

*Statutory Instrument No. 53 of 1975*

**COURT OF APPEAL ACT**

(Cap. 04:01)

**COURT OF APPEAL RULES, 1975**

*(Published on 25th April, 1975)*

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IN EXERCISE of the powers conferred by section 16 of the Court of Appeal Act, the President of the Court of Appeal hereby makes the following Rules —

*PART I Preliminary*

- Citation           **1.** These Rules may be cited as the Court of Appeal Rules, 1975.
- Interpretation   **2.** In these Rules, unless the context otherwise requires —
- “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;
- “Court” means the Court of Appeal;
- “record” means the aggregate of papers relating to an appeal (including the pleadings, proceedings, evidence and judgments) proper 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) directly affected by the appeal and includes the legal practitioner representing him;
- (b) in a criminal appeal, means the person who undertakes the defence of the judgment appealed against.

*PART II General*

**3.** The date, time and venue of the sittings of the Court shall be determined by the President of the Court. Sittings

**4.** The judgment of the Court shall be pronounced by the President or by such other Judge of the Court as the President of the Court may direct. Judgment

**5.** (1) The fees set out in the First Schedule shall be payable in respect of the matters to which they relate. Fees of Court and legal practitioners' fees and allowances

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

Provided that the Taxing Master shall on every taxation allow such costs, charges and expenses as appear to him to have been necessary or proper for the attainment of justice or for defending the rights of any party, but, save 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 over-caution, negligence or mistake, or by payment of a special fee to a legal practitioner or by other unusual expenses.

(3) 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 full travelling and subsistence allowances as set out in the tariff.

**6.** (1) The Registrar shall keep —

(a) a Criminal Appeal Register; and

(b) a Civil Appeal Register. Registers to be kept by Registrar

(2) The following particulars shall be entered in the Criminal Appeal Register and the Civil Appeal Register —

(a) the number of the appeal;

(b) the names of the appellant and the respondent; and

(c) the date and place of hearing of the appeal.

**7.** The forms set out in the Second, Third and Fourth Schedules, or forms as near thereto as circumstances permit, shall be used in all cases to which such forms are applicable. Forms

**8.** (1) The Court may extend the time prescribed for the doing of anything to which these Rules apply, or may direct a departure from these Rules in any other way in the interest of justice. Extension of time and departure from Rules

(2) Any application for extension of time shall be supported by an affidavit setting forth good and substantial reasons for the application and, where the application is for leave to file an appeal out of time, the affidavit shall contain grounds of appeal which *prima facie* show good cause for leave to be granted

(3) Any application under this rule may be heard by a single judge of the Court, designated by the President of the Court of Appeal. The President or such judge may grant or refuse such application or may refer it to the Court for determination.

Service

**9.** (1) Any reference in these Rules to an address for service means an address within Botswana where any notice, pleading, order, summons, warrant, proceeding and written communication, if not required to be served personally, may be left, or to which they may be sent.

(2) Where, under these Rules, any person has given an address for service, any notice, pleading, order, summons warrant, proceeding or other written communication which is not required to be served personally, shall be sufficiently served upon him if it is left at that address or sent by registered post to that address.

(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) Any person desiring to change his address for service shall notify the Registrar, who shall thereupon communicate the new address for service to anyone to whom he may have communicated the former address.

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

(6) 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 the personal service under rules of the High Court.

### PART III *Civil Appeals*

Application

**10.** This Part shall apply to appeals from the High Court or other tribunal from which appeals lie to the Court acting either in its original or appellate jurisdiction in civil cases, and matters related thereto .

Appeals as of right (Civil Form 1)

**11.** 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. The appellant shall deliver, or cause to be delivered, such notice to the Registrar of the court below and shall at the same time serve a copy of such notice on the respondent. The Registrar of the court below shall, subject to the provisions of these Rules, date and file such notice on receipt thereof.

Notice of appeal

**12.** (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. It shall also have endorsed on it an address within Botswana for service.

(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 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 save the general ground that the judgment is against the weight of evidence, 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) 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.

(6) 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.

**13.** (1) A notice of appeal shall be filed within six weeks of the date of the judgment appealed against. The Registrar of the court below shall not file any notice of appeal which is presented after the expiration of the period set forth in this rule unless leave to appeal out of time has previously been obtained. Time for filing of notice

(2) When leave to appeal out of time is so granted, a copy of the order granting such leave shall be annexed to the notice of appeal.

**14.** (1) Where an appeal lies only by leave of the Court or of the court below, any application to the court for such leave shall be made *ex parte* by notice of motion, stating shortly the reasons upon which the application is made. The notice of motion shall be supported by an affidavit deposing to all relevant facts including, where it is so, the fact that the court below has refused leave, annexing where possible the judgment of the court below. Appeals by leave (Civil Form 2)

(2) If leave to appeal is granted by the court below or the Court, the appellant shall thereafter file a notice of appeal within the period of time stipulated in the order granting leave, or, if no time is stipulated, then within twenty-one days.

**15.** (1) Every person who by virtue of service on him of a notice of appeal becomes a respondent to any appeal or intended appeal shall within thirty days after service on him of the notice of appeal file with the Registrar of the court below notice of a full and sufficient address for service. The Registrar of the court below shall forthwith transmit a copy of the notice of address to the Registrar and shall cause a copy thereof to be served on the appellant. Addresses for service

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

(3) Any party to an appeal or intended appeal may change his address for service at any time by filing and serving on all other parties to the appeal or intended appeal notice of such change.

Registrar's  
summons  
(Civil Form 3)

**16.** (1) The Registrar of the court below shall, after the expiration of the time prescribed for filing notice of address for service, summon the parties before him to —

- (a) settle the documents to be included in the record of appeal;
- (b) fix the amount to be deposited by the appellant to cover the estimated cost of making up and forwarding the record of appeal; and
- (c) fix the amount to be deposited by the appellant or secured by bond for the respondent's costs of the appeal.

(2) The Registrar of the court below shall, whether any of the parties attend or not, provided that notice has been duly served on each of the parties who filed an address for service, proceed to settle and determine these matters in accordance with the provisions of rules 17, 18 and 19.

