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**COURT OF APPEAL
CRIMINAL APPEALS
AND
APPLICATIONS PRACTICE
DIRECTIONS 2020**

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NATIONAL ASSEMBLY
PAPERS LAID

DATE: 13 MAY 2021

DAY:
THURSDAY

TABLED
BY:

Leader of Majority Party
Hon. Amos Kimunya

COURT OF APPEAL

A. Shikuku

CRIMINAL APPEALS

AND

APPLICATIONS PRACTICE DIRECTIONS 2020

IN EXERCISE of the powers granted by Section 13 (2) (a) and (b) of the Court of Appeal (Organization and Administration) Act of 2015 and in cognizance of Article 159(2) of the Constitution and Sections 3A and 3B of the Appellate Jurisdiction Act, the President of the Court of Appeal issues the following practice directions to assist the Court and court users in the expeditious disposal of appeals.

These Practice Directions relate to Criminal Appeals and Applications.

The Practice Directions are in addition to and complement the Court of Appeal Rules.

1. Filing of Notice of Appeal

A notice of appeal shall be filed in the High Court within fourteen days and in compliance with Rule 59 of the Court of Appeal Rules.

2. Transmission of Notice of Appeal

Where a notice of appeal has been filed in compliance with rule 59, the Deputy Registrar of the High Court shall transmit the notice of appeal physically or electronically to the Court within fourteen days..

3. Registration and notification of a Notice of Appeal

Upon receipt of the notice of appeal, the Registrar shall register the appeal and notify the Deputy Registrar of the High Court with a copy to the appellant and the Director of Public Prosecutions within fourteen days, in Form A set out the Schedule of Forms.

4. Preparation of the record of appeal

Upon notification of appeal under clause 3, the Deputy Registrar of the High Court shall prepare and transmit the record of Appeal physically or electronically within sixty days.

5. Record of Appeal

The record of appeal shall comply with Rule 62 (2) of the Court of Appeal Rules, and the checklist set out in Form B(1) of B(2) of the Schedule of Forms.

6. Requirements in preparation of a record of appeal

In the preparation of a record of appeal Rule 13 of the Court of Appeal Rules, shall be complied with such that –

- a) Every document prepared for use in the Court shall be on A4 paper of durable quality; only one side of the paper shall be used and a margin of not less than one and a half inches shall be left on the left side of the sheet.
- b) All documents prepared for use in the Court shall be clear and easily legible and may be produced by printing, photograph, other appropriate technology or any combination of these media but shall not be handwritten except for appellants acting in person.
- c) The record of appeal shall be;

- 6
- i) bound in book form with a cover of stout paper fastened with thread
 - ii) May be in more volumes than one, and each volume shall not exceed five hundred pages and
 - iii) the title of the appeal shall appear on the cover.
- d) The pages of every application and the record of appeal, shall be numbered consecutively.

7. Register of notices of appeal, service of notice and record of appeal

The Registry shall maintain a Register of the following;

- I. Notices of appeal received from the High Court
- II. Appeal number given to each notice
- III. Notification to the appellant of the appeal Number
- IV. Records of appeal received from the High court

8. Rectification of Record of appeal

Where the record of appeal has been rectified, the Registrar may recall the previous record and replace it with the correct record.

9. Pro Bono Services

- a) Pro bono services shall be offered in the Court of Appeal to persons who qualify under the Practice Directions relating to the Pauper Briefs Scheme and Pro Bono Services, Gazette Notice No. 370 of 20th January, 2016 or as directed by the Court.
- b) There shall be established a Pro Bono Committee at every Court of Appeal Station that shall regulate the pro bono services. The Committee shall include the Registrar or Deputy Registrar, a representative of; the Law society, the Office of Director of Public Prosecution, Prisons, National Legal Aid Committee and any other member as may be proposed by the President of the Court.
- c) Advocates interested in providing pro bono services may apply in writing to the Registrar or the Deputy Registrar in the prescribed form F in the Schedule.

At the time of making the application, the advocates shall also provide a copy of the current practicing certificate and such other documents or information as shall be required by the Committee.

- d) Pro bono briefs may be allocated by the Pro Bono Committee, the Registrar or the Court during hearing.
- e) The Registrar shall maintain and update a register which shall contain the names of the advocates qualified to provide pro bono services.
- f) Pro bono briefs shall be allocated to individual advocates and not to law firms.
- g) Advocates who are unable to take up pro bono briefs assigned to them shall notify the Registrar in writing within 7 days of service of the record.
- h) The fees payable to an advocate assigned a pro bono brief shall be an all-inclusive sum of Ksh. 30,000 or such other sum approved by the Chief Justice, which payment shall be managed centrally at the office of the Chief Registrar.

