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LEGAL NOTICE NO. 182 OF 2006

Court of Appeal Rules, 2006

Pursuant to section 22 of the Court of Appeal Act 1978¹, I,

JAN-HENDRIK STEYN

President of the Court of Appeal, make the following Rules-

Citation and commencement

1. These Rules may be cited as the Court of Appeal Rules, 2006 and shall come into operation on the date of publication in the Gazette.

Interpretation

2. (1) In these Rules, unless the context otherwise requires-

“**Act**” means the Court of Appeal Act 1978;

“**advocate**” means a person duly admitted as such in terms of the Legal Practitioners Act, 1983²;

“**attorney**” means person duly admitted as such in terms of the Legal Practitioners Act, 1983;

“**counsel**” means an advocate or attorney;

“**Court**” means the Court of Appeal of Lesotho;

“**court day**” means any day except Saturdays, Sundays and Public Holidays;

“**deliver**” means the filing of an original with the Registrar by a party or his attorney and the serving of copies upon all interested parties;

“**he**” includes she;

“**High Court**” means the High Court of Lesotho;

“Judge” means a Justice of Appeal and includes an Acting Justice of Appeal;

“President” means the person appointed as such in terms of the Act;

“Registrar” means the Registrar of the Court of Appeal and includes any deputy or assistant registrar of the Court;

“typed” includes photocopied, reproduced by electronic word processing and all methods of representing words in a visible form but does not include hand-writing.

(2) In the computation of time-

(a) **“days”** mean court days;

(b) **“month”** means a calendar month; and

(c) **“week”** means seven days inclusive of Saturdays, Sundays and Public Holidays, except that if the last day of the computation falls on a Sunday or public holiday, that last day shall be deemed to be the day following the Sunday or Public Holiday.

(3) In computing the number of days the first day shall be excluded and the last day shall be included.

Applications for leave to appeal

3. (1) Where an application for leave to appeal to the Court is necessary in a criminal matter in terms of the Act, the application shall be made by way of a notice of motion supported by affidavits.

(2) The notice of motion together with affidavits and relevant documents including the judgment of the High Court shall be delivered within twenty-one days of the date of the delivery of judgment or order of the High Court, and a copy of such notice shall be served upon the respondent.

(3) Four copies of the notice of motion and all documents together with the original shall be filed with the Registrar of the High Court.

(4) The respondent shall, within fourteen days of the service of notice of motion, deliver answering affidavits.

(5) The applicant shall file replying affidavits within seven days of the service upon him or on his attorney of the answering affidavits.

(6) The times fixed within these Rules may be extended on good cause shown by a judge in chambers or by the Court.

(7) An application, answer and reply, shall -

- (a) be clear and concise;
- (b) furnish fairly all information as may be necessary to enable the Court to decide the application;
- (c) deal with the merits of the case only insofar as is necessary for the purpose of explaining and supporting the particular grounds upon which leave to appeal is sought or opposed;
- (d) be properly and separately paginated; and
- (e) where leave to appeal has been refused by the High Court, include a copy of the judgment or order refusing leave.

(8) The application shall not -

- (a) be accompanied by the record; or
- (b) traverse extraneous matters.

(9) Where an application for leave to appeal in a civil matter is necessary in terms of the Act, the provisions of sub-rules (1) to (8) inclusive shall *mutatis mutandis* apply.

(10) Not later than twenty-eight days prior to the date of hearing of the application for leave to appeal in both criminal and civil matters, the appli-

cant shall deliver written heads of his argument together with a list of authorities to be quoted by him and seven copies shall be filed with the Registrar and one copy served on each respondent.

(11) The respondents shall file heads of argument in the same way not later than fourteen days prior to the date of hearing.

(12) If the Court grants leave to appeal, it may fix the time within which the record may be lodged with the Registrar and, in a civil matter, it may order the appellant to give security for the costs of the other parties, the amount of such security to be fixed by the Registrar.

(13) Where leave to appeal has been granted, the provisions of Rules 4, 5 and 6, as far as they are applicable, shall also apply.

Notice of appeal

4. (1) In every matter in which there is a right of appeal to the Court, the applicant shall, within six weeks of the date of the delivery of the judgment in the High Court, file a notice of appeal and such notice shall, as near as may be, be in accordance with Criminal Form I or Civil Form I, as set out in the First Schedule.

