of argument and file with the Registrar six copies thereof, which shall also have attached a list of the authorities to be relied upon with the relevant passages therein identified.

Heads of
argument

(2) The heads shall deal concisely with each ground of appeal or preliminary point raised, shall be accompanied by a list of authorities to be relied upon, with the relevant passages therein identified, and shall not, without the leave of the Court, deal with issues or grounds of appeal not notified in the notice and grounds of appeal already filed.

(3) The respondent shall as soon as possible, but in any event by no later than four weeks after receipt of the appellant's heads (or by such earlier date as may be directed by the Registrar), serve upon the appellant his or her full heads of argument in reply, and shall at the same time file with the Registrar six copies of these heads, which shall also have attached a list of the authorities to be relied upon with the relevant passages therein identified.

(4) Service or delivery of heads other than in accordance with the foregoing subrules shall require the leave of the President, sought in writing through the Registrar.

(5) All heads of argument shall bear the name of the author thereof, and of the law firm acting, and shall be signed by or on behalf of the author.

(6) Save in the case of appeals authorised for hearing on a basis of urgency, the date of filing of the appellant's heads of argument shall normally determine the priority of each appeal for the purpose of listing and enrolment for hearing, notwithstanding the date of initial filing of the notice of appeal.

(7) Subject to any directions of the President to the contrary which he or she deems necessary to ensure the smooth flow and expeditious hearing of appeals no appeal shall be listed for hearing until the heads of both, or all parties, as the case may be, have been filed with the Registrar:

Provided that if the respondent fails to file and serve his or her heads within the time allowed, the appeal shall be enrolled and shall proceed on an unopposed basis, subject to the right of the Court to permit oral argument in reply to be presented at the hearing by the respondent or by his or her counsel.

(8) The Court may, in its discretion, require or allow the filing of supplementary heads of argument by any party in the interests of justice.

(9) Should the appellant fail to file heads within the time allowed, the Registrar shall list the appeal for dismissal for want of prosecution and the provisions of rule 24 shall apply as if reference was there made to heads of argument, rather than to security for costs.

Court annexed
mediation

28. (1) At any time after delivery of the appeal record and before the hearing of a civil appeal there may be filed a request signed by all the parties to the appeal or their legal representatives that the appeal be referred to a Court annexed mediation with a view to the consensual resolution of the appeal:

Provided that no appeal involving constitutional arguments or statutory interpretation shall be settled by mediation, unless arguments relating to such matters are no longer pursued by the parties.

(2) If the President is of the view that the appeal is susceptible to mediation he or she shall, upon receipt of such application, nominate a Judge of the Court to conduct the mediation.

(3) At the hearing of any appeal the Court may, without prejudice to its usual powers, indicate to the parties its view that a Court annexed mediation may be fruitful and, if the parties all agree, it may postpone the appeal and direct such mediation, whereupon the President shall nominate a Judge of the Court to conduct the mediation.

(4) No party to any appeal shall be compelled to submit to or to participate in a Court annexed mediation unless he or she has agreed thereto in writing or has signified his or her consent thereto in person or through his or her legal representative in open court.

(5) No Judge who has been empanelled to hear an appeal shall be eligible to mediate in such appeal, and no Judge appointed to mediate an appeal shall be eligible to be empanelled to hear the appeal should the mediation fail.

(6) Upon his or her nomination as a mediator the Judge shall be supplied with a copy of the appeal record and shall, after consultation with the parties or with counsel —

- (a) set a time limit of no more than three weeks for the filing of mediation briefs by each party;
- (b) set a time and venue for a mediation conference to be held by the Judge with counsel and their clients, or persons duly authorised to settle the outcome of the appeal in their principal's interests, which conference shall be held between sessions of the Court; and
- (c) issue an order in terms of paragraphs (a) and (b) to be served upon the parties.

(7) Each party shall deliver to the Judge's clerk, within the time allowed, a mediation brief in a sealed envelope marked "confidential" which –

- (a) shall be no more than four pages in length;
- (b) shall set out that party's view of the real issues of substance between the parties and his or her view of an acceptable outcome;
- (c) may contain details of personal issues and facts not contained in the record, but which may be relevant to the relations between the parties, or the resolution of the dispute;
- (d) shall not contain legal arguments; and
- (e) may propose solutions to the dispute which would not be available to the Court on appeal.

(8) The mediation briefs shall not be entered in the appeal record, shall be kept confidential to the mediator Judge, shall not be served on the other party, and their contents shall not be revealed to the other party save with the consent of the author party, or to the extent so authorised.

(9) The mediation conference shall be conducted by the Judge in an informal atmosphere, with no requirement for counsel to robe, in his or her Chambers or at such other location as he or she may determine, with a view to facilitating a settlement of the issues between the parties ahead of the appeal.

(10) In conducting the mediation it shall be open to the Judge to consult with the parties and their counsel separately on a confidential basis, or jointly, to convey competing proposals, to suggest alternative routes to resolving the conflict, and generally to promote a settlement in a fair and impartial manner.

(11) Where possible, the mediation conference shall be concluded in a single sitting, but exceptionally it may be adjourned by the Judge of his or her own motion or at the request of any of the parties.

(12) No court fees or mediation charges shall be payable, but the attendances of counsel may be billed and claimed *inter se* in the normal way.

(13) No record of the proceedings at a mediation conference shall be kept, and nothing said or revealed at such a conference may be used in evidence or disclosed by the Judge or any of the parties to any third party, and in particular to the panel of Judges hearing the appeal, should the mediation be unsuccessful.

(14) The mediator Judge may assist, where appropriate, with the drafting of a settlement memorandum, and if the mediation is successful, the settlement memorandum which may relate to all or part of the appeal shall be typed up and signed by the parties and their representatives and engrossed by the mediator Judge as an order of Court.

(15) Following a mediation, the mediator Judge shall cause the mediation file to be destroyed, and shall forthwith submit to the Registrar or to the appeal panel if such has been convened, either the order of court recording the settlement or part settlement, or a certificate under his or her hand that the mediation has not been successful.

(16) If the mediation has settled only part of the appeal or if it fails, the appeal shall be listed by the Registrar for hearing at the next convenient session of the Court.

(17) Nothing contained in this rule shall excuse the parties from submitting heads of argument for the pending appeal in terms of the Rules.

29. (1) Subject to rule 26, if the appellant fails to appear when his or her appeal or application is called for hearing at the roll call or on its allotted date, the appeal or application may be struck out or dismissed, with or without costs.

Non-appearance
of appellant

(2) When an appeal or application has been dismissed or struck out for non-appearance, the appellant may upon good cause being shown apply on notice of motion for re-instatement thereof, and the provisions of rule 24(5), (6) and (7) shall apply *mutatis mutandis* to such application.