Record of  
appeal

**17.** (1) The record of appeal shall contain the following documents in the order set out —

- (a) an index;
- (b) a statement by the Registrar of the court below giving brief particulars of the case and including a schedule of the fees paid;
- (c) copies of the documents settled by the Registrar of the court below for inclusion in the record of appeal, in accordance with rule 16;
- (d) a copy of the notice of appeal and other relevant documents filed in connexion with the appeal.

(2) The Registrar of the court below, as well as the parties, shall endeavour to exclude from the record all documents (more particularly such as are merely formal) which 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. Where part or parts only of any lengthy document are directly relevant to the subject matter of the appeal it shall be permissible to omit to copy such parts of the document as are neither directly relevant to the subject matter of the appeal nor necessary for the proper understanding of the part or parts that are so relevant.

(3) If the Registrar of the court below or any party objects to the inclusion of a document on the grounds that it is unnecessary or irrelevant and the other party nevertheless insists upon it 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 the inclusion of the document was objected to and the party who so objected.

(4) It shall not be necessary for copies of individual documents to be separately certified but the Registrar of the court below shall certify as correct each copy of the record transmitted by him, in accordance with these Rules.

**18.** The appellant shall, within such time as the Registrar of the court below may direct, pay the fees prescribed for preparing the record, calculated at the full cost of one copy for the appellant and one-fifth of the cost for each of the five copies for the use of the Court.

Cost of record

**19.** The appellant shall, within such times as the Registrar of the court below shall fix, deposit such sum as shall be determined by such Registrar or give security therefor by bond with one or more sureties to the satisfaction of such Registrar for the due prosecution of the appeal and for the payment of any costs which may be ordered to be paid by the appellant:

Security for costs  
(Civil Form 4)

Provided that no deposit or security shall be required where the deposit would be payable or security given by Government.

**20.** If the appellant fails to comply with any of the requirements of rule 18 or 19, the Registrar of the court below shall so inform the respondent and the Registrar, and the Court may thereupon order that the appeal be dismissed with or without costs.

Non-compliance with rule 18 or 19

**21.** (1) The Registrar of the court below shall transmit to the Registrar the record when ready together with:

Transmission of record

(a) a certificate of service of the notice of appeal:

(Civil Forms 5 and 6)

(b) a certificate that the conditions imposed under rules 18 and 19 have been fulfilled;

(c) five copies of the record for the use of the Court; and

(d) the docket or file of the case in the court below containing all papers or documents filed by the parties in connexion thereto.

(2) The Registrar of the court below shall also cause to be served on all parties mentioned in the notice of appeal who have filed addresses for service, notices that the appeal has been forwarded to the Registrar of the Court.

(Civil Form 7)

(3) On the receipt of all the documents referred to in subrule (1) and a copy of the document referred to in subrule (2), the Registrar of the Court shall enter the appeal in the cause list.

**22.** (1) It shall not be necessary for a respondent to give formal notice of cross appeal; but if a respondent intends, at the hearing of the appeal, to contend that the decision appealed against should be varied or that it should be affirmed on grounds other than those relied on by the court below, or that part of it is erroneous and should be set aside, then he shall, within thirty days after service upon him of the notice of appeal, cause written notice of such intention to be given to every party who may be affected by such contention, whether or not such party has filed an address for service. In such notice the respondent shall clearly state the grounds on which he intends to rely and within the same period he shall file with the Registrar of the court below six copies of such notice of which one shall be included in the record, and the other five copies provided for the use of the Court.

Cross appeal

(Civil Form 8)  
(Civil Form 9)  
(Civil Form 10)

(2) Omission to give such notice shall not diminish any powers of the Court, but may, in the discretion of the Court, be a ground for postponement or adjournment of the appeal upon such terms as to costs or otherwise as may be just.

Notice of preliminary objection to be filed  
(Civil Form 11)

**23.** (1) A respondent intending to rely upon a preliminary objection to the hearing of the appeal shall give the appellant three clear days' notice thereof before the hearing, setting out the grounds of objection, and shall file such notice together with six copies thereof with the Registrar within the same time.

(2) If the respondent fails to comply with this rule, the Court 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.

Abandonment of appeal  
(Civil Form 12)

**24.** (1) An appellant may at any time abandon his appeal by giving notice of abandonment thereof to the Registrar and to any respondent who has been served with notice of appeal, and upon such notice being given the appeal shall be deemed to have been dismissed by the Court. The respondent shall be entitled to costs up to the date on which he receives notice of such abandonment.

(Civil Form 13)

(2) If all parties to the appeal consent to the withdrawal of the appeal without an order of the Court, the appellant may file in the Court a document of notice of withdrawal of appeal by consent, signed by the parties or the legal practitioners representing them, and the appeal shall thereupon be deemed to have been withdrawn and shall be struck out of the list of appeals by the Registrar. In such event, any sum lodged in Court as security for the costs of the appeal shall be paid to the appellant.

(3) The withdrawal of an appeal with the consent of the parties under subrule (2) shall be a bar to further proceedings on any application made by the respondent under rule 22.

(4) A respondent who has given notice under rule 22 shall be entitled to proceed with his appeal under that rule notwithstanding the abandonment of the appeal by the appellant.

Notice of hearing

**25.** (1) The Registrar shall, after obtaining directions from the President of the Court, cause notice of the date of hearing to be served upon the appellant and respondent.

(2) At any time before the hearing of the appeal, any party to the appeal may file with the Registrar a declaration in writing that he does not wish to be present in person or by a legal practitioner at the hearing of the appeal. Such notice shall be accompanied by six copies of such arguments, if any, as he desires to submit to the Court. The party filing such declaration and arguments must serve a copy of such declaration and arguments upon every other party who has filed an address for service and thereupon the appeal shall be dealt with as if the party had appeared.

Heads of argument to be filed

**26.** (1) In every civil appeal the appellant shall, not later than twenty-one days before the day of hearing of the appeal, file with the Registrar of the Court six copies of the main heads of the argument to be presented on appeal, together with a list of the authorities to be quoted in support of each head.

(2) A copy of the main heads of the argument as aforesaid shall be served within the same period on the respondent. The respondent shall, as soon as may be thereafter, but not later than seven days prior to the hearing of the appeal, file with the Registrar six copies of the main heads of his argument in reply, together with a list of authorities to be quoted in support of each main head.