(2) Where leave to appeal has been granted by the Court, the notice of appeal shall be delivered within three weeks of the date of granting of leave.

(3) Where a Judge of the High Court has given leave to appeal in terms of the Act, the delivery of the certificate of the Judge granting such leave together with the grounds of appeal annexed thereto shall be a sufficient notice of appeal and the certificate of the Judge of the High Court shall be in accordance with Criminal Form 2 or Civil Form 2 as set out in the First Schedule.

(4) The notice of appeal shall-

- (a) state whether the whole or part of the judgment or order is appealed against. If a part only of the judgement or order is being appealed against, the notice of appeal shall state which part; and

- (b) set forth concisely and clearly the grounds of objection to the judgment or order and such grounds shall set forth in separate numbered paragraphs the findings of fact and conclusions of law to which the appellant objects and shall also state the particular respects in which the variation of the judgment or order is sought.

(5) The appellant shall not argue or rely on grounds not set forth in the notice of appeal unless the Court grants him leave to do so. The court, in deciding the appeal, may do so on any grounds whether or not set forth in the notice of appeal and whether or not relied upon by any party.

(6) Notwithstanding anything in these Rules, if the notice of appeal or Judges' certificate is delivered before the expiry of six weeks from the date of judgment of the High Court, the appellant may deliver further grounds of appeal before the expiry of the period of six weeks.

(7) A respondent who wishes to cross-appeal shall deliver notice of his cross-appeal within twenty-one days after he has received notice of the appeal. The notice of cross-appeal shall comply with the provisions of sub-rule (4) herein.

Records

5. (1) The appellant shall, in every appeal, not later than three months after notice of appeal has been filed or the certificate of the Judge of the High Court has been filed, lodge with the Registrar seven copies of the record of the proceedings of the High Court and serve a copy of such record on each respondent:

Provided that by consent of all parties portions of the record which will not affect the result of the appeal may be omitted. The Court may, however, order that the full record shall be available:

Provided further that if the same attorney represents more than one respondent, it shall suffice for one copy of the record to be served on such attorney.

(2) The time limit for lodging of the record may be extended by written agreement of all the parties to the appeal.

(3) If the appellant fails to lodge the record within the prescribed

period or within the extended period, the appeal shall lapse.

(4) One of the copies of the record lodged with the Registrar shall be certified correct by the registrar of the court *a quo*.

(5) The copies of the record shall be in English and clearly typed on A4 standard paper in double-spacing on one side of the paper only.

(6) Legible documents that were typed or printed in the original, including all process in the lower court forming part of the record on appeal, and documents such as typed or printed contracts and cheques (whether handwritten, typed or printed) shall not be retyped and a clear photocopy shall be provided instead.

(7) The pages shall be numbered clearly and consecutively, and every tenth line on each page shall be numbered and the pagination used in the lower court shall be retained where possible.

(8) At the top of each page containing evidence, the name of the witness and, at the top of each page containing exhibits, the number of the exhibit, shall appear.

(9) All references in the appeal record to page numbers of exhibits in the original record shall be transposed to reflect the page numbers of such exhibit in the appeal record.

(10) The record shall be divided into separate conveniently-sized volumes of approximately hundred pages each.

(11) The record shall be securely bound in suitable covers disclosing-

- (a) the case number;
- (b) the names of the parties;
- (c) the volume number and the numbers of the pages contained in that volume;
- (d) the total number of volumes in the record;

- (e) the lower Court from where the case originates; and
- (f) the names and addresses of all the parties for service.

(12) The volume number and the numbers of the pages contained in a volume shall also appear on the upper third of the spine of the volume.

(13) Each volume shall be so bound that when opened it will lie flat without restraint and when being so opened and thereafter repeatedly closed the binding shall not fail.

(14) Where the record consists of more than one volume, the following documents shall be contained in a separate volume -

- (a) the judgment and order appealed against;
- (b) the judgment and order giving leave to appeal; and
- (c) the notice of appeal.

(15) The record, shall in the first or in a separate volume, contain a correct and complete index of the evidence, documents and exhibits in the case, the nature of the documents and exhibits being briefly stated therein.

(16) Unless it is essential for the determination of the appeal and the parties agree in writing, the record shall not contain -

- (a) argument and opening addresses;
- (b) formal documents;
- (c) discovery affidavits and similar documents;
- (d) identical duplicates of any document; or
- (e) documents not proved or admitted.