(3) Where an appeal or application has been dismissed or struck out, allowed, or otherwise dealt with, the Registrar shall cause the order of the Court to be served upon any party who was not present at the hearing.

Non-appearance
of respondent

30. (1) Subject to rule 26, if the respondent fails to appear when an appeal or an application is called for hearing at the roll-call or on its allotted date, the Court may proceed to hear the appeal or application *ex parte*, and the provisions of rule 29(3) shall apply.

(2) Where an appeal or application has been heard *ex parte* and any judgment has been given therein adverse to the respondent, he or she may within six weeks thereafter and upon good cause being shown make application on notice for the Court to set aside the judgment and rehear the appeal or application.

(3) No application for extension of the time allowed under subrule (2) shall be granted save in exceptional circumstances and where no fault is attributable either to the respondent or to his or her legal representative.

(4) On hearing an application under this rule the Court may in its discretion set aside the judgment and order that the appeal or application be reheard at such time and upon such conditions as to costs or otherwise as it may think fit.

(5) An application under this rule may be heard by a single Judge designated by the President.

Oral argument

31. (1) Save as may be otherwise allowed by the presiding Judge the maximum time allowed for oral argument in a civil appeal shall be one hour for the appellant and one hour for the respondent, plus 15 minutes for the appellant in reply.

(2) Where there is more than one appellant or more than one respondent the time limits allowed for each shall be set at the roll-call.

(3) Requests for additional time, if any, shall be made at the roll-call or, where possible, as soon as practicable after receipt of the record.

Powers of Court

32. (1) It is not open as of right to any party to an appeal to adduce new evidence in support of his or her original case but, for the furtherance of justice, the Court may, where it thinks fit, allow or require any new evidence to be adduced either in accordance with Part V of these Rules or *mero motu*, on notice to all the parties, and on such conditions as to the right of reply or otherwise as it deems just, and such party may, by leave of the court, allege any facts essential to the issue that have come to his or her knowledge after the decision of the Court below and adduce evidence in support of such allegations.

(2) The Court shall have power to draw inferences of fact and to give judgment and make any order which ought to have been made by the court below and to make such further or other order as the Court may deem fit, the aforesaid powers may be exercised by the Court notwithstanding that an appeal may be that part only of the judgment be reversed or varied, and such powers may also be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have appealed from, or complained of, the decision.

(3) The Court shall have power to make such order as to the whole or any part of the costs of appeal and in the court or courts *a quo* as may be just.

(4) If, upon the hearing of an appeal, it appears to the Court that a new trial ought to be held, it shall be lawful for the Court, if it thinks fit, to order that the judgment shall be set aside and that a new trial shall be held.

(5) An application for leave to introduce further evidence on appeal shall be made and heard *mutatis mutandis* in the manner provided under rule 11.

(6) The Court may, in the interests of justice or in the interests of minor children or to protect any legitimate right to the privacy of the parties, order that there be no publication of any party or witness, or that any appeal be heard *in camera*, in which event the Court shall be cleared of all persons other than the court officials, the parties and their counsel, or such other necessary attendants, whether witnesses or otherwise as the court may authorise.

(7) Save with the prior leave of the President, no photography, private or public recording, or television filming shall be permitted in Court during any appeal or other proceedings.

33. (1) If an appellant who is a natural person alleges that he or she is unable to pay the fees on appeal, or to pay the costs of preparation of the record or to provide security for costs, the Registrar of the court below, or the Registrar of this Court, as the case may be, shall, on application being made in that regard, enquire into the means of the applicant, and for that purpose may seek the views of the respondent, may require the applicant to give evidence on oath, either in person or by affidavit, and may take such other steps as he or she deems necessary to arrive at a fair determination:

Poor appellants

Provided that an applicant who was allowed by the court below to sue or defend as a poor person shall be allowed, without further proof, to prosecute or defend an appeal before this Court as such poor person, unless the Registrar of the court below is satisfied that his or her financial position has materially changed.

(2) If in doubt as to the means of the applicant, the Registrar may request a report on the circumstances of the applicant from the social welfare office of the relevant district, which report shall be filed no later than three weeks after the making of the request.

(3) The decision of such Registrar as to whether the applicant has sufficient means shall be final, and if the determination is that the applicant does not have sufficient means to finance his or her appeal, he or she shall refer the case to a legal practitioner for consideration.

(4) If the legal practitioner certifies that he or she has considered the case and that he or she believes an applicant has a reasonable probability of success, the Registrar shall include in the record of appeal, the legal practitioner's certificate and a statement of the proportion of the fees which the applicant is able to pay and no fees other than those in such statement shall be payable by such applicant, whereupon the Registrar shall assign a legal practitioner to the applicant, and such legal practitioner shall not take any fee from the applicant for anything done in the conduct of the appeal, beyond such sum, if any, as the Registrar has directed the applicant to contribute.

(5) If an appellant as aforesaid succeeds in any appeal which results in an order for payment to him or her of any sum of money from the respondent, whether by way of damages, costs or otherwise, the Court may order that the appeal fees and the costs of the record shall be a first charge on any moneys recovered under such order and, from the balance of such moneys recovered, the legal practitioner for such appellant shall be entitled to such costs as may be allowed on taxation.

Taxation of costs

34. (1) The Registrar shall be the Taxing Master.

(2) Where costs are allowed in a civil appeal they shall be taxable according to the rules for the taxation of costs for the time being in force in the High Court but according to the scale set out in Schedule 1 to these Rules:

Provided that costs allowed in respect of proceedings prior to the institution of an appeal shall be taxable according to the scale of costs for the time being in force in the court below.

(3) Any person aggrieved by any order, decision or ruling of the Taxing Master may apply to a Judge sitting in Chambers to set aside such order, decision or ruling and, on the hearing of such application, the Judge may make such further order as he or she thinks fit and any order or decision made by such Judge shall be subject to appeal to the Court as if it were an order or decision of the High Court.

PART IV – Criminal Appeals

Application

35. This Part shall apply to appeals to the Court from the High Court or from any other court from which appeals lie direct to the Court, actin either in its original or its appellate jurisdiction in criminal matters.

