

## 13.

**The West Indian Court of Appeal Rules, 1945.**

RULES MADE UNDER SECTION 5 OF THE WEST INDIAN COURT OF APPEAL ACT, 1919. (9 AND 10 GEO. 5, C. 47.)

Short title.

1. These Rules may be cited as the West Indian Court of Appeal Rules, 1945.

Interpretation.

2. In these Rules, unless the context otherwise requires—

“the Act” means the West Indian Court of Appeal Act 1919 (9 and 10 Geo. 5, c. 47);

“appellant” means the party appealing from a judgment and includes his solicitor;

“Colony” means the colony in which the appeal arose;

“Court of Appeal” means the West Indian Court of Appeal;

“Court” means the Supreme Court in the Colony and includes a Judge thereof;

“judgment” includes decree, order, sentence or decision of the Court;

“month” means calendar month;

“party” means any party to the appeal and includes his solicitor;

“Principal Registrar” means the Registrar of the Supreme Court in the Colony of Trinidad and Tobago;

“record” means the aggregate of papers relating to an appeal (including the pleadings, relevant affidavits, Judge’s notes of evidence or a transcript of the evidence, the exhibits, the decision or reasons therefor and judgments) proper to be laid before the Court of Appeal on hearing of the appeal;

“Registrar” means the Registrar in the Colony;

“respondent” means any party directly affected by the appeal and includes his solicitor;

“Rules” means these Rules or any amendments thereof or any additional Rules under the provisions of the Act;

“Rules of Court” means the Rules made by the authority in whom is vested the power to make Rules of Court in the Colony.

Words in the singular shall include the plural, and words in the plural shall include the singular.

Words importing the masculine gender shall include females.

3. All appeals to the Court of Appeal shall be by way of rehearing and shall be brought by notice of motion and no petition, case or other formal proceeding other than such notice of motion shall be necessary. The appellant may by notice of motion appeal from the whole or any part of any judgment, and the notice of motion shall state whether the whole or part only of such judgment is complained of, and in the latter case, shall specify such part. If the notice of motion alleges mis-direction or error in law, particulars of such mis-direction or error must be clearly stated.

Appeal to be by way of rehearing.

4. (1) Subject to any provisions which may be made by the Legislature of the Colony, no appeal shall be brought after the expiration of six weeks unless the Court at the time of giving judgment or at any time subsequently, or the Court of Appeal shall enlarge the time.

Time for bringing appeals.

(2) The prescribed period for appeal shall be calculated from the time at which the judgment is signed, entered or otherwise perfected, or, in the case of a refusal of an application, from the date of such refusal.

(3) An appeal shall be deemed to have been brought when the notice of motion has been filed in the office of the Registrar.

(4) No appeal shall be heard before the expiration of twenty-eight days after the appeal has been set down for hearing.

5. (1) A true copy of the notice of appeal shall be served upon all parties directly affected by the appeal and it shall not be necessary to serve any party not so affected; but the Court of Appeal may direct notice of appeal to be served on all or any parties to the action or other proceeding, or upon any person not a party, and in the meantime may postpone or adjourn the hearing of the appeal upon such terms as may be just, and may give such judgment and make such order as might have been given or made if the persons served with such notice had been originally parties.

Service of notice of appeal.

(2) A true copy of the notice of appeal shall be served on the respondent within seven days after the original notice has been filed.

(3) Service of a notice of appeal or any other document requiring to be served shall be effected—

(a) in accordance with the Rules of Court, or

(b) by registered post addressed to the respondent's address for service or to his last known place of abode. Service shall

be deemed to have been effected three days after the date on which the same shall have been posted, or

(c) in such other manner as the Court may direct.

(4) Any notice of appeal may be amended at any time as the Court of Appeal may think fit.

Settling  
record.

6. (1) The Registrar shall immediately an appeal is brought summon the parties before him to settle the documents to be included in the record and shall, whether any of the parties attend the appointment or not, settle and sign and in due course file a list of such documents.