(17) The Registrar shall *mero motu* disallow the costs, as between attorney and own client, of all documents mentioned in sub-rule (16) herein.

- (18) A separate core bundle of documents shall-
- (a) be prepared if to do so is appropriate to the appeal; and
 - (b) consist of the material documents of the case in a proper, preferably chronological, sequence.

(19) Documents contained in the core bundle shall be omitted from the record, but the record shall indicate where each such document is to be found in the core bundle.

Specific issues of law or fact

6. (1) Whenever the decision of an appeal is likely to hinge exclusively on a specific issue or issues of law or fact, the appellant shall, within ten days of the noting of the appeal, request the respondent's consent to submit issue or issues to the Court, failing which the respondent shall, within ten days thereafter, make a similar request to the appellant.

(2) The respondent or the appellant shall, within ten days, agree or state the reasons for not agreeing to the request mentioned in sub-rule (1).

(3) The request and the response shall form part of the record.

(4) The Court may make a special order of costs if the request was not made or if either of the parties unreasonably refuses to consent thereto.

(5) Where the parties reach agreement pursuant to sub-rule (1), only those parts of the record of the proceedings in the court *a quo* as may be agreed upon shall be contained in the record lodged with the Registrar:

Provided that the Court may call for the full record and may order full argument of the whole case.

Responsibility for preparation of court records

7. (1) The appellant or his attorney in civil matters and the Director of Public Prosecutions' office in criminal matters shall be responsible for the preparation of court records and shall be liable to an adverse order of costs

including an order *de bonis propriis* in the event of dereliction of this duty.

(2) A certificate certifying the correctness of the record, duly signed by the person referred to in sub-rule (1), shall be filed with the record and served on all other parties to the appeal.

Security for costs of appeal

8. (1) Where the judgment appealed from in a civil matter has not been carried into execution by the respondent, the appellant shall, before lodging with the Registrar copies of the record, enter into security to the satisfaction of the Registrar for the respondent's costs of the appeal.

(2) Every person in a criminal matter who has a right of appeal or who wishes to apply for leave to appeal shall be entitled to obtain from the Registrar of the High Court sufficient copies of the record or extracts of such as may reasonably be necessary on payment of the prescribed fees for the making of copies or extracts, on condition that if he wishes to appeal in *in forma pauperis* he shall obtain the copies or extracts free of charge if the Registrar of the High Court is satisfied in terms of the Rules of the High Court that he is a pauper.

Heads of argument

9. (1) In every appeal the appellant shall, not less than twenty-eight days before the date of the beginning of the session of the Court during which the appeal is to be heard, file with the Registrar seven copies of the heads of argument to be presented on appeal and two copies of such heads of argument shall be served on each respondent:

Provided that if the same attorney represents more than one respondent, only two copies of the heads of argument need be served on such attorney.

- (2) The heads of argument shall-
- (a) be set out in separate paragraphs for each head, stating where evidence is referred to, the volume, page and lines where such evidence appears in the record;
 - (b) be clear and succinct and not contain unnecessary elab-

oration;

- (c) not contain lengthy quotations from the record or authorities. References to authorities and the record shall not be general but shall refer to specific pages and paragraphs;
- (d) be accompanied by a list of the authorities to be quoted in support of the argument and shall indicate the authorities to which particular reference will be made during argument:

Provided that if any such authority is not readily available, copies of the text relied upon shall accompany the heads of argument;

- (e) define the form of order sought from the Court;
- (f) be accompanied by seven copies of the front page and relevant portions of all statutory provisions, regulations, and unreported decisions to which reference is made; and
- (g) shall be indexed and paginated.

(3) The respondent shall file with the Registrar seven copies of his main heads of argument not later than fourteen days before the first day of the Session of the Court and two copies of the heads shall be served on the appellant. The provisions of sub-rule (2) shall apply to such heads.

(4) The provisions of sub-rules (1), (2) and (3) shall, *mutatis mutandis*, apply to cross-appeals.

(5) Where an appellant has withdrawn an appeal, the respondent, if he has cross-appealed, may within seven days of receipt by him of notice of the withdrawal notify the Registrar in writing that he wishes to prosecute the cross-appeal and such respondent shall thereafter, for the purposes of this Rule, be deemed to be the appellant and the periods referred to in sub-rules (1), (2) and (3) shall be calculated as from the date on which the appellant withdrew his appeal.