Commencement of appeal

36. (1) A person desiring to appeal to the Court against any judgment, sentence or order of the court below, whether in the exercise of its original or its appellate jurisdiction shall commence his or her appeal —

- (a) in an appeal brought timeously as of right, by delivering to the Registrar of the court below with a copy to the Registrar of this Court and a copy to the Director of Public Prosecutions or private prosecutor a notice of appeal;**
- (b) in an appeal requiring leave, by delivering to the Registrar of the court below with a copy to the Director of Public Prosecutions or private prosecutor a notice of application for leave to appeal;**
- (c) where in such a case leave has been refused by the court below, by delivering to the Registrar of this Court, with copies to the Registrar of the Court below and the Director of Public Prosecutions or private prosecutor a notice of application to this Court for leave to appeal; or**
- (d) where the time allowed for lodging an appeal or for lodging an application for leave to appeal has elapsed, by delivering to the Registrar of this Court with copies to the Registrar of the court below and to the Director of Public Prosecutions or private prosecutor a notice of application for leave to appeal out of time which shall be accompanied by an affidavit giving an acceptable reason for the delay, and by a draft notice and grounds of appeal showing reasonable prospects of success if leave is granted.**

(2) The notice in —

- (a) subrule (1) (a) and (b) shall reach the Registrar of the court below within six weeks of the delivery of the judgment, sentence or order which is challenged;**
- (b) subrule (1) (c) shall reach the Registrar of this Court within four weeks of the refusal of leave by the court below;**
- (c) subrule (1) (d) shall reach the Registrar of this Court within six months of the delivery of the judgment, sentence or order which is challenged; and**
- (d) all cases the receiving officer shall notify, for his or her information, the Judge concerned of the appeal or intended appeal.**

37. (1) Every notice delivered in terms of rule 36 shall be in writing and shall be signed by the person giving the same or his or her authorised legal representative.

Notices to
be signed

(2) Where the appellant is unable to write he or she may affix his or her mark or thumbprint on such notice in the presence of a witness who shall attest the same, and thereupon such notice shall be deemed to be duly signed by the appellant.

(3) Where, on a trial of a person entitled to appeal, it has been contended that he or she was not responsible according to law for his or her actions on the grounds that he or she was insane at the time the act was done or the omission made by him or her, or that at the time of the trial he or she was of unsound mind and consequently incapable of making his or her defence, any notice required to be given and signed by the appellant himself or herself may be given and signed by his or her legal representative.

(4) In the case of a body corporate where any notice or other document is required to be signed by the appellant himself or herself, it shall be sufficient compliance therewith if such notice or other document is signed by the managing director, secretary, other authorised senior officer of, or by the legal practitioner representing such body corporate, and is accompanied by a resolution of such body corporate authorising the appeal and a duly executed power of attorney in favour of the signatory to such notice or other document.

38. (1) Every notice of a criminal appeal shall comply *mutatis mutandis* with the requirements of rule 18 relating to civil appeals, and shall state whether the appeal is against conviction or sentence or both, provided that in the case of an unrepresented or illiterate appellant the Registrar or the Registrar of the court below as the case may be, may in the interests of justice receive any notice of appeal honestly advanced, despite its non-compliance.

Form of notice

(2) Where the appellant is not conversant with either English or *Setswana*, a note shall be made on the notice of appeal that an interpreter in the appellant's home or familiar language is required.

39. (1) No notice of application for leave to appeal or for leave to appeal out of time filed later than the time limits set in rule 36(2) shall be entertained or allowed save in exceptional circumstances and where very strong prospects of success can be shown.

Appeals by
leave

(2) Where leave to appeal has been refused by the court below, any application to this Court shall be accompanied by the ruling of the court below refusing such leave.

(3) Where leave to appeal or leave to appeal out of time is granted, the notice and grounds of appeal accompanying the application shall stand as duly filed.

(4) An application for leave shall be heard by the President or by a single Judge designated by the President, who may grant or refuse the application or may refer it to the Court for determination.

40. (1) Upon receipt of a notice of appeal or an application for leave addressed to this Court in respect of a judgment, sentence or order made by the court below in the exercise of its original jurisdiction or after hearing *viva voce* evidence on appeal, the Judge and the Registrar of the court below shall cause to be transcribed from the recording of the trial court reporter, with reference to the Judge's notes where necessary, a legibly typed record of the proceedings in the court below, and shall notify the Registrar of the identity of the court reporter to whom this duty is assigned.

Record of
appeal

(2) The transcription and assembly of the record shall be completed in no less than six months after filing of the notice of appeal or after the granting of leave, as the case may be, and shall be delivered, together with the full original file to the Registrar of this Court.

(3) If the record is not so delivered within the time allowed, the appeal shall be placed before a Judge in chambers by the Registrar, together with the court reporter's explanation for the delay, and the Judge may make such order, including granting an extension of time, as he or she considers proper in order to expedite the hearing of the appeal.

(4) Upon receipt of a notice of appeal or an application for leave addressed to this Court in respect of a judgment, sentence or order made by the court below in the exercise of its original jurisdiction without hearing *viva voce* evidence, or in the exercise of its appellate jurisdiction without hearing further evidence on appeal, the Registrar of the court below shall forthwith cause the full file to be delivered to the Registrar of this Court.

(5) Upon receipt of the transcript or files referred to in subrules (2) and (4) the Registrar shall make up the record of appeal, which shall include —

(a) a certificate that to the best of his or her knowledge the record is complete and correct (or a proper explanation if this is not so);

(b) an index;

(c) the charge sheet or indictment;

(d) the duly transcribed record of proceedings in the court below;

(e) where applicable, the full record of proceedings, including interlocutory matters in the original trial court or tribunal, together with the judgment of that court or tribunal;

(f) the judgment of the court below;

(g) the proceedings of any application made after the judgment, order or sentence was handed down or imposed;

(h) copies of all documentary exhibits produced during the trial;

Provided that in the case of books of account or other lengthy documents only the relevant extracts therefrom need be included; and

(i) the notice of appeal or notice of application as the case may be.

(6) The Registrar of the court below shall, together with the full file, in each case, deliver to the Registrar, any books of account and lengthy documents from which extracts have been made for the record, and, where practicable, any exhibits in kind, such as weapons, which may need to be observed by the appeal Court, but not livestock, vehicles, perishables, cash or exhibits which have been returned to their owners.

(7) Formal documents, such as subpoenas and recognizances, correspondence from counsel etc., need not unless specifically relevant be included in the record of appeal, but such documents, including committal documents, shall be available in the original file for examination if required.

(8) The record shall be consecutively paginated and, where necessary, shall be divided into manageable binders, marked with volume numbers, each containing no more than 250 pages, with a single complete index in the first volume, and a sub-index in each additional volume.

(9) As soon as the record is complete the Registrar shall cause one copy thereof to be delivered to each appellant and to the Director of Public Prosecutions or private prosecutor, as the case may be, and shall record the fact of such delivery in the appeal file.

(10) The Registrar shall upon completion of the record list the appeal for hearing in its turn or as directed by the President.