(3) When, however, the filing of the record on appeal does not allow the main heads of the argument to be filed within twenty-one days of the hearing, the appellant shall file the same without delay, and the respondent shall thereafter file his argument in reply as soon as possible.

**27.** (1) If the appellant fails to appear when his appeal is called for hearing and he has not taken action under rule 25, the appeal may be struck out or dismissed with or without costs. Non-appearance of appellant

(2) When an appeal has been struck out owing to the non-appearance of the appellant, the Court, may on a motion by the appellant and if it thinks fit, and on such terms as to the payment of court fees, costs or otherwise as it may deem just, direct the appeal to be re-entered for hearing.

**28.** (1) If the respondent fails to appear when the appeal is called for hearing and he has not taken action under rule 22 (2), the Court may proceed to hear the appeal *ex parte*. Non-appearance of respondent

(2) Where an appeal has been heard *ex parte* under this rule and any judgment has been given therein adverse to the respondent, he may apply to the Court to set it aside and to re-hear the appeal.

(3) No application to set aside and re-hear under this rule shall be made after the expiration of twenty-one days from the date of the judgment sought to be set aside:

Provided that a respondent who has failed within the period of twenty-one days to make application under this rule may nevertheless at any time within a further period of six weeks thereafter apply to the Court on notice to the appellant to set aside such judgment and the Court, if satisfied that good and sufficient cause has been shown for the application being out of time, may grant the application and make such order in relation thereto or as to costs as it may deem fit in the circumstances.

(4) Any such application shall be by motion accompanied by an affidavit setting forth the reasons and grounds for the application and the Court may thereupon in its discretion set aside the judgment and order that the appeal be re-head at such time and upon such conditions as to costs or otherwise as it may think fit.

**29.** (1) It is not open as of right to any party to an appeal to adduce new evidence in support of his original case but, for the furtherance of justice, the Court may, where it thinks fit, allow or require any new evidence to be adduced in accordance with Part V of these Rules. A party may, by leave of the Court, allege any facts essential to the issue that have come to his knowledge after the decision of the court below and adduce evidence in support of such allegations. Powers of the Court

(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 powers aforesaid may be exercised by the Court notwithstanding that the 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 as may be just.

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

Poor appellants **30.** (1) If an appellant alleges that he is unable to pay the fees on appeal, the Registrar of the court below, upon application being made for that purpose, shall enquire into the means of the applicant and for that purpose may require the applicant to give evidence on oath, either in person or by affidavit:

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 the Court as such poor person, unless the Registrar of the court below is satisfied that his financial position has materially changed.

(2) The decision of the Registrar of the court below shall be final as to whether the applicant has sufficient means to finance his appeal or not. If the Registrar of the court below is satisfied as to the applicant's lack of means, he shall refer the case to a legal practitioner for consideration.

(3) If the legal practitioner certifies that he has considered the case and that he believes the applicant has a reasonable probability of success, the Registrar of the court below shall forward to the Registrar 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. No fees other than those in such statement shall be payable by the applicant. The Registrar shall thereupon assign a legal practitioner to the applicant. Such legal practitioner shall not take any fee from the applicant for anything done in the conduct of the appeal.

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

Taxation of costs

**31.** (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 in the First Schedule 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 in Chambers to a Judge of the Court to set aside such order, decision or ruling and to make such further order as he may think fit. 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**

**32.** 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, acting either in its original or its appellate jurisdiction in criminal matters. Application

**33.** (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 of its appellate jurisdiction, shall commence his appeal by sending to the Registrar of the court below a notice of appeal or notice of application for leave to appeal, or notice of application for extension of time within which such notice is to be given. Commence-  
ment of  
appeal  
(Criminal  
Forms 1, 2, 3,  
4, 5 and 6)

(2) The notice of appeal or notice of application for leave to appeal shall reach the Registrar not later than six weeks after the judgment, sentence or order appealed against:

Provided that where such notice relates to an appeal against a sentence of death, it shall be delivered to the person in charge of the prison where the appellant is confined not later than fourteen days after the pronouncement of the sentence by the court below.

**34.** (1) Every notice of appeal or notice of application for leave to appeal or notice of application for extension of time within which such notice shall be given or other notice required or authorized to be given, shall be in writing and signed by the person giving the same or by the legal practitioner representing him. All notices required or authorized to be given shall be addressed to the Registrar of the court below. How notices,  
etc., must  
be signed

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

(3) Where, on a trial of a person entitled to appeal, it has been contended that he was not responsible according to law for his actions on the grounds that he was insane at the time the act was done or the omission made by him, or that at the time of the trial he was of unsound mind and consequently incapable of making his defence, any notice required to be given and signed by the appellant himself may be given and signed by his 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, it shall be sufficient compliance therewith if such notice or other document is signed by the managing director, secretary, manager or by the legal practitioner representing such body corporate.

**35.** (1) Where an appeal lies to the Court as of right, it shall be instituted in the form of a notice of appeal. The appellant shall deliver or cause to be delivered such notice to the Registrar of the court below and at the same time he shall deliver or cause to be delivered a copy of such notice on the respondent. Appeals as of  
right

(2) A notice of appeal shall in all respects comply with the provisions relating to the notice of appeal in civil appeals as laid down in rules 12 to 20 inclusive.