10. Applications Made to Court

- a) An application shall be by way of Notice of Motion except informal applications allowed by the Court.
- b) An application shall be accompanied by supporting affidavits and any other relevant documents.
- c) An application shall be accompanied by a Notice of Appeal except;
 - i. an application for extension of time to file a Notice of Appeal; and
 - ii. an application for leave to appeal.
- d) Where an application for extension of time in the High Court (Form C) is declined under Rule 113 (2) of the Court of Appeal Rules, the applicant may apply for extension of time as provided under Rule 4 of the Court of Appeal Rules in Form D of the Schedule.

11. Case Management

- a) To facilitate just, expeditious, proportionate and affordable disposal of appeals, the Registry shall list all pending appeals before the Registrar for case management conference.
- b) A first case management conference shall be held to give pre-trial directions on the hearing of the appeal.
- c) A second case management conference may be conducted to confirm compliance with pre-trial directions before the hearing date.
- d) The case management notice shall be served upon the appellant through the prison facility if the appellant is in prison, upon the appellant if the appellant is acting in person, upon the appellant's advocate where he or she is represented, and up the Director of Public Prosecution.
- e) During the first case management conference, the Deputy Registrar shall;
 - i. Ensure that the appellant is present and if not, issue a production order.
 - ii. Ensure that a pro bono advocate has been appointed where applicable and has already taken instructions.
 - iii. Ensure that a memorandum of appeal or a supplementary memorandum and/or grounds of appeal have been filed where necessary and if not give directions on filing.
 - iv. Give directions on the time for the filing and serving of written submissions which shall be typed using 1.5 spacing on font 12 and not more than 12 pages long. Provided where due to the complexity of the issues in an appeal, the Deputy Registrar may allow parties to exceed those pages.
 - v. Hand written submissions may be allowed for appellants appearing in person, appellants in custody or as the Registrar may direct.
 - vi. Parties shall comply with the directions given at case management and failure to do so, the appeal will be set down for hearing, at the date set for confirmation of compliance. A party defaulting to comply with the case management directions will rely on oral submissions as the Court may direct during the hearing.

- i. Failure to comply with case management directions will not be a reason for adjourning a hearing that has been fixed for hearing at the case management conference or as the case may be.
Check list at the case management conference
- l. Confirm that the memorandum of appeal or the supplementary memorandum of appeal has been filed.
 - ii. Confirm filing and service of submissions.
 - iii. Confirm filing of authorities where necessary.
 - iv. Confirm compliance of any other directions issued.
 - v. Give a hearing date.

h. The forms for the case management conference are annexed in Form G of the schedule of these Practice Directions.

12. Orders

Orders following the completion of a substantive appeal should follow the form set out in form J in the Court of Appeal rules.

13. Withdrawal of Appeals or Applications

Any appeal or application may be withdrawn in accordance with Rule 68 of the Court of Appeal Rules in Form E of the Schedule;

- a. At any time before hearing by notice in writing to the Registrar signed by the appellant, and upon such notice being given the appeal shall be deemed to have been withdrawn.
- b. When any appeal is withdrawn, the Registrar shall forthwith notify the respondent and the registrar of the superior court.
- c. An appeal which has been withdrawn may be restored by leave of the Court on the application of the appellant if the Court is satisfied that the notice of withdrawal was induced by fraud or mistake and that the interests of justice require that the appeal be heard.
- d. An appeal may be withdrawn by an informal application in court at any time before the hearing is concluded under rule 68(4).

14. Urgent Appeals and Applications

- a. a. Where an appellant wishes that his or her application be heard urgently, the application shall be accompanied by a Certificate of Urgency and Affidavit as to Urgency signed by the appellant or his or her advocate setting out the reasons why the application should be heard urgently.
- b. In exceptional circumstances where a party wishes an appeal to be heard urgently, the party shall write a letter to the Registrar of the Court supported by an Affidavit as to Urgency setting out the reasons why the appeal should be heard urgently. The letter and a copy of the Affidavit shall be served on all other parties in the appeal.
- c. The application under paragraph (a) above and the letter under paragraph

15. Use of ICT

Parties may be required to use appropriate information communication technology (ICT) in any court proceedings and operations including electronic filing, service, hearings via audio visual and any other approved technologies, and any other Court or administrative processes where the Court deems it necessary.

