

LEGAL NOTICE NO. 294 OF 2023

THE CONSTITUTION OF THE KINGDOM OF ESWATINI, 2005
(Act No. 001 of 2005)

THE SUPREME COURT RULES, 2023
(Under Section 142)

Pursuant to the powers conferred by Section 142 of the Constitution of the Kingdom of Eswatini, the Chief Justice makes these Rules -

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**PART 1
PRELIMINARY PROVISIONS**

Citation and commencement

1. (1) These Rules may be cited as the Supreme Court Rules, 2023.

(2) These Rules shall come into force after sixty (60) calendar days of publication in the gazette.

Interpretation

2. In these Rules, unless the context otherwise requires: -

“Act” means the Court of Appeal Act, 1954 or its successor;

“Appellant” or “Applicant” means the party appealing from a judgment or the counsel of that party;

“Audio-visual Link (AVL)” means facilities that enable both audio and visual communication between participants, when some of the participants are not physically present at the place of hearing of all or part of the proceedings;

“Counsel” means an advocate or an attorney admitted in terms of the Legal Practitioners Act, 1964 or its successor;

“Court” means the Supreme Court as established by section 145 of the Constitution;

“Day” means any Court day other than a Saturday, Sunday or public holiday, and only court days shall be included in the computation of any time expressed in days under these rules or fixed by any order of the Court;

“File and serve” means to serve upon all parties to the Appeal and file with the office of the Registrar;

“Judgement” includes a decree, order, conviction, sentence, ruling and decision;

“Justice” means a Judge or acting judge of the superior court appointed under section 153 of the Constitution and may be styled Judge or Justice (JA) in the case of a Judge of the Supreme Court;

“Party” means a litigant to an appeal or counsel of the litigant and includes a litigant in interlocutory or review proceedings before the Supreme Court;

“Record” means the aggregate of papers relating to an appeal and may include the pleadings, proceedings, evidence and judgments properly to be filed before the Supreme Court on the hearing of the appeal or review;

“Registrar” means Registrar of the Supreme Court and includes a deputy and assistant registrar of the Supreme Court; and

“Respondent” means a person other than the appellant or applicant who was a party to the proceedings in the lower court and who is affected by the appeal or review or a person who is permitted by the court to be a party to the appeal or review or the counsel of the party.

Office hours of the Registrar

3. (1) The office of the Registrar shall be open to the public from 8:30am to 1:00pm and from 2:00pm to 4:30pm except on Saturdays, Sundays and Public Holidays.

(2) Notwithstanding sub-rule (1), the Registrar may in exceptional circumstances issue, process and accept documents at any time or day and shall do so when directed by the Chief Justice or, in the absence of the Chief Justice, the most senior Justice available.

Sessions and sittings of the Court

4. (1) The Chief Justice shall at least thirty (30) Court days before the commencement of a session of the Court issue the Court Roll which shall specify the date, time and place of a session of the Court.

(2) The date, time and place of a sitting of the Court shall be determined by the Chief Justice, who shall select the Judge or Judges to constitute the court at a particular sitting.

(3) The Registrar shall cause the notice of a session and sittings to be –

- (a) distributed to the Justices of the Court, Attorney General, Director of Public Prosecution, Commissioner or Correctional Services and Commissioner General Police and every Counsel practicing in Eswatini;
- (b) the Registrar shall cause the notice of the session and sittings in the Supreme Court to be published in the gazette; and
- (c) notwithstanding sub-rule (3) (b) above, nothing in these Rules shall preclude the Court from disposing of any business that has not been published in the gazette.

Court attire

5. A Counsel appearing before the Court shall be robed, which includes the wearing of a bib as well as dark jacket and pants or skirt and the shirt or blouse must be pristine white, closed at the neck and black closed shoes.

Delivery of Judgment

6. (1) A judgment of the Court shall be in writing and delivered in open Court during the

session at which the appeal or review was heard or so soon thereafter as the judgment may be delivered.

(2) Notwithstanding the provisions of sub-rule (1), where a judgment is not ready for delivery before the conclusion of the session, the judgment may be read by any Justice of the Court or, if the Chief Justice so directs, by the Registrar, and the Registrar shall enter judgment accordingly, and that judgment shall be as effective in all respects as if it had been delivered at a sitting of the Court.