(11) In order to obtain clarification of or to explain anomalies in the record the Court shall be entitled to consult the original file, Judge's notes and exhibits where it deems this appropriate.

(12) No record need be kept or transcribed of oral exchanges between counsel, or with the Court or of oral arguments made or presented by either side in the Court below, or in any Court or tribunal of origin unless a contemporaneous electronic or mechanical record has been kept.

41. The provisions of rule 27 shall apply *mutatis mutandis* to every criminal appeal save that an unrepresented or illiterate appellant shall be excused from filing heads of argument, and may rely solely on his or her grounds of appeal supported by any verbal submissions he or she may choose to make at the hearing.

Heads of
argument

42. (1) Applications for bail pending appeal shall be made in the first to the court below, and if refused may be brought at any time thereafter on the same or supplemented papers before a single Judge designated by the President, in which event the original record, even if not yet transcribed, shall be made available to the Court for the purposes of the bail application.

Bail

(2) Such applications shall be brought on notice to the Director of Public Prosecutions or the private prosecutor as the case may be, and shall be accompanied by an affidavit detailing the applicant's personal circumstances, his or her reasons why it is just, safe and in the public interest to grant him or her bail as a convicted prisoner, the names and means of proposed sureties for his or her due appearance at his or her appeal, and proffered bail conditions.

(3) Upon receipt of a notice of application for bail pending appeal, the Registrar or the Registrar of the court below shall, after consulting the President or the managing Judge, as the case may be, fix an early date for the hearing of the application, and shall notify the parties in writing of such date.

(4) The Director of Public Prosecutions or the private prosecutor, as the case may be, shall, whether or not he or she wishes to oppose bail, file and serve by no later than the day preceding the hearing his or her notice of opposition or non-opposition accompanied by an affidavit sworn by the investigating officer, or some other person familiar with the case, setting out the reasons for the deponent's opposition or non-opposition to bail being granted pending appeal, together, where applicable, with any proposed conditions of bail.

(5) Where the Court or the court below admits an appellant to bail pending the determination of his or her appeal, the court which admitted him or her to bail shall specify the conditions of bail, and the amounts in which the appellant and his or her surety or sureties (unless the court directs that no surety is required) shall be bound by recognizances or shall make payment in cash, and such surety or sureties shall be approved by the Registrar of the court that has admitted the appellant to bail; and the recognizances of the appellant and his or her surety or sureties (if any) shall be taken before such Registrar.

(6) An appellant who has been admitted to bail shall be personally present at each and every hearing of his or her appeal and at the final determination thereof, and the Court may, in the event of the appellant not being present at any hearing of his or her appeal, if it thinks it right to do so, cancel his or her bail, and decline to consider the appeal, and may proceed summarily to dismiss the same and may issue a warrant for the apprehension of such appellant:

Provided that the Court may consider the appeal in his or her absence, or make such other order as it thinks fit and provided further that the appellant may, within a period of six weeks thereafter, make application for the re-instatement of his or her appeal on good cause shown, and the Court may in its discretion grant or refuse such application upon such terms, as to bail or otherwise, as it deems just.

(7) When an appellant is present before the Court, the Court may, on an application made by any person or if it thinks it right to do so, without any application, make an order admitting the appellant to bail, or revoke or vary any such order previously made, or enlarge or reduce from time to time the recognisances of the appellant or of his or her sureties or substitute any other surety for a surety previously bound, as it thinks right.

Abandonment
of appeal

43. (1) An appellant may, at any time before the hearing, abandon his or her appeal or application by giving notice of withdrawal thereof in writing to the Registrar, and upon such notice being given the appeal shall be deemed to have been dismissed by the Court, and shall be so entered in the Criminal Appeal Register.

(2) Upon receipt of a notice of withdrawal duly completed and signed or marked by the appellant or his or her authorised representative, the Registrar shall give notice thereof to the respondent, the prison authority, and the Registrar of the court below, and shall return to the Registrar of the court below the original file and exhibits received from him or her.

(3) This rule shall not apply to appeals involving the sentence of death which shall be dealt with in terms of rule 44.

(4) After an appeal has been called on the date set for hearing, it may be withdrawn only with the leave of the Court, which shall not be granted if the Court is of the view that it is proper to exercise any of its powers under rule 32 to vary the conviction returned or the sentence imposed by the court below.

Sentence of
death

44. (1) After any trial in which the sentence of death has been imposed, the Registrar of the court below shall forthwith cause the record of proceedings to be transcribed and forwarded to this Court as soon as possible, whether or not an appeal has been filed, and the Registrar shall thereupon complete the record in terms of rule 40(5).

(2) The appellant or his or her counsel (whether *pro deo* or on brief) shall, within the time allowed for an appeal serve and file either his or her notice and grounds of appeal against his or her conviction or sentence or both, or a notice that he or she does not challenge the conviction and sentence.

(3) After preparing the record, the Registrar shall cause copies thereof to be delivered to the appellant and to the Director of Public Prosecutions and shall list the case for hearing or consideration at the next session of the Court.

(4) When the case is called, the Court shall, where a notice of appeal has been lodged, proceed to hear the appeal, or, where no notice of appeal has been lodged, review the record and, after giving the parties the opportunity to be heard, satisfy itself that the conviction is sound, and that the finding of no extenuating circumstances has been properly made.

(5) After reviewing the record and hearing the parties, the Court may either confirm the conviction and sentence or may make such other orders as are permitted under section 13 of the Act as it deems fit.

(6) Where the sentence of death is confirmed, the Court shall order that the record, together with its judgment, be returned forthwith to the Registrar of the court below for the preparation by the trial Judge of his or her report under section 55(1) of the Constitution.

45. (1) On the final determination of any appeal the Court shall make such order regarding the disposal of exhibits as may be appropriate. Notification of result of appeal

(2) On the final determination of any appeal or of any application to the Court, the Registrar shall give to the appellant, if he or she is in custody and was not present for such final determination, to the respondent and to the prison authority, notice of the result of the appeal.

(3) In the case of an appeal relating to a conviction involving the sentence of death, notice of the result shall in addition be given to the Office of the President, which shall further be notified that the record has been returned to the Registrar of the court below in terms of rule 44(6).

(4) The Registrar shall thereupon return the original file to the Registrar of the court below, and notify him or her of the result, so that the outcome of the case can be entered in the Register of the court below.

46. Save in exceptional circumstances, no costs shall be allowed on either side on the hearing of any appeal or any proceedings preliminary or incidental thereto: Costs

Provided that the Court may order the payment of costs where the original proceedings have been instituted by a private prosecutor.