(6) A party shall not be entitled to withdraw an appeal or a cross-appeal without the written consent of all other parties or the leave of the Court.

Powers of the President

10. (1) The President shall determine the periods during which the court shall sit.

(2) The President may -

(a) *mero motu* or on application, extend or reduce any time period prescribed in these Rules and may condone non-compliance with these Rules; or

(b) give such directions in matters of practice, procedure and the disposal of any appeal, application or interlocutory matter as he may consider just and expedient.

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

Appeals in forma pauperis

11. (1) A person who can show that he is a poor person according to the provisions of the High Court Rules 1980³ and who wishes to prosecute or defend a civil appeal *in forma pauperis* may apply to the Court for leave to do so.

(2) Subject to the provisions of sub-rule (5), the application shall be made by a notice of motion supported by affidavit of the applicant and other affidavits as may be necessary.

(3) The application shall set out the means of the applicant to show that he would be considered a pauper according to the provisions of the High Court Rules 1980 or any amendment thereof.

(4) Subject to the provisions of sub-rule (6) below, all the provisions of Rule 3 shall apply to every notice of motion filed under this Rule in so far as such provisions are applicable to civil matters:

Provided that -

- (a) in cases where an appeal has already been noted an application for leave to prosecute the appeal *in forma pauperis* shall be filed with the Registrar not later than twenty-one days after the appeal has been noted; and
- (b) an application for leave to defend an appeal *in forma pauperis* shall be lodged with the Registrar not later than four weeks after the respondent has been served with the notice of appeal.

(5) Notwithstanding the provisions of this Rule, if the opposite party consents to the applicant proceeding *in forma pauperis* an application for leave may be made orally from the Bar at the hearing of the appeal.

(6) Whenever a person obtains leave to prosecute or defend an appeal *in forma pauperis*, he shall not be required to lodge security for the costs of the opposite party or to pay any fees of Court.

(7) Notwithstanding this Rule, the Court shall not consider any application by any person of whom the Chief Legal Aid counsel appointed in terms of the Legal Aid Act, 1978⁴ has undertaken the legal representation.

(8) Where during any application for leave to appeal *in forma pauperis*, it comes to the knowledge of the Court that the Chief Legal Aid counsel mentioned in sub-rule (7) above, has undertaken the legal representation of the applicant, the application shall be dismissed.

Application for bail

12. (1) A person who has been convicted in the High Court of a criminal offence and who has lodged a notice of appeal may apply to the Court for bail by means of a notice of motion supported by necessary affidavits.

(2) A copy of the notice shall be served on the Director of Public Prosecutions.

(3) The provisions of sub-rules (3), (4), (5) and (6) of Rule 3 shall apply to the application under this Rule.

(4) Where bail is granted, the applicant shall enter into a recognisance in a form in accordance with Criminal Form 3 of the First Schedule hereto.

(5) The application for bail shall not be made to the Court if bail has been granted or refused by the High Court unless the applicant shows that there has been a material change of circumstances since the grant or refusal of bail by the High Court.

Effect of noting appeal

13. (1) Subject to these Rules, the noting of an appeal does not operate as a stay of execution of the judgment appealed from.

(2) The appellant may, at any time after he has noted an appeal, apply to the Judge of the High Court whose decision is appealed from or, if he is not available, to any other Judge of the High Court, for leave to stay execution.

(3) On the application mentioned in sub-rule (2), the Judge of the High Court may make an order as he sees just and in particular, without in any way depriving him of his discretion, may-

- (a) order that execution be stayed subject to the appellant giving such security as the Judge thinks fit for payment of the whole or any portion of the amount he would have to pay if the appeal should fail;
- (b) refuse that execution be stayed subject to the respondent giving security for restoration of any sum or thing received under execution; or
- (c) order that execution be stayed for a specified time but that after the lapse of such time execution may proceed unless the appellant has within such time furnished security for such sum as the Judge may specify.

(4) The Judge of the High Court hearing such application may make such order as to costs as he may deem fit.

Appeals against death sentence

14. (1) Where an appeal against the death sentence or a sentence of corporal punishment is noted, the Registrar shall immediately notify the Attorney-General, the Director of Public Prosecutions and the officer in charge of the prison in which the appellant is detained, that the appeal is pending.