Register of appeals and reviews

7. (1) The Registrar shall maintain and keep separate registers of all civil appeals, criminal appeals and reviews brought before the Court.

(2) Each register shall contain particulars of the date on which –

- (a) the notice of appeal, review or the application for leave to appeal was lodged;
- (b) an interlocutory order was made;
- (c) the record of the appeal or review was received;
- (d) the appeal, review or application was heard; and
- (e) judgment was delivered.

Registrar to keep, maintain Court records and documents

8. (1) The Registrar shall number the notice with a consecutive number for the year during which the notice of appeal or review is filed.

(2) The person presenting the document for filing shall number the documents with the number assigned by the Registrar in respect of the notice in sub-rule (1).

(3) The Registrar shall not receive a document that does not conform to these Rules.

(4) The Registrar shall maintain the court stamps and court records which shall not thereafter be withdrawn permanently from the official court files without a court order.

Inspection and copying of documents

9. (1) A person shall when inspecting a document or when making a copy which forms part of the Court record do so with the consent and presence of the Registrar.

(2) The Registrar shall, at the request of a party, make a copy of a document forming part of the record on payment of the prescribed fee as prescribed in the Schedule of fees attached.

(3) The Registrar shall, when requested, certify that a copy or photocopy of a record is a true copy of the original.

PART 2 **GENERAL PROVISIONS**

Notice of Appeal

10. (1) An appeal shall be instituted in the form of notice of appeal signed by the appellant or by a certificate of a judge issued in terms of Section 4, 6 or 15 of the Act, which shall constitute a notice of appeal and filed as specified in the First Schedule under Criminal Form 1 for criminal matters and civil Form 1 for civil matters.

(2) The appellant shall deliver a notice of appeal or cause it to be delivered to the Registrar within the period prescribed in Rule 13 (1) and shall at the same time serve a copy of that notice on the respondent.

(3) Subject to these Rules, the Registrar shall date, number and file a notice of appeal on receipt.

(4) A notice of appeal shall –

- (a) state whether the whole or part of the judgment or order is appealed against, except that where an appeal is noted against an order where reasons have not been given, this Rule shall be complied with within fifteen (15) days after the reasons have been given;
- (b) state which part of the judgment or order is appealed against, where only a part of the judgment or order is appealed against; and
- (c) set forth concisely and distinctly -
 - (i) the ground or grounds of appeal on which the appellant relies for the relief sought; and
 - (ii) in the grounds referred in subparagraph (i), in separately numbered paragraphs, the findings of fact and conclusions of law to which the appellant objects and the particular respects in which the variation of the judgment or order is sought.

Notice of cross appeal

11. (1) A respondent who intends to file a notice of cross-appeal shall, within fifteen (15) days or such longer period as may be allowed on good cause shown after receiving a notice of appeal from the party appealing, file a notice of cross-appeal with the Registrar and the Registrar of the Court whose judgment is appealed against and serve a copy of the notice on the party appealing.

(2) The notice of cross-appeal referred to in sub-rule (1) shall set forth fully and distinctly the particulars in respect of which the variation of the judgment of the court cross appealed from is sought on the same basis as set out in Rule 10 (4).

Appellant confined to the grounds of appeal

12. (1) A party to an appeal or cross appeal shall not, without leave of the Court, introduce a new ground of appeal which is not contained in the notice of appeal or cross appeal.

(2) Notwithstanding the provisions of sub-rule (1), the Court in deciding the appeal shall not be confined to the grounds so stated in the notice of appeal provided that the Court shall not in deciding the appeal rest its decision on any ground which the parties have not had sufficient opportunity of addressing the Court on.

Time for filing notice of appeal

13. (1) A notice of appeal shall be served and filed no later than twenty (20) days from the date of the judgment appealed against.

(2) The Registrar shall not accept or register any notice of appeal which is presented after the expiry of the period mentioned in sub-rule (1) unless extension of time or leave to appeal out of time has been previously obtained from the Court or Judge.

(3) Notwithstanding sub-rule (2), a notice of appeal which is presented out of time without leave of court shall be endorsed as being out of time, be date-stamped and returned to the appellant by the Registrar with a similarly endorsed and date-stamped copy retained on the file of the court whose judgment is appealed against.