47. (1) In any appeal against a conviction or sentence for murder, manslaughter, attempted murder or treason, an appellant who is otherwise unable to brief a legal practitioner, shall be entitled to *pro deo* representation, at no cost to him or her, by a legal practitioner appointed by the Registrar, who shall, in the absence of special circumstances, be the practitioner who represented him or her at his or her trial. Pro deo counsel

(2) Save where there are irreconcilable differences between the appellant and his or her allotted representative, there shall be no substitution or replacement of the *pro deo* counsel so allocated, and if the appellant rejects his or her allotted counsel, he or she shall (unless he or she briefs counsel at his or her own expense) argue his or her appeal as a self-actor.

(3) In any case of particular complexity the Registrar may, with the leave of the President, appoint *pro deo* counsel to represent an appellant who is unable to afford legal representation.

Part V – Taking of Additional Evidence

48. This Part, except where the context otherwise requires, applies to appeals to the Court whether in civil or criminal matters. Application

49. Any additional evidence ordered by the Court to be taken shall be either by affidavit or by oral examination before the Court or before the court below. Taking of additional evidence

50. Where the Court has ordered any witness to attend to be examined before the Court, a subpoena shall be served upon such witness specifying the time and place at which to attend for such purpose. Witness summons

51. Witnesses who attend before the Court shall be paid fees and reimbursements on the same scales as are applicable in the High Court, and in criminal appeals payments shall be made by the Registrar from public funds, and in civil appeals such payments shall be made by the party in whose favour the witness is to testify. Expenses of witnesses

**Presence of
parties**

52. The appellant and respondent or any legal practitioners representing them shall, unless the Court otherwise directs, be entitled to be present at, and take part in, any examination of any witness to whom this Part applies.

**Revocation of
S.I. No. 122 of
2013**

53. (1) The Court of Appeal Rules of 2013 are hereby revoked.

(2) Notwithstanding subrule (1), the conduct of any appeal filed and savings before the coming into force of these Rules shall be governed to its conclusion by the Rules revoked under subrule (1), to the extent that such Rules as revoked are incompatible with these Rules.

SCHEDULES

SCHEDULE 1

FEES

(rules 8 (1) and (2) and 34 (2))

A. FEES IN CIVIL MATTERS

1. On filing notice of appeal as of right against a final judgment or decision (To be paid at the Court below)	P60
2. On respondent's notice of intention to cross-appeal, or to contend that decision of court below be varied	P60
3. On filing a motion for leave to appeal	P100
4. On filing motion for extension of time:	
(a) if time has not yet expired	P60
(b) if time has already expired	P100
5. On filing any motion not otherwise provided for	P60
6. On filing a notice of opposition with accompanying affidavit	P60
7. On filing amended or additional grounds of appeal:	
(a) if filed in accordance with rule 25 (1)	P30
(b) if filed thereafter with the leave of the Court	P50
8. On filing a notice of withdrawal or abandonment of an appeal	P30
9. On filing motion to reinstate appeal dismissed or struck out for the non-appearance of appellant	P120
10. On filing motion to re-instate appeal dismissed or struck out for failure to provide security for costs	P120
11. On filing motion to set aside and re-hear appeal determined in the absence of respondent	P120
12. On filing motion to set aside Taxing Master's decision or order	P120
13. On every order of the court made on a final determination of the appeal	P30
14. On filing notice of change of Attorney	P30
15. On filing notice of renunciation of agency	P30
16. On inspection of court record (per occasion)	P20
17. On filing bill of costs for taxation	P60

B. FEES GENERAL

1. The cost of preparing record of appeal in the court below or of taking copies of minutes, records, documentary exhibits, judgments and any orders of the court shall be at the rate of P5 per folio or part thereof, such part not being less than one-quarter of a folio, provided that the cost of transcribing viva voce evidence taken in the Court below shall be at the rate of P10 per folio or part thereof.
2. The fee for certifying such copies as aforesaid shall be at the rate of P1 per folio or part thereof, such part not being less than one-quarter of a folio.
3. Fees for the service of any documents and in connection therewith and payments for any mileage involved in such service shall be charged and paid under the rules and scale regulating service in the High Court.

SCHEDULE 2

LEGAL PRACTITIONERS' FEES, COSTS AND ALLOWANCES

(rule 8 (4))

A. LEGAL PRACTITIONERS' FEES

1. On taking instructionsTime taken by practitioner
2. Fee on the BriefTime taken by practitioner
3. Attendance at Registrar's office to settle record
of appeal.....Time taken by practitioner
4. Attendance in Court and arguing appeal:
 - (a) one day hearingTime taken by practitioner
 - (b) for each subsequent day of hearing.....Time taken by practitioner
5. Preparing and arguing motions and other interlocutory applications:
 - (a) when taken on the same day as argument in the appealP200
 - (b) when taken on different day and not as part of the appeal
..... Time taken by practitioner

B. BILL OF COSTS

In connection with a bill of costs for services rendered by a practitioner, such practitioner shall be entitled to charge:

1. For drawing the bill of costs, making the necessary copies and attending settlement, five percent of the first P10 000 or a portion thereof, two and a half percent of the second P10 000 or a portion thereof, and one percent on the amount in excess of P200 000 of the amount of the practitioner's fees, either as charged in the bill if not taxed, or as allowed on taxation.
2. In addition thereto, if recourse is had to taxation, for arranging and attending taxation and obtaining consents to taxation, five percent of the first P10 000 or portion thereof, two and a half percent on the next P10 000 and one and a half percent on any amount in excess of P20 000 of the fees allowed on taxation.

The fee under each item of this section shall be calculated on the same amount.

C. TRAVELLING AND SUBSISTENCE ALLOWANCES

1. A travelling allowance for a legal practitioner may be allowed at a rate of P1.75 per km, where he travels to Court by car; otherwise he shall be reimbursed to the extent that he has been out of pocket by attending the Court or the Court Registry, provided that the maximum of such reimbursement shall be the maximum he would have been entitled to had he travelled by car.

2. A subsistence allowed for a legal practitioner may be allowed at the rate of P750 for every night it is necessary for him or her to remain at the place where the Court is sitting or where he necessarily has to transact the business on behalf of his or her client.

D. GENERAL CHARGES

Charges for attendances, perusal, drafting and drawing, copies and disbursements shall, *mutatis mutandis*, be as applicable in the High Court tariff.