(2) The Registrar as well as the parties shall endeavour to exclude from the record all documents (more particularly such as are merely formal) that are not relevant to the subject matter of the appeal, and generally to reduce the bulk of the record as far as practicable, taking special care to avoid duplication of documents and unnecessary repetition of headings and other merely formal parts of documents; but the documents omitted to be copied shall be enumerated in a list at the end of the record.

(3) If one party objects to the inclusion of a document on the ground that it is unnecessary or irrelevant and the other party nevertheless insists upon its being included, the document shall be included and the record shall, with a view to the subsequent adjustment of the costs of and incidental to the inclusion of such document, indicate in the index of papers or otherwise the fact that, and the party by whom, the inclusion of the document was objected to.

(4) If no written decision is given by the Judge at the time of giving judgment such Judge shall communicate his reasons for the judgment in writing to the Registrar and such reasons shall be included in the record.

Notice by  
respondent  
of contention  
that judg-  
ment should  
be varied.

7. (1) It shall not, under any circumstances, be necessary for a respondent to give notice of motion by way of cross-appeal, but if a respondent intends, upon the hearing of an appeal, to contend that the decision of the Court should be varied, he shall, within fourteen days after service of the notice of appeal, or within such time as may be prescribed by special order made on application, give written notice of such intention to any parties who may be affected by such contention, and in such notice shall clearly state the reason on which he intends to rely, and within the same period he shall file a copy of such notice with the Registrar.

(2) A copy of such notice shall be included in the record but, if the record has already been filed, the prescribed number of copies shall be prepared forthwith and left with the Registrar by the appellant for transmission to the Judges.

(3) The omission to give notice shall not diminish the powers conferred by the Act upon the Court of Appeal but may, in the discretion of the Court of Appeal, be ground for an adjournment of the appeal, or for any special order as to costs.

8. (1) The appellant shall within forty-two days from the date when the appeal is brought or within such extended time as may be granted by the Court or the Court of Appeal—

Entering  
appeal.

(i) file in the office of the Registrar:

(a) the record;

(b) an affidavit of service of the notice of appeal; and

(ii) leave four copies of the record for the use of the Judges of the Court of Appeal; and

(iii) give notice to the respondent of the filing of the record within seven days thereafter.

(2) The Registrar shall thereupon set down the appeal for hearing by entering the same in the proper list of appeals.

9. (1) When the appeal is set down for hearing the Registrar shall forthwith—

Fixture of  
sittings.

(a) notify the Principal Registrar that the appeal has been set down for hearing;

(b) send a copy of the record to each of the Judges of the Court of Appeal.

(2) Upon receipt of the notification from the Registrar, the Principal Registrar shall inform the President who shall thereafter arrange a sitting of the Court of Appeal in the Colony and direct the Principal Registrar to summon the Judges nominated by him for that sitting, and to inform the Registrar of the date of the sitting. The Judges shall, as far as practicable, serve in rotation.

(3) The Registrar shall notify the parties or their solicitors and gazette the date of such sitting and screen in some suitable place a notice of the sitting of the Court of Appeal.

(4) The Court of Appeal may be adjourned by the President or at his direction by any Judge thereof.

(5). If for any reason, additional copies of the record are required, the Registrar shall call upon the appellant to provide such copies within such time not being less than seven days, as he shall specify.

Default in  
filing record  
and  
documents.

**10.** (1) If the appellant files none of the documents set out in Rule 8 (1) (i) within the period prescribed by Rule 8 (1) or files a notice of intention to withdraw his appeal, the appeal shall stand dismissed with costs, and the Court may on being satisfied by the production of a certificate from the Registrar that none of the said documents has been filed or otherwise that the appellant has abandoned or withdrawn his appeal, order execution to issue forthwith.

(2) If the appellant fails in any other respect to comply with Rule 8 (1) the appeal may be dismissed or may be ordered to stand over at the cost of the appellant or of his solicitor personally or the appellant may be deprived of his costs or the Court of Appeal may make such other order as it thinks fit. The respondent may upon such failure by the appellant, apply for an order under this sub-rule.