- Appeals by leave** **36.** (1) Where an appeal lies only by leave of the Court or of the court below, any application to the Court for such leave shall be made by notice of application for leave to appeal, stating shortly the reasons upon which the application is made. The notice shall state all relevant facts including, where it is so, the fact that the court below has refused leave, annexing where possible the judgment of the court below. The notice shall also set forth concisely and under distinct heads the grounds of objection to the judgment appealed against and such grounds shall be numbered consecutively.
- (2) The notice shall be delivered to the Registrar and a copy shall be served upon the respondent forthwith.
- (3) If leave to appeal is granted by the Court, it shall not be necessary for such appellant to give any notice of appeal but the notice shall in such case be deemed to be a notice of appeal.
- Cost of record** **37.** (1) The appellant shall, within such time as the Registrar of the court below may direct, pay the court fees prescribed for preparing the record, calculated at the full cost of one copy for the appellant and one-fifth cost for each of the five copies for the use of the Court.
- (2) The Registrar of the court below may, on good cause shown, waive payment of the fees payable under this rule. Any refusal by such Registrar to waive such fees shall be subject to appeal to a Judge of the High Court in Chambers whose decision shall be final.
- Fees** **38.** (1) The fees set out in the First Schedule shall be paid in respect of the several matters mentioned therein:
- Provided that the court below or the Court may waive in whole or in part the payment of any fees by any appellant or may order that any fees already paid be refunded to the appellant as may seem just.
- (2) The fees payable in appeals from prosecutions by persons other than the States shall be as laid down in respect of civil matters.
- Record in criminal appeals from the court below in its original jurisdiction** **39.** (1) The record of appeal in an appeal or application relating to an appeal from the court below acting in its original jurisdiction in criminal cases shall contain legibly typed copies of the following items, arranged in this order —
- (a) an index;
- (b) the charge or information;
- (c) the Judge's notes of the evidence and minutes of the proceedings:
- Provided that if shorthand notes or tape or other recording has been taken, a copy of the transcript thereof shall be included, either in addition to or in substitution of the Judge's notes, as he may direct;
- (d) the judgment and any explanation thereof;
- (e) the proceedings on or after sentence insofar as not included in the notes of the hearing or minutes of proceedings;
- (f) all documentary exhibits put in at the trial, including depositions read in consequence of the absence of a witness:
- Provided that in the case of books of accounts or other documents of great length, extracts of the relevant portions thereof only may be included;

(g) the notice of appeal or notice of application for leave to appeal, or notice of application for leave to appeal out of time in which such notice shall be given.

(2) It shall not be necessary for the record of appeal to contain copies of any recognizances entered into or documents filed in connexion with the appeal or application other than those set out in subrule (1) unless the Court or a Judge of the court below shall otherwise direct.

**40.** (1) The record of appeal in an appeal or application relating to an appeal from the High Court acting in its appellate jurisdiction in criminal matters shall contain legibly typed copies of the following items, arranged in this order —

Record in appeals in criminal matters from the court below in its appellate jurisdiction

- (a) an index, which shall include the particulars of the record of proceedings from the lower court;
- (b) the record of the proceedings of the lower court as submitted to the High Court;
- (c) the notice of appeal and all other relevant documents filed in connexion with the appeal in the court below;
- (d) the notes of the Judge on the hearing of the appeal and minutes of the proceedings, including notes of evidence, if any, taken in the court below;
- (e) the judgment of the court below;
- (f) the notice of appeal to the Court or notice of application for leave to appeal to the Court or notice of application for leave to appeal out of time in which such notice shall be given.

(2) It shall not be necessary for the record of appeal to contain copies of any recognizance entered into for purpose of appeal to the High Court or to the Court or application to the Court unless the Court or a Judge of the High Court shall otherwise direct.

**41.** Where an appeal is lodged against sentence only following upon conviction after trial, the record to be placed before the Court on the hearing of the appeal shall consist of a record of the charges, pleas, judgment and all proceedings after judgment, inclusive of any representations by, or on behalf of, the convicted person or the State and, where there is a private prosecutor, by or on behalf of the prosecution:

Record in appeals against sentence only

Provided that other parts of the original record may be transcribed if so required by the Registrar or by the Court.

**42.** (1) Where the Court or the court below admits an appellant to bail pending the determination of his appeal, the Court which admitted him to bail shall specify the amounts in which the appellant and his surety or sureties (unless the Court directs that no surety is required) shall be bound by recognizances 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 surety or sureties (if any) shall be taken before such Registrar.

Bail (Criminal Forms 7 and 8)

(2) An appellant who has been admitted to bail shall be personally present at each and every hearing of his appeal and at the final determination thereof. The Court may, in the event of such appellant not being

(Criminal Form 9) present at any hearing of this appeal, if it thinks right so to do, decline to consider the appeal, and may proceed summarily to dismiss the same and may issue a warrant for the apprehension of the appellant:

Provided that the Court may consider the appeal in his absence, or make such other order as it thinks fit.

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

Abandonment of appeal (Criminal Form 10)

**43.** (1) An appellant may, at any time, abandon his appeal by giving notice thereof to the Registrar and upon such notice being given the appeal shall be deemed to have been dismissed by the Court.

(2) Upon receipt of a notice of abandonment duly completed and signed or marked by the appellant or party authorized to sign notices under rule 34, the Registrar shall give notice thereof to the respondent, the prison authority and the Registrar of the court below, and in the case of an appeal against a conviction involving sentence of death, shall in like manner give notice to the Permanent Secretary, Office of the President, for the information of the authority responsible for advising His Excellency the President on the exercise of the prerogative of mercy, and the Registrar shall also return to the Registrar of the court below any original documents and exhibits received from him.

Criminal Form 11)

Notice of abandonment of appeal may be withdrawn (Criminal Form 12)

**44.** An appellant who has abandoned his appeal may, with the leave of the Court, withdraw his notice of abandonment by sending to the Registrar a notice of application for leave to withdraw an abandonment of appeal, together with a notice of application for leave to appeal out of time, if applicable.

Notification of final determination of appeals (Criminal Form 13)

**45.** (1) On the final determination of any appeal or of any application to the Court, the Registrar shall give to the appellant, if he is in custody and has not been present at such final determination, and to the respondent and the prison authority, notice of such determination.

(2) In the case of an appeal in relation to a conviction involving sentence of death, the Registrar shall, on receiving notice of appeal, send copies thereof to the Permanent Secretary, Office of the President, for the information of the authority responsible for advising His Excellency the President on the exercise of the prerogative of mercy, to the respondent and to the prison authority. On the determination of the appeal by the Court the Registrar shall notify the result of the appeal to the said Permanent Secretary, the appellant if he was not present at the hearing, to the respondent and to the prison authority.

Notification of result of appeal (Criminal Form 14)

**46.** (1) The Registrar, at the final determination of the appeal, shall notify, in such manner as he thinks most convenient, the Registrar of the court below the decision of the Court in relation thereto, and also any orders or directions made or given by the Court in relation to such appeal or any matter connected therewith.

(2) The Registrar of the court below shall, on receiving the notification referred to in this rule, enter the particulars thereof on the record of the court below.