(2) Where judgment is given in an appeal against the death sentence or a sentence of corporal punishment the Registrar shall immediately notify the persons referred to in sub-rule (1) of the order given in an appeal.

(3) In the appeals under this Rule, the Court may appoint an advocate to act if the appellant is not represented in the appeal.

Effect of breach of Rules

15. (1) If an appellant breaches provisions of these Rules, his appeal may be struck off the roll.

(2) The Court shall have a discretion to condone any breach on the application of the appellant.

(3) Such application shall be by notice of motion delivered to the respondent and to the Registrar not less than seven days before the date of hearing.

(4) Where the respondent consents to condonation, the application may be considered by a single Judge.

(5) The Court, if it condones the breach, may order that the appellant shall comply with the Rules breached within a specified time or may make any order which it deems just including any order as to costs.

(6) The provisions of this Rule shall apply *mutatis mutandis* to the appellant in a cross-appeal.

(7) If the respondent to an appeal breaches a provision of the Rules applicable to him he may be prevented from appearing to oppose the appeal:

Provided that the Court shall have the same discretion to condone the breach

as in the case of an appellant.

(8) The provisions of sub-rule (7) shall not apply to criminal appeals.

(9) Where the respondent is prevented from opposing the appeal, the Court shall consider the merits of the appeal in the same way as if it were opposed and if it considers that the appeal has no merit it shall dismiss it and make such an order as to costs as it may think fit.

Hearing of appeals

16. (1) At the hearing of the appeal, the appellant or his legal representative shall first address the Court, provided that the Court, in its discretion may call upon the respondent to address it first.

(2) Where the appellant has more than one legal representative, all of them shall be entitled to address the Court but not on the same aspects of the appeal.

(3) After the close of the appellant's address, the respondent or his legal representatives, shall be entitled to address the Court:

Provided that if the respondent has more than one legal representative all of them shall be entitled to address the Court but not on the same aspects of the appeal.

(4) The appellant shall be entitled to reply after the respondent has concluded his address.

(5) If the respondent is first called on to address the Court, the appellant, or as many legal representatives as he has, shall be entitled to address the Court but not on the same aspects of the appeal.

(6) After all the arguments have been heard, the Court may give judgment immediately or may reserve judgment.

(7) The judgment shall be given by the President or the Judge presiding but the President or Judge presiding, may request any other member of the Court hearing the appeal to give judgment.

(8) The Court shall be competent to make its order and to file written reasons for the order either at the same time or at a later date.

(9) Where the Court does not give judgment before the end of its session, it may send the written judgment to the Registrar to be delivered in open court by a Judge or a Judge of the High Court whether or not such Judge sat on the appeal:

Provided that sub-rule (7) shall apply to the delivery if the Judge thinks fit.

(10) The appellant and respondent or their legal representatives shall be entitled to read the written reasons for judgment where such reasons are not read in Court.

(11) If the appellant or respondent appeared in person and he is not able to read English an interpreter shall read the reasons for judgment to him in language understandable to him.

(12) The Attorney-General, the Director of Public Prosecutions and the officer in charge of the prison in which the appellant is held (if he is not on bail) shall be notified by the Registrar of the result of every criminal appeal.

Powers of the Court

17. (1) Subject to the provisions of sections 10, 11 and 12 of the Act, the Court shall have powers to-

- (a) amend indictments in criminal matters;
- (b) amend pleadings in civil matters; and
- (c) order evidence of any witness to be heard whether or not such witness gave evidence at the trial.

(2) Where there has been an order relating to any property or money to be forfeited to the Crown or to be awarded to any person in any criminal matter which is on appeal, the Court hearing the appeal may confirm, amend or set aside such order.

(3) If the Court considers it in the interests of justice to do so in criminal or civil cases, it may set aside the order against which the appeal is brought and order a new trial to be heard by the High Court or any other Court of competent jurisdiction.

(4) Subject to the provisions of the Act, the Court shall have the power to give any judgment or make any order that the circumstances may require.

(5) Without prejudice to the generality of the foregoing, the court shall have the power to-

- (a) confirm, amend or set aside the judgment or order which is the subject of the appeal;
- (b) remit the case to the High Court or any other court of competent jurisdiction with such instructions that it considers to be necessary;
- (c) receive further evidence at the hearing of an appeal; and
- (d) postpone an appeal *mero motu* or on the application of any party thereto on good cause being shown:

Provided that an application for a postponement shall be accompanied by such affidavits as the case may require, which shall be served on all other parties to the appeal.