16. Prison visits and stakeholder engagement

The court may conduct prison visits and regular stakeholder engagements.

FORMS

FORM A

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT

CRIMINAL APPEAL NUMBER OF 20

.....APPELLANT

VERSUS

.....RESPONDENT

IN

HIGH COURT CRIMINAL CASE/APPEAL.....OF 20.....

BETWEEN

..... ACCUSED/APPELLANT

VERSUS

..... REPUBLIC/RESPONDENT

NOTIFICATION OF CRIMINAL APPEAL NUMBER

The notice of appeal dated.....day of20..... has been received in this registry on the.....day of.....20..... and assigned serial number CRIMINAL APPEAL NO (NRB/MSA/NYR/KSM).....OF 20.....

The Deputy Registrar of the High Court is requested to prepare the Record of Appeal within sixty (60) days of the date of receipt of this notice.

To be served upon:

The Appellant(s)

The Director of Public Prosecution

FORM B (1)

**CRIMINAL APPEALS RECORD PREPARATION CHECK FORM
(1st APPEALS)**

C.A CRA/ HCCRC/ NO: _____ OF _____
 _____ VS. _____

S/NO.	ITEM TO BE CHECKED	MARK (X/√)	REMARKS
1.	Cover details		
2.	Index		
3.	Memorandum of Appeal		
4.	Document Initiating proceedings, i.e. charge sheet/ information, notice of motion, etc		
5.	Plea		
6.	Recording of Evidence(Witnesses testimonies)		
7.	List of Witnesses		
8.	List of Exhibits		
9.	Documentary Exhibits		
10.	Submissions(If any)		
11.	Judgment		
12.	10 th -line paragraphing		
13.	Pagination (Top right-hand corner) Is there any missing page?		
14.	Legibility		
15.	Binding		
16.	Notice of Appeal		
17.	Original High Court File		

Is the record ready for registration? _____

Checking & Verification of this Record of Appeal has been done by: _____

Designation: _____ Signature _____

Confirmed by: _____

Designation: _____ Signature _____

FORM B (2)

CRIMINAL APPEALS RECORD PREPARATION CHECK FORM

(2ND APPEALS)

C.A CRA/HCCRA/ HCCRMISC/HCEC & ACA NO: _____ OF _____
 _____ VS. _____

S/NO.	ITEM TO BE CHECKED	MARK (X/√)	REMARKS
1.	Cover details		
2.	Index		
3.	Memorandum of Appeal		
4.	Document Initiating proceedings, i.e. charge sheet, notice of motion, etc		
5.	Plea		
6.	Recording of Evidence(Witnesses testimonies)		
7.	List of Witnesses		
8.	List of Exhibits		
9.	Documentary Exhibits		
10.	Submissions(If any)		
11.	Judgment		
12.	Petition of Appeal		
13.	Judges notes		
14.	Submissions (If any)		
15.	High Court Judgment		
16.	10 th -line paragraphing		
17.	Pagination (Top right-hand corner) Is there any missing page?		
18.	Legibility		
19.	Binding		
20.	Application Form U/R 113 CAR		
21.	Notice of Appeal		
22.	Original High Court File		
23.	Original Lower Court File		

FORM C.

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT.....

CRIMINAL APPEAL NO.....

..... APPELLANT

VRS

..... RESPONDENT

APPLICATION UNDER RULE 113(1) (a) & (b), (2) OF THE COURT OF APPEAL RULES

In the matter of an intended appeal to the Court of Appeal from the judgment of the High Court of Kenya in criminal case.....of.....atby Honourable Mr/Lady Justice.....

Dated.....

Application made under Rule 113(1) (a) and (b), (2) of the Court of Appeal Rules

..... APPELLANT

Versus

..... RESPONDENT

WHEREAS intends to appeal to court of appeal from a foresaid judgment of the High court and has applied to the said high court:

- 1) For leave to apply out of time as a poor person under rule (2) (5) of the the court rules.

I Honourable Mr/Lady Justice.....Certify that: -

- 1 The application for leave to appeal under rule 113(2) and (5) out of time as a poor person having been made with/without sufficient cause is hereby allowed/rejected.
- 2 The intended appeal raises/does not raise one or more questions of law proper for determination by the court of appeal and;
- 3 The intended appellant ought to be required to pay the or part of the fees ordinary payable in respect of the appeal (including fees for preparing the record).

The applicable fee is waived.