**47.** On the hearing and determination of any appeal or any proceedings preliminary or incidental thereto, no costs shall be allowed on either side:

Costs

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

**48.** The Registrar, after consultation with the President of the Court, may assign a legal practitioner to an appellant who is otherwise unable to brief one in any appeal in which it appears desirable in the interests of justice that the appellant should have legal aid:

Assignment of legal practitioner to appellants

Provided that in any case in which sentence of death has been pronounced on the appellant by the court below, the Registrar shall, after consultation with the President of the Court, assign a legal practitioner to the appellant.

**49.** Any application for leave to appeal may be heard by a single judge of the Court designated by the President of the Court of Appeal. The President or such judge may grant or refuse such application or may refer it to the Court for determination.

Leave to appeal may be determined by a single judge

#### PART V *Taking of Additional Evidence*

**50.** This part, except where the context otherwise requires, applies to appeals to the Court whether in civil or criminal matters.

Application of Part

**51.** 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

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

Witness summons (Miscellaneous Form I)

**53.** Witnesses who attend before the Court shall be paid fees and reimbursements on the same scales as are applicable in the High Court. 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

**54.** 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.

Presence of parties at examination

**FIRST SCHEDULE**

**A. FEES IN CIVIL MATTERS**

	<b>R</b>
(1) On filing notice of appeal against a final judgment or decision:.....	15,00
(2) On respondent's notice of intention to contend that decision of court below be varied.....	15,00
(3) On filing notice of appeal against an interlocutory order or decision.....	6,00
(4) On filing a motion for leave to appeal :.....	6,00
(5) On filing notice of appeal where leave granted.....	15,00
(6) On filing motion for extension of time:	
(a) if time has not yet expired.....	7,30
(b) if time has already expired.....	20,00
(7) On filing any motion not otherwise provided for :.....	6,00
(8) On filing amended or additional grounds of appeal:	
(a) if filed at least three weeks before the date fixed for the commencement of the sitting for which the appeal is set down :.....	3,00
(b) if filed less than three weeks, but at least two clear days before such date.....	9,00
(c) if filed later, but before hearing of appeal.....	18,00
(9) On amending or adding to grounds of appeal by leave or direction of the court at hearing.....	30,00
(10) Hearing fee payable in advance :.....	12,00
(11) On filing motion to restore appeal struck out for the non-appearance of appellant :.....	20,00
(12) On filing motion to set aside and re-hear appeal determined in the absence of respondent.....	30,00
(13) On filing motion to set aside Taxing Master's decision or order :.....	3,00
(14) On every order of the court made on a final determination of the appeal :.....	6,00

**B. FEES IN CRIMINAL MATTERS**

	<b>R</b>
(1) On filing notice of appeal against judgment, order of decision of the court below :.....	15,00
(2) On filing notice of motion for leave to appeal out of time.....	6,00
(3) On filing notice of any other motion or application.....	3,00

**C. FEES – GENERAL**

- (1) The cost of preparing record of appeal in the court below or of taking copies of minutes, records, judgments and any orders of the court shall be at the rate of 20 cents per folio or part thereof, such part not being less than one-quarter of a folio.

- (2) The fee for certifying such copies as aforesaid shall be at the rate of 10 cents 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 connexion 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.

**Note:** A folio shall consist of 100 words, four figures to be counted as one word, and any fraction of less than 25 words shall not be counted as an additional folio.

#### D. LEGAL PRACTITIONERS' FEES

	<i>Minimum</i>	<i>Maximum</i>
	R	R
(1) On taking instructions .....	-	5,00
(2) Fee on the Brief .....	50,00	300,00
(3) Attendance at Registrar's office to settle record of appeal : .....	-	10,00
(4) Attendance in Court and arguing appeal:		
(a) one day hearing : .....	50,00	200,00
(b) for each subsequent day of hearing .....	25,00	75,00
(5) Preparing and arguing motions and other interlocutory applications:		
(a) when taken on the same day as argument in the appeal : .....	-	5,00
(b) when taken on a different day and not as part of the appeal ....	15,00	50,00
(6) Bills of Cost:		
(a) for drawing up bill of costs, making the necessary copies and attending settlement : .....	15,00	50,00
(b) for attending taxation .....	-	15,00

**Note:** The Court may increase the maxima shown in items (2) and (4) in any case of special difficulty.

#### E. TRAVELLING AND SUBSISTENCE ALLOWANCES

1. A travelling allowance for a legal practitioner may be allowed at a rate of 12 cents per mile 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 allowance for a legal practitioner may be allowed at the rate of R15,00 for every night it is necessary for him to remain at the place where the Court is sitting or where he necessarily has to transact the business on behalf of his client.

SECOND SCHEDULE

Civil Form I

NOTICE OF APPEAL

Between:

*Plaintiff*

- and -

*Defendant*

TAKE NOTICE that the plaintiff/defendant being dissatisfied with the decision/part of the decision of the High Court, more particularly stated in paragraph 2 below, contained in the judgment/order of the Court dated the..... day of ....., 19...., does hereby appeal to the Court of Appeal upon the grounds set out in paragraph 3 and will at the hearing of the appeal seek the relief set out in paragraph 4.

AND the appellant further states that the names and addresses of the 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:

(1) :.....

(2) :.....

(3) :.....

4. Relief sought from the Court of Appeal:

.....

5. Persons directly affected by the appeal:

*Name*

*Address*

(1) :.....

(2) :.....

(3) :.....

DATED this.....day of....., 19.....

*Appellant*

**Civil Form 2**

**IN THE COURT OF APPEAL OF BOTSWANA**

**Notice of Motion for Leave to Appeal**

TAKE NOTICE that the Court of Appeal will be moved on the . . . . . day of . . . . ., 19. . . . ., at . . . . . o'clock in the forenoon or as soon thereafter as Counsel can be heard on the hearing of an application for leave to appeal against the decision of the Court given on the . . . . .day of . . . . ., 19. . . . .

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

DATED this . . . . . day of . . . . ., 19. . . . .

-----  
*Applicant, or the legal practitioner representing him whose address for service is:*

.....  
.....

To: Registrar, Court of Appeal

And to: .....  
.....  
.....  
Respondents

**Civil Form 3**

**IN THE COURT OF APPEAL OF BOTSWANA**

**SUMMONS TO PARTIES BY REGISTRAR TO SETTLE RECORD**

Between:

..... *Appellant*

--and--

..... *Respondent*

TAKE NOTICE that all parties concerned are required to attend before me in my Chambers at . . . . . on the . . . . . day of . . . . ., 19. . . . ., at the hour of . . . . . in the . . . . .noon to proceed with settling of the record of appeal herein.