(6) The Court shall have the powers set out in sub-rule (5) in addition to any other powers granted elsewhere in these Rules.

Interlocutory matters

18. (1) In this Rule, “**an interlocutory matter**” means any matter relevant to a pending appeal the decision of which will not involve the decision of the appeal.

(2) An interlocutory matter may be brought before a single Judge, but the Judge before whom the matter is brought may in his discretion hear,

refuse to hear or refer the matter to the Full Court.

(3) Interlocutory matters shall be brought by way of notice of motion delivered not less than seven days before the date set down for hearing, to the opposing party and to the Registrar.

(4) The opposing party may deliver answering affidavits not less than two days before the date of hearing.

(5) The Judge hearing the matter may make any order he thinks fit including an order as to costs. Without in any way fettering his discretion, he may refer the whole matter to the Full Court to be heard together with the appeal or he may refer the question of costs to be decided by the Court hearing the appeal.

Audience in Court

19. (1) The following persons are entitled to audience in the Court-

- (a) an appellant or respondent in person;
- (b) an attorney; and
- (c) an advocate duly instructed by an attorney.

(2) Notwithstanding the provisions of sub-rule (1)(a), a company or an association shall not be entitled to an audience in the Court unless it is represented by an attorney or an advocate duly instructed by an attorney.

(3) Nothing in this Rule shall prevent an advocate from appearing in Court pro deo for appellant or respondent in a criminal matter when appointed to do so by the Attorney-General, or by the Director of Public Prosecutions, or by the Registrar or by the Court.

Taxation of costs

20. (1) The costs incurred in an appeal or application shall be taxed by the Registrar who shall act as the taxing master.

(2) The Registrar may at the taxation of any bills of costs, call for

such books, documents, papers or accounts as are necessary for him to properly determine all matters arising from taxation.

(3) Where an advocate, duly instructed by an attorney has appeared in the appeal, the amount of fees allowed for costs on a party and party basis shall be such as appears in the Third Schedule attached to the Rules:

Provided that the Registrar, if he thinks it fit, may depart from any of the provisions of the Schedule.

(4) The amount of fees allowed to an attorney on a party and party basis shall be such as appears in the Fourth Schedule attached to these Rules:

Provided that the Registrar, if he thinks it just, may depart from any of the provisions of such Schedule.

(5) In applying the provisions of the tariff, a folio shall contain one hundred and fifty words, four figures to be counted as a word.

(6) The Registrar shall not proceed to tax any bill unless he is satisfied that the party who is liable to pay the costs has received notice of the taxation. Such notice shall not however be necessary if the party liable to pay the costs has consented in writing to taxation in his absence.

(7) The Registrar in taxing the bill of costs may disallow the costs of unnecessary duplication of documents.

(8) Where, in the opinion of the Registrar, more than one attorney has been engaged in the performance of the work covered by the tariff in the Second Schedule, each such attorney shall be entitled to be remunerated, on the basis set out in the Fourth Schedule for the work done by him.

(9) The taxation by the Registrar after the affixing of his allocatur shall be subject to review by the Court.

(10) The party who is not satisfied with the ruling of the Registrar as to any item or part of an item which was objected to or disallowed *mero motu* by the Registrar may, within fourteen days of the allocatur, require the Registrar to state a case for the decision of the Court.

(11) Such case shall set out each item or part of an item together with the grounds of objection advanced at the taxation and shall embody any relevant findings of fact by the Registrar.

(12) The Registrar shall supply a copy of the stated case to each of the parties. Each party may, within fourteen days of the receipt of the copy, submit contentions in writing including grounds of objection if any, not advanced at the taxation, in respect of an item which was objected to before the Registrar or disallowed by him *mero motu*.

(13) Thereafter the Registrar shall frame his report and lay the case, together with the contentions of the parties and his report, before a Judge.

(14) After the taxing master, has so laid his report before the Judge, he shall notify the parties or their respective attorneys of the date of hearing.

(15) The Judge, after hearing the parties, may-

- (a) make such an order as he thinks just on each item referred to;
- (b) make an order as to costs as he thinks fit; or
- (c) in his discretion refer the matter for decision by the Full Bench at the next session of the Court.

Court fees

21. (1) The fees to be paid to the Court are as set out in the Second Schedule attached hereto.