(4) Where there is a written judgment the period for filing a notice of appeal shall run from the date of delivery of the written judgment.

(5) Where the appellant is in a police or correctional service facility the appellant may deliver the notice of appeal and a copy of that notice within the prescribed time to the officer in charge of the facility where the appellant is kept who shall thereupon endorse the notice and the copy with the date of receipt and forward them to the Registrar who shall file the original and forward the copy to the respondent.

(6) Subject to Rule 21 and 22, where an appellant fails to note an appeal within the time prescribed under this Rule the right to appeal shall be extinguished.

Application for leave to appeal

14. (1) An application for leave to appeal shall be filed within twenty-five (25) days from the date of delivery of the judgment which it is sought to be appealed against and filed as specified in the First Schedule under Criminal Form 3 for criminal matters and Civil Form 3 for Civil matters.

(2) An application for leave to appeal shall -

- (a) be made by way of petition in criminal matters or motion in civil matters;
- (b) set out in details the grounds upon which the application is based which *prima facie* show good cause for leave to be granted; and
- (c) set out reasonable prospects of success.

(3) Where facts are alleged, those facts shall be verified by affidavit.

(4) The appellant shall deliver the petition or motion and its supporting documents to the Registrar and serve a copy on the respondent.

(5) A notice of motion for leave to appeal and all supporting documents shall be accompanied by supporting affidavit which shall be delivered to the Registrar and a copy of that notice and supporting documents including the draft notice of appeal shall be served by the appellant on the respondent.

(6) Where an appellant is in a police or correctional facility that appellant may, within thirty (30) days of the date of the judgment sought to be appealed, deliver the petition and supporting documents and a copy of that petition and supporting documents to the officer in charge of the facility who shall thereupon endorse the petition with the date of receipt and forward the petition and supporting documents to the Registrar who shall file the original and forward the copy to the respondent.

(7) The respondent may file an affidavit in answer to the petition or notice of motion within seven (7) days from the date of service or within such longer period as the Court may allow, and the appellant may file a reply within ten (10) days of the receipt of the answering affidavit.

Application for leave to appeal to constitute notice of appeal

15. Where the Court on an application for leave to appeal has granted an appellant leave to appeal it shall not be necessary for the appellant to file or serve a notice of appeal, the application constituting sufficient notice.

Declaration and arguments to be filed by a party who will not be present at the hearing of the appeal

16. (1) A party may, not less than ten (10) days before the date on which the appeal has been set down for hearing, file with the Registrar a declaration in writing stating that that party does not wish to be present in person or be represented by counsel at the hearing of the appeal.

(2) The party shall, together with the declaration, submit to the Registrar six (6) copies of such argument as that party desires to present to the Court and serve a copy of that declaration and a copy of the argument on the other party or parties to the appeal.

Amendment of notice of appeal

17. The Court may, on application, allow an amendment of the notice of appeal and of heads of argument filed by a party to an appeal, upon such terms as to service of notice of such amendment, tender for costs and otherwise as the Court may deem fit.

Abandonment of appeal

18. (1) An appellant may at any time abandon an appeal or cross-appeal by giving notice of abandonment to the Registrar and all parties.

(2) Upon notice being given the appeal shall be deemed to have been dismissed by the Court and filed as specified in the First Schedule under Criminal Form 4 for criminal matters and Civil Form 4 for Civil matters.

(3) The Registrar shall forthwith give notice of the dismissal of the appeal or cross-appeal to the respondent and the Registrar of the High Court.

(4) In a civil appeal the respondent shall be entitled to costs up to the date on which the respondent receives the notice of abandonment.

(5) A respondent who has given notice under Rule 11 shall be entitled to proceed with the cross appeal notwithstanding the abandonment of the appeal by the appellant.

Notice of hearing

19. The Registrar shall, after obtaining direction from the Chief Justice, cause notice of the date of hearing to be served upon the appellant and respondent.

Adjournment of hearing

20. Where for any reason it appears proper to adjourn an appeal or application, the Court may do so upon such terms and for such time as it may deem fit.

Extension of time and departure from Rules

21. (1) The Court may exceptionally, either *mero motu* or on application extend the time set for doing anything to which these rules apply, or may direct or condone departure from these rules in the interest of justice.