(3) An appellant whose appeal has been dismissed under sub-rule (1) hereof may within one month thereafter move the Court of Appeal for an order that his appeal may be restored, and the Court of Appeal may for good and sufficient cause restore the same on such terms as it thinks fit.

Notice of  
preliminary  
objection.

**11.** A respondent intending to reply upon a preliminary objection shall give notice thereof, setting out the grounds of the objection, to the appellant and to the Registrar not less than two clear days before the hearing and shall furnish three copies of such notice for the use of the Judges hearing the appeal. If the respondent fails to comply with this Rule the Court of Appeal may refuse to entertain the objection or may adjourn the hearing thereof at the cost of the respondent or may make such other order as it thinks fit.

Non-  
appearance  
of parties.

**12.** (1) If the appellant shall fail to appear in person or by counsel when his appeal is called for hearing the same shall stand dismissed with costs.

(2) An appellant whose appeal has been dismissed owing to his non-appearance may within one month move the Court of Appeal and the Court of Appeal may, if it thinks fit and on such terms as to costs and otherwise as it may deem just, direct the Appeal to be re-entered for hearing.

(3) If the respondent shall fail to appear in person or by counsel when the appeal is called for hearing, and proof is made by the appellant that all necessary steps have been taken for bringing on the same, the Court of Appeal shall proceed to hear the appeal *ex parte*.

13. When any question of fact is involved in an appeal, the evidence taken in the Court bearing on such question shall, subject to any special order of the Court of Appeal, be brought before the Court of Appeal as follows—

Evidence.

(a) as to any evidence taken by affidavit, by the production of office copies of such affidavits;

(b) as to evidence taken orally, by the production of a copy of the Judge's notes certified by the Registrar, or a transcript of the evidence taken by a shorthand writer and certified by him, or such other materials as the Court of Appeal may deem expedient.

14. On hearing of an appeal the Court of Appeal shall have power, if the notes of the Judge of the Court or a transcript of the evidence are not produced, or if there are no such notes or transcript, to hear and determine such appeal upon any other evidence or statement of what occurred before such Judge which the Court of Appeal may deem sufficient.

Trial Judge's notes.

15. If upon the hearing of an appeal, a question arises as to the ruling or the direction of the Judge to a jury or assessors, the Court of Appeal shall have regard to verified notes or other evidence, and to such other materials as the Court of Appeal may deem expedient.

Questions as to ruling of Trial Judge.

16. (1) The Court of Appeal shall have all the powers and duties as to amendment and otherwise of the Court, together with full discretionary power to receive further evidence upon questions of fact, such evidence to be either by oral examination in Court, by affidavit, or by deposition taken before an examiner or commissioner or other officer.

Powers of Court of Appeal.

(2) Such further evidence may be given without special leave upon interlocutory applications, or in any case as to matters which have occurred after the date of decision from which the appeal is brought.

(3) Upon appeals from a judgment after trial or hearing of any cause or matter upon the merits, such further evidence (save as to matters subsequent as aforesaid) shall be admitted on

special grounds only, and not without special leave of the Court of Appeal.

(4) The Court of Appeal shall have power to draw inferences of fact and to give any judgment and make any order which ought to have been made, and to make such further or other order as the case may require.

(5) The powers aforesaid may be exercised by the Court of Appeal notwithstanding that the notice of appeal may be that part only of the decision may 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.

(6) The Court of Appeal shall have power to make such order as to the whole or any part of the costs of the appeal as may be just.

Interlocutory judgment not to prejudice decision.

17. No interlocutory judgment or rule from which there has been no appeal to any tribunal shall operate so as to bar or prejudice the Court of Appeal from giving such decision upon the appeal as may be just.

New trial.

18. If upon hearing of an appeal it shall appear to the Court of Appeal that a new trial ought to be had, it shall be lawful for the Court of Appeal, if it shall think fit, to order that the verdict and judgment shall be set aside, and that a new trial shall be had.

Delivery of judgment.

19. (1) A judgment or other decision of the Court of Appeal shall be delivered in open court in the Colony but if the Judges of the Court of Appeal or any of them are not prepared to deliver their judgments or judgment before the conclusion of the sitting at which the appeal has been heard, it shall be lawful for the Judges or Judge to transmit to the Registrar their or his written judgments or judgment on such appeal.

