

CUSTOMARY COURT ACT
(Cap. 04:05)
CUSTOMARY COURT OF APPEAL RULES, 1986
(Cap. 04:05 (Sub leg))
(Published on 24th January, 1986)

ARRANGEMENT OF RULES

RULE

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IN EXERCISE of the powers conferred on the Minister of Local Government and Lands by section 44 of the Customary Courts Act, the following Rules are hereby made —

1. These Rules may be cited as the Customary Court of Appeal Rules, 1986. Citation

2. In these Rules unless the context otherwise requires — Inter-pretation
“appeal” includes an application for leave to appeal;
“appellant” means a party appealing from a judgment or applying for leave in that behalf;
“clerk” means the clerk of the Customary Court of Appeal;
“court clerk” has same meaning as contained in section 2 of the Customary Courts (Procedure) Rules;
“court” means the Customary Court of Appeal;
“record” means the aggregate of papers relating to an appeal proper to be laid before the court on the hearing of the appeal together with all documents resulting from the proceedings thereof;
“respondent” —
(a) in a civil appeal means any party other than the appellant directly affected by the appeal;

- (b) in a criminal appeal means the person who undertakes the defence of the judgment appealed against.
- Registers to be kept**
- 3. (1) (a)** The Clerk shall keep —
- (i) a Criminal Appeal Register, and
 - (ii) a Civil Appeal Register.
- (b)** The following particulars shall be entered in the Criminal Appeal Register and the Civil Appeal Register —
- (i) the number of the appeal,
 - (ii) the year in which the appeal was lodged,
 - (iii) the names of the appellant and the respondent, and
 - (iv) the place, date and time of hearing of the appeal,
 - (v) orders and awards made.
- (2) (a)** All documents in a case shall bear the serial number of that case which shall be written at the top of the first page.
- (b)** In every appeal there shall be recorded in writing and attached to the record of the case the names of the members of the Court hearing such an appeal.
- Day of hearing**
- 4.** The date, time and place of the sittings of the Court shall be determined by the President of the Court.
- Delivery of judgment**
- 5.** The judgment of the Court shall be pronounced by the Presiding Officer.
- Noting an appeal**
- 6.** Any person noting an appeal shall within 30 days of such order or decision —
- (a) deliver his written reasons for an appeal to the Court Clerk; and
 - (b) deposit, with the Court Clerk, in the case of a Civil Appeal such fee as may be prescribed.
 - (c) the notice of appeal shall disclose the names and addresses of the appellant and the respondent.
- Petition to appeal out of time**
- 7.** Any person petitioning the Court for leave to appeal out of time shall —
- (i) deliver to the Court Clerk the written petition setting out the grounds on which he relies for appealing;
 - (ii) in the case of Civil Appeal deposit, with the Court Clerk, such fee as may be prescribed;
 - (iii) the petition shall disclose the names and the address of appellant and the respondent.
- Transmission of petition to appeal**
- 8.** The Court Clerk shall transmit the petition and a copy of the case record to the Clerk of the Customary Court of Appeal.
- Transmission of appeal**
- 9. (1)** Subject to rules 6 and 7 the Court Clerk shall after an appeal has been noted transmit to the Court, a copy of the record of the case and a copy of the grounds of appeal.
- (2)** The Court Clerk shall, at the same time as he transmits the documents referred to in rule 6 or 7, send to the respondent a copy of the grounds of appeal if the appellant has not done so.
- Setting down dates of hearing**
- 10. (1)** Subject to rule 4 on receipt of the documents referred to in rules 6 and 7 the Clerk of the Court shall forthwith set down a date of hearing of appeal, and shall give due notice of such date, place and time of hearing to the parties.

(2) If leave to appeal out of time has been granted the procedure for hearing appeals shall be the same as if an appeal had been in time.

11. If leave to appeal is granted by the Court the appellant shall thereafter prosecute his appeal on the date that may be stipulated in the order granting leave or if no date or time is stipulated then on the date of set down in accordance with rule 4.

Prosecution
of appeal

12. (1) Immediately on receipt of the documents mentioned in rules 6 and 7 Clerk shall place such documents before the President who shall there upon read them and inform the Clerk whether he will require the attendance of any or all of the witnesses at the hearing of the appeal.

Determi-
nation to
call
witnesses

(2) The Clerk shall give due notice to the parties informing the date, place and time of hearing of the appeal and which, if any, of their witnesses shall be required at the hearing.

13. (1) If an appellant or respondent in an appeal fails to prosecute or defend such an appeal, after proper notice of the place, date and time of hearing of such an appeal, judgment by default may be granted in such manner as the Court deems fit.

Default
judgment
and
dismissal
of appeal

(2) If the appellant in a criminal case fails to prosecute an appeal after proper notice of the date, place and time of hearing of such an appeal, the appeal shall be dismissed.

14. (1) The hearing of every civil appeal shall be conducted in accordance with the procedure authorised by the Customary law of the area from which the appeal originates.

Procedure
on hearing
of civil
appeals

(2) Subject to the provisions of these rules, the court may, in its discretion, grant leave to a party to adduce oral evidence at the hearing of the appeal or proceed by way of re-hearing either in whole or in part.

15. (1) The Court may from time to time adjourn the hearing of an appeal for a suitable period provided that in a criminal appeal the adjournment shall not exceed 14 days

Adjourn-
ment

(2) Before adjourning an appeal the Court shall inform the parties and any witness who are present of the date to which the case is adjourned.

16. When the Court has determined whether the appeal shall be upheld or dismissed it shall record in writing the judgment including the reasons for it. Such judgment shall be signed by the presiding officer of the Court who shall deliver it in open court in the presence of the parties.

Recording
and
delivery of
judgment

17. After judgment or order has been delivered the presiding officer shall inform the party against whom the judgment has been given if he is present of his right to appeal as laid down in section 37 of the Customary Courts Act.

Right of
appeal

18. Any compensation as ordered by the Court shall be paid to the Court Clerk.

Payment
of Compen-
sation
Witnesses
Summons

19. 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.

20. Witnesses who attend before the Court under rule 19 shall be paid fees and reimbursements on the same scales as are applicable in the Magistrate Court. In criminal appeals payments shall be made by the Clerk from public funds and in civil appeals such payments shall be made by the party in whose favour the witnesses is to testify.

Witnesses
fees

Enforce-
ment of
judgment

21. The Court from which the appeal originates shall, upon receipt of any decree, order warrant or process directed to it, enter such decree, order, warrant or . . . process in its own records and enforce, execute or serve them as though they were issued by it.

MADE this 15th day of January, 1986.

J.L.T. MOTHIBAMELE,
Minister of Local Government and Lands.

L2/7/250