E. HOURLY RATES FOR PRACTITIONERS (PARTY – PARTY SCALE)

Pupil	00 per hour
0-2 years experience	00-P600 per hour
2-5 years experience	P600-P800 per hour
5-10 years experience	P800-P1000 per hour
10-15 years experience	P1000-P1200 per hour
Over 15 years experience	P1800 per hour

F. ADVOCATES' FEES

1. Except where the judge authorises fees consequent upon the employment of more than one advocate to be included in a party and party bill of costs, only such fees as are consequent upon the employment of one advocate shall be allowed as between the party and party.
2. Where fees in respect of more than one advocate are allowed in a party and party bill of costs, the fees to be permitted in respect of any additional advocate shall not exceed one half of those allowed in respect of the first advocate.
3. In matters which are not of unusual complexity, fees shall be charged and taxed on the scale applicable to practitioners generally.
4. The Taxing Master shall be entitled at his or her discretion at any time to depart from the provisions of this tariff in complex, extraordinary or exceptional cases, where strict adherence to such provisions would be inequitable.

SCHEDULE 3

FORMS (CIVIL)
(rule 10)

(Where alternatives are provided, the necessary deletions of non-applicable alternatives are to be effected)

Civil Form 1 **(Here insert name of Judge)**

IN THE HIGH COURT OF BOTSWANA/INDUSTRIAL COURT OF BOTSWANA

NOTICE OF APPEAL

Case No:

Between:

..... Plaintiff/Applicant/Petitioner

And

..... Defendant/Respondent

TAKE NOTICE that the *(insert party)* being dissatisfied with the decision/part of the decision of the High Court/Industrial Court, more particularly stated in paragraph 2 below, contained in the judgment/order of the court dated the of, 20..... does hereby appeal to the Court of Appeal upon the grounds set out in paragraph 3 and shall 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 persons directly affected by the appeal are those set out in paragraph 5.

My address for service is

2. Part of the decision of the Court below complained of:
.....
.....

3. Grounds of appeal:
- (a)
 - (b)
 - (c)

4. Relief sought from the Court of Appeal:

.....
.....

5. Persons directly affected by the appeal:

Name Address

(a)

(b)

(c)

DATED this day of, 20.....

.....
Appellant

To: The Registrar
(High Court/Industrial Court)

And to: The Registrar
Court of Appeal

And to:
Respondent

Civil Form 2

**IN THE INDUSTRIAL COURT OF BOTSWANA/HIGH COURT OF BOTSWANA/
COURT OF APPEAL OF BOTSWANA**

NOTICE OF MOTION FOR LEAVE TO APPEAL

Case No:

Between:

.....

Applicant

And

.....

Respondent

TAKE NOTICE that the Court of Appeal shall be moved on theday of
....., 20....., at
o'clock in the afternoon or as soon thereafter can be heard on the hearing of an application for
leave to appeal against the decision of thecourt given on the
day of, 20.....

AND FURTHER TAKE NOTICE that the grounds of this appeal are:

- (1).....
- (2).....
- (3).....

DATED this day of....., 20.....

Applicant, or the legal practitioner representing him or her whose address for service is

.....

.....

TO: Registrar of the Court of Appeal/Industrial Court/High Court

And to:

Respondent

Civil Form 3

IN THE COURT OF APPEAL OF BOTSWANA

SUMMONS TO PARTIES BY REGISTRAR TO SETTLE RECORD

Case No:(High Court)

Case No:(Court of Appeal)

Between:

..... Appellant

And

..... Respondent

TAKE NOTICE that all parties concerned are required to attend before me in my Chambers at on the..... day of 20....., at the hour of in thenoon to proceed with settling of the record of appeal herein, determining the cost of record preparation, and setting security to be lodged for the costs of the appeal.

DATED thisday of, 20.....

.....
Registrar of the Court of Appeal

To:
Appellant

And to:
Respondent

Civil Form 4

IN THE COURT OF APPEAL OF BOTSWANA

BOND FOR COSTS ON APPEAL

Case No:

In the matter between:

..... Appellant

And

..... Respondent

KNOW ALL MEN, that by these presents

.....
(here insert name and address of guarantor)

Do hereby irrevocably and unconditionally bind myself jointly and severally with the appellant as surety and co-principal debtor in the sum of P..... for the due payment of all legal costs as taxed or agreed or ordered by the Court to be payable to the Respondent should the appeal be dismissed, struck off or withdrawn.

AND THE CONDITION OF THIS BOND is that —
(delete as necessary)

The said sum of P..... shall be and is hereby lodged in cash with the Registrar to be paid out in whole or in part upon presentation of a taxed or agreed bill of costs, or court order by the respondent with any balance remaining, or the whole said sum if the appeal is successful to be refunded to me.

OR

The said sum of P..... or such part thereof as may be required to settle the said costs, shall be paid by me on demand to the Respondent upon presentation of a taxed or agreed bill of costs or a court order requiring such payment.

In witness whereof I have hereunto set my hand on this day of

..... 20..... at Gaborone in the presence of the subscribing witnesses.

.....
Surety/Appellant

As Witnesses

(1)..... (signatures, names and addresses)

(2).....

Civil Form 5

IN THE COURT OF APPEAL OF BOTSWANA

CERTIFICATE OF REGISTRAR THAT SECURITY FOR COSTS HAS BEEN PROVIDED, THAT COSTS OF RECORD HAVE BEN PAID, AND THAT THE RECORD AS SETTLED IS COMPLETE

Case No:

Between:

..... Appellant

And

..... Respondent

I,, Registrar of the Court, DO HEREBY CERTIFY that the above-mentioned appellant has duly and timeously complied with the obligations imposed upon him or her in the above-named case to provide security for costs of the appeal and to pay the cost of preparation of the appeal record; and that to the best of my knowledge the record as settled is complete.

DATED this day of, 20.....

.....
Registrar of the Court of Appeal

Civil Form 6

IN THE COURT OF APPEAL OF BOTSWANA

NOTICE BY RESPONDENT IN RESPONSE TO APPEAL

Case No:

Between:

.....

Appellant

And

.....

Respondent

TAKE notice that the Respondent intends

(delete as applicable)

(1)To oppose the above appeal

(2)To abandon the judgment appealed

(3)To abide the decision of the Court on appeal

DATED thisday of 20.....

.....

Respondent

**To: Registrar
Court of Appeal**

And to:.....

Appellant

Civil Form 7

IN THE COURT OF APPEAL OF BOTSWANA

**NOTICE BY RESPONDENT OF CROSS-APPEAL/INTENTION TO CONTEND
THAT DECISION OF COURT BELOW BE VARIED**

Case No:

Between:

.....

Appellant

And

.....

Respondent

TAKE NOTICE that upon the hearing of the above appeal the respondent herein intends to contend that the decision of the Court below dated the day of, 20....., be varied as follows —

.....
.....
.....

AND TAKE NOTICE FURTHER that the grounds on which the respondent intends to rely are as follows:

(1).....