DATED this . . . . .day of . . . . ., 19. . . . .

-----  
*Registrar of the High Court*

IN THE COURT OF APPEAL OF BOTSWANA  
BOND FOR COSTS ON APPEAL

KNOW ALL MEN, by these presents, that we .....  
of ..... and :.....  
of ..... and :.....  
of ..... are jointly and severally held and  
firmly bound to :.....  
of ..... in the sum of .....  
of lawful money to be paid to the said.....,  
his executors, administrators or assigns, for which payment well and  
truly to be made, we bind ourselves, and each of us for himself, in the whole,  
our and every of our heirs, executors and administrators, firmly by these  
presents.

Sealed with our seals.

DATED the .....day of....., 19 ....  
WHEREAS a suit is now pending in the Court at.....  
wherein the above-bounded..... is Plaintiff, and the  
said..... is Defendant;

AND WHEREAS a judgment was given by the Court therein, on the  
.....day of..... 19 .... for the said .....  
and the said..... has filed Notice of Appeal from  
the said Judgment;

AND WHEREAS it is by law provided that the party appealing shall  
give security to the satisfaction of the Registrar of the court below for the  
due prosecution of the appeal and for the payment of any costs which  
may be ordered to be paid by the appellant;

AND WHEREAS the above-named.....  
and :..... and :.....  
at the request of the said..... have agreed to enter  
into this obligation for the purpose aforesaid;

NOW the condition of this obligation is such that if the said.....  
.....shall duly prosecute the appeal and if the above-  
bounded.....  
and..... any or either of them shall  
pay any costs which may be ordered to be paid by the appellant this  
obligation shall be void, otherwise it shall remain in full force.

SIGNED, SEALED AND DELIVERED BY:

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

In the presence of:

Name .....  
Signature : .....  
Address : .....

**Civil Form 5**

**IN THE COURT OF APPEAL OF BOTSWANA  
CERTIFICATE OF SERVICE ON NOTICE OF APPEAL**

Between:

..... *Appellant*

— and —

..... *Respondent*

I, ....., Registrar of the High Court, DO HEREBY CERTIFY that notice of appeal in the above-named case was duly served upon ..... the respondent herein.

DATED at ..... this ..... day of ....., 19.....

.....  
*Registrar of the High Court*

**Civil Form 6**

**IN THE COURT OF APPEAL OF BOTSWANA  
CERTIFICATE OF REGISTRAR THAT CONDITIONS OF  
SERVICE HAVE BEEN FULFILLED**

Between:

..... *Appellant*

-- and --

..... *Respondent*

I, ....., Registrar of the High Court, DO HEREBY CERTIFY that the above-named appellant has duly and punctually complied with the conditions of appeal imposed upon him in the above-named case.

DATED this..... day of....., 19.....

.....  
*Registrar of the High Court*

**To:** Registrar, Court of Appeal of Botswana

**Civil Form 7**

**IN THE COURT OF APPEAL OF BOTSWANA  
NOTICE TO PARTIES OF DISPATCH OF RECORD**

Between:

..... *Appellant*

- and -

..... *Respondent*

TAKE NOTICE that the record in the above-named appeal has this day been forwarded to the Registrar of the Court of Appeal.

DATED this..... day of....., 19.....

-----  
*Registrar of the High Court*

**To:**

..... of :..... *Appellant*

..... of :..... *Respondent*

**Civil Form 8**

**IN THE COURT OF APPEAL OF BOTSWANA  
NOTICE BY RESPONDENT OF INTENTION TO  
CONTENT THAT DECISION OF COURT BELOW BE VARIED**

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....., 19....., be varied as follows —

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

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

(1) :.....

(2) :.....

(3) :.....

etc.

DATED this..... day of....., 19.....

-----  
*Respondent*

**Civil Form 9**

**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 BELOW**

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 ....., 19...., be affirmed on grounds other than those relied on by the Court below.

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

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

DATED this..... day of....., 19....

.....  
*Respondent*

**Civil Form 10**

**IN THE COURT OF APPEAL OF BOTSWANA  
NOTICE OF INTENTION TO CONTEND THAT PART  
OF JUDGMENT IS ERRONEOUS**

Between:

..... *Appellant*  
- and -  
..... *Respondent*

TAKE NOTICE that upon the hearing of the above appeal the respondent intends to contend that the part of the decision of the High Court stated in paragraph 2 below contained in the judgment/order of the Court, dated the .....day of....., 19...., is erroneous upon the grounds set out in paragraph 3, and will seek the relief set out in paragraph 4.

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

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

3. Grounds to be relied upon-

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

etc.

4. Relief sought from the Court—

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

DATED this ..... day of ....., 19....,

\_\_\_\_\_  
*Respondent*

**Civil Form 11**

**IN THE COURT OF APPEAL OF BOTSWANA  
NOTICE BY RESPONDENT OF INTENTION TO  
RELY UPON PRELIMINARY OBJECTION**

*Appeal No.*..... 19....

Between:

..... *Appellant*

– and –

..... *Respondent*

TAKE NOTICE that the respondent herein named intends, at the hearing of this appeal, to rely upon the following preliminary objection, notice whereof is hereby given to you, namely—

.....  
.....

AND TAKE NOTICE FURTHER that the grounds of said objection are as follows —

(1) .....

(2) .....

(3) .....

etc.

DATED this ..... day of ....., 19....

\_\_\_\_\_  
*Respondent*

**To:** the above-named appellant.

**Civil Form 12**

IN THE COURT OF APPEAL OF BOTSWANA  
**NOTICE OF ABANDONMENT OF APPEAL**

*Appeal No.* ..... 19....

Between:

..... *Appellant*

- and -

..... *Respondent*

TAKE NOTICE that the appellant herein intends to withdraw, and hereby wholly withdraws, his appeal against the respondent in the above-mentioned appeal.

DATED at..... this..... day of....., 19....