FORM D.

REPUBLIC OF KENYA

IN THE COURT OF APPEAL OF KENYA AT.....

CRIMINAL APPEAL NO.....

..... APPLICANT

VS

..... RESPONDENT

NOTICE OF MOTION

(APPLICATION UNDER RULE 4 OF THE COURT OF APPEAL RULES)

In the matter of an intended appeal to the Court of Appeal from the judgment of the High Court of Kenya in criminal case.....of.....atby Honourable Mr/Lady Justice.....

Dated.....

Application made under Rule 4 of the Court of Appeal Rules.

..... APPELLANT

Versus

.....RESPONDENT

WHEREAS intends to appeal to court of appeal from a foresaid judgment of the High court and has applied to the said high court:

1) For leave to apply out of time as a poor person under rule (2) (5) of the the court rules.

I Honourable Mr/Lady. Justice.....Certify that: -

- 1 The application for leave to appeal under rule 113(2) and (5) out of time as a poor person having been made with/without sufficient cause is hereby allowed/rejected.
- 2 The intended appeal raises/does not raise one or more questions of law proper for determination by the court of appeal and;
- 3 The intended appellant ought to be required to pay the or part of the fees ordinary payable in respect of the appeal (including fees for preparing the record).

The applicable fee is waived.

Dated..... This..... day of.....20.....

.....

JUDGE OF APPEAL

FORM E

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT.....

CRIMINAL APPEAL NUMBEROF 20.....

.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

IN.....

HIGH COURT CRIMINAL CASE/APPEAL.....OF 20.....

BETWEEN

..... ACCUSED/APPELLANT

VERSUS

.....REPUBLIC/RESPONDENT

NOTICE OF WITHDRAWAL

(Under rule 68(1) of the Court of Appeal Rules and all other enabling provisions of the law)

Take notice that the appellant intends to withdraw this appeal.

Drawn and filed by:

PRISON NO.....

NAME.....

SIGNATURE/THUMP PRINT.....

APPELLANT

To be served upon:

The Director of Public Prosecution

FORM F

THE COURT OF APPEAL

PRO BONO SERVICES APPLICATION FORM

1. DATE OF APPLICATION

2. NAME OF APPLYING ADVOCATE

3. CONTACT OF ADVOCATE

FIRM

PHYSICAL ADDRESS

BUILDING FLOOR ROOM

STREET/ROAD

P O BOX TOWN

EMAIL ADDRESS

CELLPHONE

4. LSK ADMISSION NO.....

5. CURRENT PRACTISING CERTIFICATE SERIAL NO.

6. PRO BONO SERVICES APPLICATION AT THE COURT OF APPEAL IN

7. NATURE OF BRIEF (PLEASE TICK)

- CRIMINAL []
- CHILDREN []

8. APPLICANT'S SIGNATURE

FOR OFFICIAL USE ONLY

9. RECEIVED BY

10. ACTION: A. APPROVED [] B. REJECTED [] C. DEFERRED []

REASONS FOR (B) AND (C)

11. SIGNATURE OF CHAIRPERSON

FORM G (1)

Email:

THE COURT OF APPEAL

Telephone:

P.O. Box

In reply please quote

CRIMINAL CASE MANAGEMENT CHECK LIST

DATE:

APPEAL NO

PARTIES

ATTENDANCE:

APPELLANT

COUNSEL FOR APPELLANT

Postal & Physical Address

Email Address

COUNSEL FOR RESPONDENT

Postal & Physical Address

Email Address

CHECK LIST

S/NO.	CHECK LIST ITEM	DIRECTIONS BY THE DR
1.	Has Counsel seen the Appellant and taken instructions?	_____
2.	Has Counsel filed a Supplementary Memorandum of Appeal?	_____
3.	Has Counsel filed Authorities?	_____
4.	Has the Appellant filed his/her Notice Memorandum/Grounds of Appeal	_____
5.	Have all the parties been served with the Record of Appeal?	_____
6.	Is the appeal ready for hearing?	_____ _____

COMMENTS:

Hearing Date by Consentday of20

SIGNED BY:

Counsel for Appellant(s)/ Applicant(s)

Counsel for Respondent(s).....

DEPUTY REGISTRAR DIRECTIONS

I hereby certify that all issues that are necessary for the preparation of this appeal/application for hearing have been sorted out and this may now be set down for hearing.

Thisday of.....20..... _

DEPUTY REGISTRAR

SUPREME COURT BUILDING



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Nairobi, Kenya

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