(2).....

(3).....

DATED this day of, 20

.....

Respondent

To: Registrar of the Court of Appeal

And to:

Appellant

Civil Form 8

IN THE COURT OF APPEAL OF BOTSWANA

**NOTICE OF INTENTION TO CONTEND THAT JUDGMENT SHOULD
BE AFFIRMED ON GROUNDS OTHER THAN THOSE
RELIED ON BY THE COURT**

Case No:

Between:

.....

Appellant

And

.....

Respondent

TAKE NOTICE that upon the hearing of the above appeal the respondent herein intends contend that the decision of the Court below, dated day of, 20..... be affirmed on grounds other than those relied on by the court below.

AND TAKE NOTICE FURTHER that the grounds in which the respondent intends to rely are as follows —

(1).....

(2).....

(3)....., etc

DATED this day of, 20.....

.....

Respondent

To: Registrar of the Court of Appeal

And to:.....

Appellant

Civil Form 9

IN THE COURT OF APPEAL OF BOTSWANA

**NOTICE BY RESPONDENT OF INTENTION TO RELY UPON
PRELIMINARY OBJECTION**

Case No:

Between:

.....

Appellant

And

.....

Respondent

TAKE notice that the Respondent intends at the hearing of this appeal, to rely upon the following preliminary objection(s), namely,

(1).....

(2).....

(3).....

AND that the relief sought is that:

.....

.....

DATED this day of, 20.....

.....

Respondent

To: Registrar of the Court of Appeal

And to:

Appellant

Civil Form 10

IN THE COURT OF APPEAL OF BOTSWANA

NOTICE OF ABANDONMENT OF APPEAL

Case No:

Between:

..... **Appellant**

And

..... **Respondent**

TAKE NOTICE that the appellant herein intends to withdraw, and hereby withdraws, his or her appeal against the respondent in the above-mentioned appeal, and tenders to pay any wasted costs occasioned by the appeal.

DATED at thisday of, 20.....

.....
Appellant

To: Registrar of the Court of Appeal

And to:
Respondent

Civil Form 11

IN THE COURT OF APPEAL OF BOTSWANA

NOTICE OF WITHDRAWAL OF APPEAL BY AGREEMENT

Case No:

Between:

..... **Appellant**

And

..... **Respondent**

TAKE NOTICE that the above appeal is withdrawn with the consent of all parties thereto.

DATED this day of, 20.....

.....
Appellant

.....
Respondent

To: Registrar of the Court of Appeal

Civil Form 12

**IN THE COURT OF APPEAL OF BOTSWANA
REQUEST FOR COURT ANNEXED MEDIATION**

Case No:

Between:

..... Appellant:

And

..... Respondent

TAKE notice that the parties hereto, being of the opinion that the issues in this appeal are capable of amicable settlement, hereby request that their appeal be referred to a Court Annexed Mediation, before being listed for hearing by the Court.

DATED at this.....day of..... 20.....

.....
Appellant

.....
Respondent

TO: Registrar of the Court of Appeal

SCHEDULE 4

FORMS (CRIMINAL)
(rule 10)

Criminal Form 1

IN THE COURT OF APPEAL OF BOTSWANA

**NOTICE OF APPEAL FROM DECISION OF COURT SITTING
AS COURT OF FIRST INSTANCE**

High Court Case No:

THE STATE vs

To: **The Registrar of the High Court**
And to: **The Registrar of the Court of Appeal**
And to: **The Director of Public Prosecutions**

I,, having been convicted of the offence of

.....

and being now a prisoner in prison at
or whose address for service is

do hereby give notice of appeal against my conviction/sentence (particulars of which
hereinafter appear) to the Court on the following grounds —

.....
.....
.....

.....
Signature or mark of Appellant

Witness to mark:

Name:

Signature:

Address:

DATED this day of, 20.....

Particulars of Trial and Conviction

1. Date of trial
2. In what court tried
3. Sentence

Criminal Form 2

IN THE HIGH COURT OF BOTSWANA

**NOTICE OF APPLICATION FOR LEAVE TO APPEAL FROM DECISION OF THE
HIGH COURT GIVEN IN ITS APPELLATE JURISDICTION**

Case No:

THE STATE vs.

To: The Registrar of the High Court
And to: Director of Public Prosecutions

I,, having been convicted of the
offence of
and being now a prisoner in prison at
or whose address for service is

DO HEREBY GIVE NOTICE of my application for leave to appeal to the Court
of Appeal against the decision of the High Court of Botswana given on appeal at
..... on 20.....
on the following grounds:

.....
.....
.....

.....
Signature or mark of Appellant

Witness to mark:

Name:

Signature:

Address:

DATED this day of, 20.....

Particulars of Trial and Conviction

1. Date of trial and sentence
2. In what court tried
3. Sentence
4. In what court appeal heard
5. Date of dismissal

Criminal Form 3

IN THE COURT OF APPEAL OF BOTSWANA

**NOTICE OF APPLICATION FOR LEAVE TO APPEAL FROM DECISION OF
THE HIGH COURT ON ITS APPELLATE JURISDICTION, WHEN LEAVE
REFUSED BY HIGH COURT**

Case No:

THE STATE vs.....

To: The Registrar of the High Court
And to: The Registrar of the Court of Appeal
And to: The Director of Public Prosecutions

I, having been convicted
of the offence of..... and now being a prisoner in
prison at or whose address for service is
.....

DO HEREBY GIVE NOTICE that I apply for leave to appeal against the decision of the High
Court given on appeal on the following grounds:

.....
.....

.....
Signature or mark of the Appellant

Witness to mark:

Name:

Signature:

Address:

DATED this day of, 20.....

Particulars of Trial and Conviction

1. Date of trial
2. In what court tried
3. Sentence
4. In what court appeal heard
5. Date when leave refused by High Court

Criminal Form 4

IN THE COURT OF APPEAL OF BOTSWANA

NOTICE OF APPEAL BY PROSECUTOR

Case No:

Between:

..... Appellant

And

..... Respondent

To: The Registrar of the High Court
And to: The Registrar of the Court of Appeal
And to: The Respondent

I, of being the prosecutor in the above case and being desirous of appealing against the decision of the High Court in terms of of

Do hereby give notice of appeal on the following grounds of law:

.....
.....
.....

.....
Prosecutor

DATED this day of, 20.....

Particulars of Trial and Conviction

1. Date of trial
2. In what court tried
3. Nature of conviction
4. Sentence

Criminal Form 5

IN THE COURT OF APPEAL OF BOTSWANA

NOTICE OF APPLICATION FOR LEAVE TO APPEAL OUT OF TIME

Case No:

THE STATE vs

To: **The Registrar of the High Court**
And to: **The Registrar of the Court of Appeal**
And to: **The Director of Public Prosecutions**

I, having been convicted of the offence of
..... and being now a prisoner at
..... or whose address for service is
.....