-----  
*Appellant*

**To:** The Registrar,  
The Court of Appeal of Botswana.

**And to:** .....  
.....  
.....

**Civil Form 13**

IN THE COURT OF APPEAL OF BOTSWANA  
**NOTICE OF WITHDRAWAL OF APPEAL BY AGREEMENT**

Between:

..... *Appellant*

- and -

..... *Respondent*

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

DATED this..... day of....., 19....

-----  
*Appellant, or the legal  
practitioner representing him*

-----  
*Respondent, or the legal  
practitioner representing him*

**To:** The Registrar,  
The Court of Appeal of Botswana

THIRD SCHEDULE

**Criminal Form I**

IN THE COURT OF APPEAL OF BOTSWANA

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

THE STATE v. ....

**To:** The Registrar of the High Court

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 (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....., 19.....

**Particulars of Trial and Conviction**

1. Date of trial : .....
2. In what court tried : .....
3. Sentence .....
4. Whether questions of law now raised were raised at the trial : .....

The following questions to be answered:

(a) Do you desire to be present on the hearing of your appeal by the Court .....

(b) If you so desire, state your reasons .....

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

**Note:** The Court will, if you so desire, consider your case and argument if put into writing by you or on your behalf, instead of your case and argument being presented orally. If you so desire to present your case and argument in writing, submit as fully as you think right, your case and argument in support of your appeal.

**Criminal Form 2**

**IN THE COURT OF APPEAL OF BOTSWANA  
NOTICE OF APPLICATION FOR LEAVE TO APPEAL FROM  
DECISION OF THE HIGH COURT SITTING AS A COURT OF  
FIRST INSTANCE**

THE STATE v. : .....

**To:** The Registrar of the High Court

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

and being desirous of appealing against my conviction/and sentence,  
**DO HEREBY GIVE NOTICE** that I hereby apply for leave to appeal  
on the following grounds:

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

.....  
*Signature or mark of Applicant*

**Witness to mark:**

Name : .....

Signature .....

Address : .....

DATED this ..... day of ....., 19.....

**Particulars of Trial and Conviction**

1. Date of trial.....
2. In what court tried : .....
3. Sentence .....
4. Whether questions of law now raised were raised at the trial. ....

The following questions to be answered:

- (a) Do you desire to be present on the hearing of your appeal by the  
Court .....
- (b) If you so desire, state your reasons .....

**Note:** The Court will, if you so desire, consider your case and argument  
if put into writing by you or on your behalf, instead of your case  
and argument being presented orally. If you so desire to present  
your case and argument in writing, submit, as fully as you think  
right, your case and argument in support of your appeal.

**Criminal Form 3**

IN THE COURT OF APPEAL OF BOTSWANA

**NOTICE OF APPEAL FROM DECISION OF THE HIGH COURT IN ITS APPELLATE JURISDICTION**

THE STATE v. : .....  
**To:** The Registrar of the High Court

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 the decision of the High Court of .....  
on the following grounds:

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

\_\_\_\_\_  
*Signature or mark of Appellant*

**Witness to mark:**

Name : .....

Signature .....

Address : .....

DATED this ..... day of ..... 19 .....

**Particulars of Trial and Conviction**

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

**Note:** The Court will, if you so desire, consider your case and argument if put into writing by you or on your behalf, instead of your case and argument being presented orally. If you so desire to present your case and argument in writing, submit, as fully as you think right, your case and argument in support of your appeal.

**Criminal Form 4**

IN THE COURT OF APPEAL OF BOTSWANA

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

THE STATE v. ....

**To:** The Registrar of the High Court

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 on the following grounds:

.....  
.....

-----  
*Signature or mark of Applicant*

**Witness to mark:**

Name .....

Signature .....

Address .....

DATED this ..... day of ....., 19 .....

**Particulars of Trial and Conviction**

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

**Note:** The Court will, if you so desire, consider your case and argument  
if put into writing by you or on your behalf, instead of your case  
and argument being presented orally. If you so desire to present  
your case and argument in writing, submit, as fully as you think  
right, your case and argument in support of your appeal.

**Criminal Form 5**

IN THE COURT OF APPEAL OF BOTSWANA  
**NOTICE OF APPEAL (OR APPLICATION FOR LEAVE  
TO APPEAL) BY PROSECUTORS**

Between:

..... *Appellant*

- and -

..... *Respondent*

**To:** The Registrar of the High Court

I, ....., of  
.....  
the prosecutor in the above case and being desirous of appealing against  
the decision under section.... of .....,  
do hereby give notice of appeal (or application for leave to appeal) on the  
following grounds:

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

.....  
*Prosecutor*

DATED this.... day of ....., 19....

**Particulars of Trial and Conviction**

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

**Criminal Form 6**

IN THE COURT OF APPEAL OF BOTSWANA  
**NOTIFICATION BY REGISTRAR OF HIGH COURT OF  
RESULT OF APPLICATION FOR LEAVE TO APPEAL**

THE STATE v. : .....

**To:** The Registrar of the Court of Appeal of Botswana

I hereby give you notice that on the..... day of.....  
....., 19...., the High Court, sitting at.....,  
granted/refused an application for leave to appeal against conviction and  
sentence in the case of which the particulars are set out below.

.....  
*Registrar of the High Court*

**Particulars of Trial and Conviction**

- 1. No. of case .....
  - 2. Court of trial .....
  - 3. Name of accused :.....
  - 4. Result of trial .....
- DATED this..... day of....., 19.....

**Note:** The Registrar of the High Court should forward with this notice the application for leave to appeal.

**Criminal Form 7**

**IN THE COURT OF APPEAL OF BOTSWANA  
RECOGNIZANCE OF BAIL OF APPELLANT**

THE STATE .....

BE IT REMEMBERED THAT WHEREAS.....

was convicted of the offence of.....

on the... day of....., 19...., and was thereupon sentenced to.....

and is now in lawful custody in prison at.....

and has duly appealed against his conviction/and sentence to the Court and has applied for bail pending the determination of his appeal, and has been granted bail on entering into his 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 to owe to the Republic of Botswana the said sum of ..... of good and lawful money to be made and levied of his goods and chattels, lands and tenements, to the use of the Republic of Botswana if he the said.....

fail in the condition endorsed.

\_\_\_\_\_  
*Signature of mark of Appellant*

**Witness to mark:**

Name :.....

Signature .....

Address :.....