(2) An application for an urgent hearing of an appeal, for leave to appeal, for extension of time, for condonation, for re-instatement, for stay of execution, for directions or for any other purpose permitted by these rules, shall be made by notice to the other party or parties as specified in Criminal Form 5 and shall be supported by an affidavit setting forth good and substantial reasons for the application and, where the application is for leave to appeal, for leave to file an appeal out of time or for an expedited appeal, the affidavit shall be accompanied by the proposed notice and grounds of appeal, which shall *prima facie* show reasonable prospects for success should leave be granted.

Condonation in general

22. The Court may on application and on sufficient cause shown, including the prospects of success, excuse any party from compliance with any of these rules and may give such directions in matters of practice and procedure as it considers just and expedient.

Court Orders

23. The Registrar shall draw up and sign orders of the Court and shall transmit the order and judgements together with a certified copy to the Registrar of the High Court.

Right of audience

24. (1) A person either involved in or entitled to participate in proceedings may appear as follows –

- (a) in the case of a natural person, the person may appear on their own or by representation from counsel; and
- (b) in the case of a company or other artificial person having capacity to litigate the person shall be represented by a duly authorised counsel.

(2) Save in exceptional circumstances, counsel representing an appellant or a respondent in an appeal in any session shall not withdraw from the case later than twenty (20) days from the hearing of the appeal, after the publication of the roll for that session in the Gazette.

(3) A withdrawal after the time prescribed in sub-rule (2) shall be permissible only with the leave of the Court, which may be granted by a single Judge, on good cause shown.

Service

25. (1) Unless otherwise specified, service required in these rules shall be executed in the same manner as prescribed for service of process of the High Court.

(2) Notwithstanding sub-rule (1) a notice or other document which is required or authorized by these rules to be given or sent shall be deemed to have been duly given or sent by any other mode of service recognised by the Court including by any provable electronic means.

Amicus curiae submission

26. (1) A person with a sufficient interest in an appeal before the Court may with the leave of the Court, be admitted to the case as *amicus curiae* on such conditions as the Court may direct.

(2) The Court may grant leave under sub-rule (1) where the court is satisfied that the applicant has sufficient interest in the case and has useful legal argument to advance which does not duplicate the arguments of the parties to the appeal.

(3) An application for admission as *amicus curiae* shall be made in writing to the court no later than seven (7) days before the hearing of the appeal and shall-

- (a) briefly describe the interest of the *amicus curiae* in the proceedings;
- (b) identify the position to be adopted by the *amicus curiae* in the proceedings;
- (c) briefly set out the legal submissions to be advanced, their relevance, why they will be useful to the court, and how they differ from the submissions of other parties in the application.

(4) An order granting leave to be admitted as *amicus curiae* shall specify the date by which written submissions are to be filed and served on the other parties, and any conditions as to that admission.

(5) The *amicus curiae* shall be limited and shall not add to the record on appeal, shall not present oral argument unless ordered or permitted to do so by the Court; and shall not repeat arguments already advanced by parties to the appeal.

(6) The *amicus curiae* shall not be entitled to any costs for argument presented but costs incurred by a successful party arising from the intervention of the *amicus curiae* may be recovered from the *amicus curiae* if so ordered by the Court.

PART 3 **CRIMINAL APPEALS**

Varying order of restitution

27. (1) Where an appeal is brought against the conviction or sentence of a person and at the trial of that person an order of restitution is made, the person in whose favour or against whom that order is made shall be entitled to be heard.

(2) The Court may, with leave hear any other person with sufficient interest in the appeal before the Court makes any order annulling or varying such order of restitution.

Bail pending appeal

28. (1) An application for bail pending appeal shall be made in the first instance to the High Court and, where refused, the application may be brought before this Court at any time on the same or supplemented papers as specified in either form 6, 7, or form 8 of the First Schedule.

(2) In the event the original record mentioned in sub section (1) above has not been yet been transcribed, the record shall be made available to the Court for the purposes of the bail application.

(3) An application for bail pending appeal in terms of these Rules shall be brought on notice to the Director of Public Prosecutions or the private prosecutor as the case may be, and shall be accompanied by an affidavit detailing the personal circumstances of the applicant, reasons why it is just, to grant the applicant bail as a convicted prisoner, the names and means of proposed sureties for the due appearance of applicant at the appeal, and proffered bail conditions as specified in form 7 of the First Schedule.