(2) The Chief Justice of the Colony shall read or cause to be read such judgments or judgment at a sitting of the Court, and the Registrar shall enter judgment accordingly, and such entry of judgment shall be as effective in all respects as if it had been delivered at a sitting of the Court of Appeal.

Interest.

20. On an appeal, interest for such time as execution has been delayed by the appeal shall be allowed unless the Court of Appeal otherwise orders, and the Registrar may compute such interest without any order for that purpose.

21. An appeal shall not operate as a stay of execution or of proceedings under the judgment appealed from, except so far as the Court or the Court of Appeal may order, and no intermediate act or proceeding shall be invalidated, except so far as the Court may direct.

Appeal no stay except by order.

22. (1) Whenever any doubt arises as to whether a judgment is final or interlocutory, such doubt may be determined by the Court of Appeal under the Rules or by the Court on application in a summary way.

Determination of doubt as to finality of judgment.

(2) Any such determination by the Court shall, if made in pursuance of Rules of Court, be deemed by the Court of Appeal to be binding on all parties.

23. (1) Subject to any provisions which may be made by the Legislature of the Colony, the following applications may be dealt with by the Court—

Applications to Court.

(a) applications for giving security for costs to be occasioned by any appeals;

(b) applications for leave to appeal *in forma pauperis*;

(c) applications for a stay of execution on any judgment appealed from pending the determination of such appeal;

(d) applications for an injunction restraining the defendant in the action from disposing or parting with the possession of the subject matter of the appeal pending the determination thereof;

(e) applications under Rules 7, 10 and 22;

(f) applications for extension of time;

(g) any other interlocutory applications.

(2) Any such application shall be heard in the first instance by the Court unless the Court of Appeal is actually sitting in the Colony at the time.

(3) Where an application has been refused by the Court or the Court gives special leave either party may apply in writing within fourteen days after the date of the order made by the Court, to have the application re-heard by the Court of Appeal.

(4) All applications whether to be heard by the Court or not, shall be entered in the Court of Appeal.

(5) When an application is to be heard by the Court of Appeal the applicant shall lodge with the Registrar four copies of the papers for the use of the Judges.

24. (1) Applications under paragraphs (b), (c), (d) and (f) of 23 (1) may be made *ex parte* by way of affidavit containing the grounds of the application and the order asked for.

Mode of application.



(2) Any other application under these Rules shall be made by way of summons or motion. Such application shall be supported by affidavit, a copy of which shall be served with the summons or notice of motion.

(3) Where an application is made *ex parte* under sub-rule (1) of this Rule, an order may be made requiring any party affected to be served with notice of the application.

(4) Where an application under these Rules is made by summons, an order may be made adjourning the hearing into open court.

(5) Where an application made by summons is heard by the Court of Appeal, it shall be treated as if it were a motion, and it shall be heard in open court.

Application  
for security  
for costs.

25. (1) Before an application for security for costs is made, a written demand shall be made by the respondent and if the demand is refused or if an offer of security be made by the appellant and not accepted by the respondent, the Court of Appeal or Court shall in dealing with the costs of the application consider which of the parties has made the application necessary.

(2) An application for security for costs may be made at any time after the appeal has been brought and must be made promptly thereafter.

(3) An order for security for costs shall direct that in default of the security being given within the time limited therein or any extension thereof the appeal shall stand dismissed.

Application  
for leave to  
appeal in  
*forma*  
*pauperis*.

26. (1) An application for leave to appeal *in forma pauperis* shall be accompanied by—

(a) an affidavit stating:

(i) that the appellant is not worth \$120 or £25 excepting his wearing apparel and tools of trade and his interest in the subject matter of the intended appeal;

(ii) that his usual income from all sources does not exceed \$9.60 or £2 a week;

(iii) that he is unable to provide sureties;

(b) a certificate of counsel that the appellant has reasonable ground of appeal.