TAKEN AND ACKNOWLEDGED at..... this ..... day of....., 19 ...., before me.

\_\_\_\_\_  
*Registrar of the Court of Appeal/  
Registrar of the High Court*

**CONDITION**

The condition of the within written Recognizance is such that if the said ..... shall personally appear and surrender himself at and before the Court at each and every hearing of his 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 from such Court at any such hearing without the leave of the said Court, and in the meantime not depart from his 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.

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

.....  
.....

\_\_\_\_\_  
*Signature or mark of Appellant*

**Witness to mark:**

Name : .....

Signature .....

Address : .....

**Criminal Form 8**

**IN THE COURT OF APPEAL OF BOTSWANA**

**RECOGNIZANCE OF APPELLANT'S SURETIES**

THE STATE v. ....

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

19....., .....

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 law full 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 marks:**  
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 said conviction and sentence and having applied to the said Court for bail pending the determination of his said appeal, has been granted bail on his entering into recognizance in the sum of . . . . . and with . . . . . surety/sureties each in the sum of . . . . . if the said . . . . . shall personally appeal and surrender himself at and before the Court at each and every hearing of his 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 from such Court at any such hearing without the leave of the said Court, and in the meantime not depart from his usual place of abode without the leave of the Court, then this Recognizance shall be void, otherwise it shall be of full force and affect.

-----  
*Signature or mark of surety*

-----  
*Signature or mark of surety*

**Witness to marks:**

Name . . . . .  
Signature . . . . .  
Address . . . . .

**Criminal Form 9**

**IN THE COURT OF APPEAL OF BOTSWANA**

**WARRANT FOR ARREST OF APPELLANT ON BAIL**

THE STATE v. . . . .

**To:** All Members of the Botswana Police Force, 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 Force and members of the Botswana Prison Service, forthwith to apprehend the said . . . . .  
and bring him to . . . . . Prison and there deliver him 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 until further order of the Court.

DATED this . . . . . day of . . . . ., 19 . . . . .

-----  
*Presiding Judge*

**Criminal Form 10**

IN THE COURT OF APPEAL OF BOTSWANA

**NOTICE OF ABANDONMENT OF APPEAL**

THE STATE v. ....

**To:** The Registrar of the High Court

I, .....  
having been convicted of the offence of.....  
.....  
in the..... Court  
sitting at..... and  
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....., 19.....

-----  
*Signature or mark of Applicant*

**Witness to mark:**  
Name :.....  
Signature.....  
Address :.....

**Criminal Form 11**

IN THE COURT OF APPEAL OF BOTSWANA

**NOTIFICATION OF ABANDONMENT OF APPEAL**

THE STATE v. ....

**To:** The Attorney-General

THIS IS TO GIVE YOU NOTICE that I have this day received from  
the above-named.....  
a notice of abandonment of all proceedings in regard to his appeal to the  
Court. The said notice is dated the..... day of....., 19..

By the Rules of the Court, upon the notice of abandonment being given,  
the appeal shall be deemed to have been dismissed by the Court.

DATED this..... day of....., 19.....

-----  
*Registrar of the Court*

**Copies to:**

- Permanent Secretary, Office of the President (in cases of conviction of a capital offence).
- Director of Prisons.
- Registrar of the court below.
- Commissioner of Police.

**Criminal Form 12**

IN THE COURT OF APPEAL OF BOTSWANA

**NOTICE OF APPLICATION FOR LEAVE TO WITHDRAW  
AN ABANDONMENT OF APPEAL**

**To:** The Registrar of the Court of Appeal

I,....., having  
been convicted of the offence of :.....  
.....  
and now being a prisoner in prison at .....  
or whose address for service is :.....  
.....  
and having duly sent a notice that I desired to appeal to the Court of  
Appeal, and having abandoned my appeal:

GIVE YOU NOTICE that I hereby apply to the Court of Appeal  
to withdraw my notice of abandonment, in the special circumstances  
following:

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

\_\_\_\_\_  
*Signature or mark of Applicant*

**Witness to mark:**

Name :.....  
Signature.....  
Address :.....

DATED this..... day of....., 19....

**Criminal Form 13**

**IN THE COURT OF APPEAL OF BOTSWANA  
NOTIFICATION OF RESULT OF APPLICATION**

THE STATE v. ....

**To:** The above-named Appellant

**And to:** The Attorney-General

**THIS IS TO GIVE YOU NOTICE** that the Court has considered the matter of the application of the above-named appellant for:

- (i) leave to appeal to the said Court;
- (ii) leave to extend the time within which he may give notice of appeal or of application for leave to appeal;
- (iii) permission to be present during the proceedings;
- (iv) admission to bail;
- (v) leave to withdraw abandonment of appeal,

and have finally determined the same and have this day given judgment to the effect following:

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

DATED this .... day of ....., 19....

-----  
*Registrar of the Court*

**Copies to:**

Permanent Secretary, Office of the President  
(in case of conviction of a capital offence).

Director of Prisons.

Registrar of the court below.

Commissioner of Police.

**Criminal Form 14**

IN THE COURT OF APPEAL OF BOTSWANA  
**NOTIFICATION OF RESULT OF APPEAL**

THE STATE v. ....

**To:** The above-named Appellant

**And to:** The Attorney-General

THIS IS TO GIVE NOTICE that the above-named, having appealed against his conviction of the offence of.....

.....  
before the.....Court,

and/or the sentence of.....

.....  
passed upon him for the offence of :.....

.....  
by the Court, the Court has finally determined the said appeal and has this day given judgment therein to the effect following:

.....  
.....  
.....  
DATED this..... day of....., 19.....

-----  
*Registrar of the Court*

**Copies to:**

Permanent Secretary, Office of the President  
(in case of conviction of a capital offence).

Director of Prisons.

Registrar of the court below.

Commissioner of Police.

**Fourth Schedule**  
**Miscellaneous Form 1**  
IN THE COURT OF APPEAL OF BOTSWANA  
**ORDER TO WITNESS TO ATTEND COURT FOR**  
**EXAMINATION**

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 such 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 ..... 19....., 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....., 19.....

\_\_\_\_\_  
\_\_\_\_\_  
*Registrar of the Court*

MADE this 10th day of April, 1975.

I.A. MAISELS  
*President of the Court of Appeal*

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