(2) Court fees shall be payable by means of revenue stamps affixed to the document provided that the Registrar may accept cash if he thinks fit.

(3) No fees of any kind shall be paid by the appellant convicted of murder and sentenced to death.

(4) The Court or the High Court may waive, in whole or in part, payment of fees by the appellant or may order that any fees already paid be refunded to the appellant as the Court sees it just.

Repeal

22. The Court of Appeal Rules, Legal Notice No. 10 of 1980⁵, are hereby repealed:

Provided that any proceedings already commenced under the repealed Rules may continue thereunder, save in so far as the Rules herein contained may be applicable thereto without injustice or increased costs to any of the parties.

DATED: 19/10/2006

**JAN-HENDRIK STEYN
PRESIDENT OF THE COURT OF APPEAL**

NOTE

1. Act No. 10 of 1978
2. Act No. 11 of 1983
3. Act No. 9 of 1980
4. Act No. 19 of 1978
5. L.N. No. 10 of 1980 as amended by L.N. No. 54 of 1990 and by L.N. No. 211 of 1992

FIRST SCHEDULE

CRIMINAL FORM NO. 1

In the matter between

and

Appellant

Respondent

Case No:

TAKE NOTICE that the above-named appellant having been convicted of the crime of on the day of and sentenced to and being now a prisoner in the gaol at (or now residing at) hereby notes an appeal against the above-named conviction and sentence to the Court of Appeal on the grounds set out in the annexure hereto.

Signed

Appellant

(or Appellant's attorney)

(Address of Attorney)

To the Registrar of the Court of Appeal
and to the Director of Public Prosecutions
and To the Registrar of the High Court.

Dated at this day of.....

CRIMINAL FORM NO. 2

Judge's Certificate

in the High Court of Lesotho

in the matter of:

V

Appellant

Respondent

Case No.

WHEREAS the appeal of the said appellant from the Subordinate Court at was dismissed by me in the High Court of Lesotho on the day of I do hereby certify that the case is a fit case for an appeal on the grounds set out in the annexure hereto

Dated at this day of

(Signature)

CRIMINAL FORM NO. 3**Recognisance of Bail of Appellant**

Be it remembered that whereas was convicted of the crime of on the day of and was thereupon sentenced to and now is in lawful custody in gaol at

and has duly appealed against his conviction and/or sentence to the Court of Appeal of Lesotho, and has applied to the High Court/Court of Appeal pending the determination of his appeal, and the High Court/Court of Appeal has granted him bail on entering into his own recognisance in the sum of

with sureties each in the sum of, the said personally comes before me the undersigned, being the Registrar of the High Court or Court of Appeal and acknowledges himself to owe to His Majesty the King Letsie III the said sum of to be made and levied on his goods, chattels, lands and tenements to the use of his said Majesty, his heirs and successors, if he the said fail in the condition endorsed.

Taken and acknowledged this day of before me

Signed

Appellant

Signed
Registrar of the High Court

Signed
Registrar Court of Appeal

Condition

The condition of the written recognisance is such that he, the said..... shall personally appear and surrender himself at and before the Court of Appeal of Lesotho at each and every hearing of his appeal and at the final determination thereof and then and there abide by the judgment of the said Court and not be out or absent from the said court at any such hearing without the leave of the said Court, and in the meantime not to depart out of the Kingdom of Lesotho, then this recognisance shall be valid, otherwise of full force and effect.

When released on bail the residence of the appellant, to which any notices, etc. are to be addressed, will be as follows.

Signed
Appellant

CIVIL FORM NO. 1

NOTICE OF APPEAL

In the Court of Appeal of Lesotho

In the matter between

Appellant
and
Respondent

Case No.

TAKE NOTICE that the above-named appellant who was the plaintiff/defen-

dant (or applicant or respondent, as the case may be) in the High Court of Lesotho being dissatisfied with the judgment of the said High Court given by the Honourable dated the day of hereby appeals to the Court of Appeal of Lesotho on the grounds contained in the annexure hereto. The Appellant reserves the right to deliver further grounds of appeal within the period set out in these Rules.

To the Registrar of the High Court
and To the Registrar of the Court of Appeal
and to Respondent or Respondent's attorney

Date at this day of

Signed
Appellant (address)
or Appellant's attorney (as the
case may be)

CIVIL FORM NO. 2

Judge's Certificate

In the High Court of Lesotho

In the matter between

Plaintiff

and

Respondent

Case No.