Do hereby apply for leave to appeal out of time against my conviction/sentence (particulars of which appear hereafter) on the following grounds:

.....
.....
.....

I attach hereto my affidavit giving reasons why I am late and showing that I have prospects of success on appeal.

.....
Signature or mark of Appellant

Witness:

DATED this day of 20.....

Particulars of trial and conviction

1. Date of trial
2. In what court tried
3. Sentence
4. Date High Court appeal heard (if applicable)

Criminal Form 6

IN THE COURT OF APPEAL OF BOTSWANA

RECOGNIZANCE OF BAIL OF APPELLANT

Case No:

THE STATE vs

BE IT REMEMBERED THAT WHEREAS
was convicted of the offence of
on the day of, 20....., and was thereupon
sentenced to
and is now in lawful custody in prison at and has
duly appealed against his or her conviction/and sentence to the Court and has applied for bail
pending the determination of his or her appeal, and has been granted bail on entering into his or
her own recognizance in the sum of with
surety/sureties each in the sum of, the said
..... personally has come before the undersigned, being
the Registrar of the Court/High Court, and acknowledged himself or herself to owe to the
Republic of Botswana, the said sum of of good and lawful money to be
and levied of his or her goods and chattels, lands and tenements, fail in the condition endorsed.

.....
Signature or mark of Appellant

Witness to mark:

Name:

Signature:

Address:

TAKEN AND ACKNOWLEDGED at this

day of, 20....., before me.

.....
Registrar of the Court of Appeal/Registrar of
the High Court

CONDITION

The condition of the within written Recognisance is such that if the said

.....
shall personally appear and surrender himself or herself at and before the Court at each and every hearing of his or her appeal to the Court and at the final determination thereof and then and there abide by the judgment of the said Court and not depart or absent himself or herself from such Court at any such hearing without the leave of the said Court, and in the meantime not depart from his or her usual place of abode, without the leave of the Court, then this Recognisance shall be void, otherwise it shall be of full force and effect.

When released on bail my address for service to which any notices, etc, are to be addressed, shall be as follows:

.....
.....

.....
Signature or mark of Appellant

Witness to mark:

Name

Signature

Address

Criminal Form 7

IN THE COURT OF APPEAL OF BOTSWANA

RECOGNIZANCE OF APPELLANT'S SURETIES

Case No:

THE STATE vs.

BE IT REMEMBERED THAT on this day of
20.....

of
and.....
of.....

came before me the undersigned and severally acknowledged themselves to owe the Republic
of Botswana the several sums following, that is to say, the said.....

the sum of and the said
the sum of of good and lawful money, to be made and levied
of their goods and chattels, lands and tenements respectively to the use of the Republic of
Botswana if.....

now in lawful custody in prison at fail in
the condition hereon endorsed.

TAKEN AND ACKNOWLEDGED before me, the undersigned, the day and year first
abovementioned.

.....
Registrar of the Court of Appeal/
Registrar of the High Court

.....
Signature or mark of surety

.....
Signature or mark of surety

Witness to mark:

Name

Signature

Address

CONDITION

The condition of the within written Recognizance is such that whereas the said
.....
having been convicted of
and now in such lawful custody as before mentioned (under a sentence of
.....
for such offence) has duly appealed to the Court against his or her said conviction and
sentence and having applied to the said court for bail pending the determination of his or
her said appeal, has been granted bail on his or her entering into recognizance in the sum
of and with surety/sureties each in the sum of
....., if the said shall personally appear and surrender himself
or herself at and before the Court at each and every hearing of his or her appeal to the Court
and the final determination thereof and then and there abide by the judgment of said Court
and not depart or absent himself or herself from such Court at any such hearing without the
leave of the said Court, and in the meantime not depart from his or her usual place of abode
without the leave of the Court, then this recognizance shall be void, otherwise it shall be of
full force and effect.

.....
Signature or mark of surety

.....
Signature or mark of surety

Witness to marks:

Name

Signature

Address

Criminal Form 8

IN THE COURT OF APPEAL OF BOTSWANA

WARRANT FOR ARREST OF APPELLANT ON BAIL

Case No:

THE STATE vs.

**To: All Members of the Botswana Police Service, and to
All Members of the Botswana Prison Service**

WHEREAS
an appellant in the Court, has been released on bail and it has now been ordered by the said Court that a warrant be issued for the apprehension of the said

THIS is therefore to command you, the said members of the Botswana Police Service and members of the Botswana Prison Service, forthwith to apprehend the said
.....and bring him or her to Prison and there deliver him or her with this warrant into the custody of the Officer-in-Charge of the Prison and you, the said Officer-in-Charge of the said Prison, are hereby required to receive the said into your custody in the said Prison and there safely to keep him or her until further order of the Court.

DATED this day of, 20

.....
Presiding Judge

Criminal Form 9

IN THE COURT OF APPEAL OF BOTSWANA

NOTICE OF ABANDONMENT OF APPEAL

Case No:

THE STATE vs

To: **The Registrar of the High Court**
And to: **The Registrar of the Court of Appeal**
And to: **The Director of Public Prosecutions**

I, having been convicted of the offence of
.....in the
..... sitting at
having been desirous of appealing to the Court against my said conviction/and sentence of
..... passed upon me on my
said conviction, do hereby give you notice that I do not intend further to prosecute my appeal
but that I hereby abandon all further proceedings in regard thereto as from the date hereof.

DATED this day of, 20.....

.....
Signature or mark of Appellant

Witness to mark:

Name

Signature

Address

SCHEDULE 5

FORMS (MISCELLANEOUS)

(rule 10)

Miscellaneous Form 1

IN THE COURT OF APPEAL OF BOTSWANA

ORDER TO WITNESS TO ATTEND COURT FOR EXAMINATION

Case No:

Between:

.....

Appellant

And

.....

Respondent

To:

(Name of witness)

Of

(address)

WHEREAS on good cause shown to the Court you have been ordered to attend and be examined as a witness before each Court upon the appeal of the above-named:

THIS IS TO GIVE YOU NOTICE to attend before the said Court at

..... on the..... day of, 20.....,

at o'clock in the noon. You are also required to have with you at the same time and place any books, papers or other things relating to the said appeal which you may have had notice so to produce.

DATED this day of, 20.....

.....

Registrar of the Court of Appeal

MADE this 27th day of September, 2018.

JUSTICE IAN KIRBY,
President of the Court of Appeal.