(2) Where an appellant obtains leave to appeal *in forma pauperis*, he shall not be required to lodge security for the costs of the respondent or to pay any registry fees or any fees for a copy of the Judge's notes of evidence or the record, or for five duplicate copies thereof for transmission to the Judges of the Court and for the use of counsel for the appellant.

27. (1) The Registrar shall keep a book in which shall be entered particulars of all appeals filed, the date of filing, the date of the entering of the appeal, the date of hearing of the appeal and the judgment given.

Duties of Registrar.

(2) Immediately after the determination of an appeal the Registrar shall send to the Principal Registrar a correct copy of the entries made under the provisions of sub-rule (1) of this Rule, and the Principal Registrar shall keep a book in which a record of all appeals heard and determined by the Court of Appeal shall be made.

(3) The Registrar shall also send to the Registrar of the Court of every other colony to which the Act applies a copy of every written judgment of the Court of Appeal.

28. (1) Every document or paper required by the Rules to be filed or left with the Registrar shall be legibly printed or type-written with black ink (which will not soil the hands of a reader) upon strong white foolscap paper of good quality with an inner margin of not less than two inches and an outer margin of about half-an-inch, and a space of not less than three-eighths of an inch shall be left between every two lines.

Printing or typing of Record.

(2) There shall be an index to the record and every page thereof shall be numbered consecutively, and every fifth line on a page shall be numbered in the margin. Correspondence and exhibits shall be arranged together at the end of the record.

(3) The Registrar may refuse to file or receive any document not strictly conforming to the requirements of sub-rule (1) of this Rule and the Court of Appeal may disallow the costs of any such document which has been filed or received by the Registrar.

29. The fees to be taken by the Registrar shall be payable in advance as follows—

Fees.

On bringing appeal	... ..	\$1.20 or 5/-
On entering any appeal for hearing and on the judgment thereunder, an inclusive fee of ...	... ..	\$9.60 or £2
On making any application	... ..	\$1.20 or 5/-
On filing every document or exhibit	... ..	.48 or 2/-
On inspection of any document or judgment	... ..	.24 or 1/-
On office copies of any document for the first folio to consist of ninety words	... ..	.24 or 1/-
For every other folio or part of a folio	... ..	.12 or 6d.
On taxation of bill of costs including certificate	... ..	\$2.40 or 10/-

Right of  
practice.

**30.** All persons having the right to practise as barristers, advocates, solicitors or attorneys before the Court of any Colony in which the appeal arose shall be entitled to practise in the Court of Appeal when sitting in such Colony.

Power to  
make rules  
of Court.

**31.** (1) The authority in whom is vested the power to make Rules of Court in a colony may make Rules of Court—

(a) regulating the practice and procedure on appeals;

(b) regulating the fees to be allowed to barristers, advocates, solicitors and attorneys in respect of appeals; and

(c) prescribing the forms to be used in the Colony in respect of appeals.

(2) If no provision is made by the Rules or Rules of Court in respect of any matter or proceeding, the practice or procedure governing appeals in the Colony shall apply.

(3) Where no provision is made by Rules of Court for the fees to be allowed to barristers, advocates, solicitors and attorneys in the Court of Appeal, the scale of fees in force in the Court shall apply.

(4) Costs shall be taxed in accordance with the law and practice of the Court.

Revocation.

**32.** The West Indian Court of Appeal Rules, 1920, and the West Indian Court of Appeal (Amendment) Rules, 1930, are hereby revoked:

Provided that nothing in these Rules shall affect anything done under the Rules hereby revoked.

Date of  
commence-  
ment.

**33.** These Rules shall come into operation on the First day of October, 1945, and shall also apply as far as may be practicable (unless otherwise expressly provided) to all proceedings taken on or after that day in all appeals then pending.

(Signed) H. W. B. BLACKALL, *Chief Justice of Trinidad and Tobago, President.*

E. A. COLLYMORE, *Chief Justice of Barbados.*

JOHN VERITY, *Chief Justice of British Guiana.*

CLEMENT MALONE, *Chief Justice of the Windward Islands and Leeward Islands.*