WHEREAS the appeal of the above-named Plaintiff (or Defendant as the case may be) from the Subordinate Court at was dismissed by me in the High Court of Lesotho on the day of I do hereby certify that the case is a fit case for an appeal on the grounds set out in the annexure hereto.

DATED at day of

 Signature of Judge

SECOND SCHEDULE

Fees of the Court

For lodging any application including affidavits	M20.00
For lodging notice of appeal or cross appeal	M40.00
For every order of Court	M30.00
For a certified copy of any order	M10.00
Request for a copy of any record or part thereof, if made by an official of the Court or of the High Court	M1.00 for every page of 150 words or less
Taxing fee in appeals	M50.00
Taxing fee in applications	M40.00

THIRD SCHEDULE

Tariff of fees of Advocates

In this Schedule Senior Counsel shall have the meaning defined in the Fourth Schedule of the High Court Rules 1980.

The following fees shall be allowed for advocates on a party and party basis.

	<u>Senior Counsel</u>	<u>Junior Counsel</u>
1. Consultations to settle application per hour	M250.00	M165.00
2. Consultations to settle notice		

	of appeal and to advise on appeal per hour	M250.00	M165.00
3.	Settling notice of motion and affidavits per hour	M250.00	M165.00
4.	Attendances in Court.		
	(1) First day of hearing		
	(a) opposed applications	M1000.00	M700.00
	(b) on appeal	M3000.00	M2000.00
	(c) noting judgment with no argument	M100.00	M70.00
	(d) noting judgment with argument as to costs	M500.00	M350.00
	(2) Subsequent days of hearing		Two thirds fees allowed for first day

The taxing master may reduce a fee if an application is heard on the same day as the appeal.

FOURTH SCHEDULE

Tariff of Fees for Attorneys

A

Taking Instructions

1.	(a) To note an appeal	M100.00
	(b) To prosecute or defend an appeal	M100.00 to M250.00
	(c) To make or oppose an application	M100.00 to M250.00
2.	To draft any notice of motion or	

affidavit per folio

M20.00

B

Preparation of Records

For preparation of the record, including for arranging for printing and typing and correcting and checking the record, per hour M100.00

C

Perusal

1. (a) Perusing judgment of High Court when taking instructions, per folio M10.00
- (b) Perusing record on appeal for each 20 folios or part thereof M20.00
2. Perusing any plan, diagram, photograph or other annexure to the record other than words M5.00 to M50.00
3. Attendance on and perusal of any notice of motion, affidavit including annexures or any other document not otherwise provided for per folio M6.00
4. Attendance on and perusal of heads of argument for each 5 folios or portion thereof (Subject to a minimum of M100.00) M50.00

D

Attendance

1. Any formal attendance on a document, letter etc. and including a telephone call M10.00
2. attendance at office of Registrar to deliver a letter or document or to uplift an order M10.00

3.	Attendance on business other than formal business per hour or part thereof	M50.00
4.	Attendance on consultation with client or counsel per hour or part thereof	M50.00
5.	Attendance at Court of Appeal where counsel employed per hour or part thereof	M100.00
6.	Attendance at Court of Appeal where counsel not employed per hour or part thereof	M200.00
7.	Attendance at Court to note judgment	M100.00

E

Drawing of Documents

1.	Any notice of motion or affidavits per folio	M20.00
2.	Instructions to counsel on appeal or application per folio	M10.00
3.	All other documents per folio	M10.00

F

Copying

Heads of argument and other documents not specially provided for

First copy per page	M3.00
Other copies per page	M2.00

G
Bill of Costs

In connection with a bill of costs for work done or services rendered by an attorney, such attorney shall be entitled to charge-

- (a) for drawing bill of costs, making the necessary copies and attending settlement-

5 per cent of the amount of the fees, either as charged in the bill, if not taxed, or as allowed on taxation, the minimum fee is to be M50.00;

- (b) for arranging and attending taxation:

5 per cent of the fees allowed with a minimum of -M50.00

- (c) for attending taxation of the other party's bill of costs-

5 per cent of the fees appearing on the bill as submitted, before taxation, with a minimum fee of M50.00; and

Note: For disbursements made to Counsel see Tariff of Fees for Advocates, Third Schedule.

C

C