(4) Upon receipt of a notice of application for bail pending appeal, the Registrar or the Registrar of the High Court shall, after consulting the Chief Justice or the trial judge, as the case may be, fix a date for the hearing of the application, and shall notify the parties in writing of that date.

(5) The Director of Public Prosecutions or the private prosecutor, as the case may be, shall, whether or not the Director of Public Prosecutions or the private prosecutor desires to oppose the application, file and serve by no later than the day preceding the hearing a notice of opposition or non-opposition accompanied by an affidavit sworn by the investigating officer, or some other person familiar with the case, setting out the reasons for the opposition or non-opposition of the applicant to bail being granted pending appeal, together, where applicable, with any proposed conditions of bail.

(6) Where the Court or the High Court admits an appellant to bail pending the determination of the appeal, the court which admitted the appellant to bail shall specify the conditions of bail.

(7) An appellant who has been admitted to bail shall be personally present at each and every hearing of the appeal and at the final determination of the appeal.

(8) The Court may, in the event of the appellant not being present at any hearing of an appeal in respect of that appellant, provisionally cancel the bail, and may issue a warrant for the apprehension of the appellant.

Record of appeal in criminal appeals

29. (1) Where an appeal is lodged against sentence only, the record of appeal to be placed before the Court on the hearing of the appeal shall be prepared by the Registrar of the High Court and shall consist of –

- (a) a short transcript or statement of the charges;
- (b) pleas;
- (c) judgment;
- (d) the order, if any; and

- (e) all proceedings after judgment, inclusive of any representations by or on behalf of the convicted person, the Crown prosecutor or private prosecutor.

(2) Notwithstanding sub-rule (1), the Chief Justice may order that other parts of the original record be transcribed and included in the record at the instance of the Chief Justice or the appellant.

(3) Where an appeal is against sentence and conviction, the Registrar of the High Court shall prepare the record of appeal, which shall include-

- (a) a certificate that the record complies with this rule and is complete and correct or where the record does not comply with this rule a proper explanation as to the non-compliance;
- (b) an index;
- (c) the charge sheet or indictment;
- (d) the transcribed record of proceedings in the High Court;
- (e) where applicable, the full record of proceedings, including interlocutory matters in the original trial court, together with the judgment of that court;
- (f) the judgment of the High Court;
- (g) the proceedings of any application made after the judgment was handed down or imposed;
- (h) copies of all documentary exhibits produced during the trial but in the case of books of account or other lengthy documents only the relevant extracts shall be included; and
- (i) the notice of appeal or notice of application as the case may be.

(4) Formal documents, such as subpoenas and recognizances, correspondence from counsel including committal documents, shall not unless specifically relevant, be included in the record of appeal, such documents, shall be available in the original file for examination where required.

(5) All copies of the record shall be clearly typed on one side only of an A4-size paper, one and a-half-spaced, in black ink, and every tenth line of each page of the record shall be numbered, and at the top of each page there shall be typed the name of the witness whose evidence is recorded on that page.

(6) The record shall be consecutively paginated and, where necessary, shall be divided into manageable binders, marked with volume numbers, each containing not more than two hundred and fifty (250) pages, with a single complete index in the first volume, and a sub-index in each additional volume.

Service and transmission of record of appeal

30. (1) As soon as the record of appeal is complete the Registrar shall cause one copy to be served free of charge on the appellant and to the Director of Public Prosecutions or private

prosecutor, as the case may be, and shall record the fact of such delivery in the appeal file.

(2) The Registrar shall upon completion of the record list the appeal for hearing in its turn or as directed by the Chief Justice.

Presence of appellant at hearing of appeal

31. (1) An appellant, whether in custody or not, is entitled to be present in person at the hearing of an appeal and all subsequent proceedings.

(2) The Court hearing the appeal may dispense with the physical presence of the appellant in the interest of public health or security or compelling convenience.

Sentence of death

32. (1) After any trial in which the sentence of death has been imposed, the Registrar of the High Court shall forthwith cause the record of proceedings including documents in sub-rule (2) to be transcribed and forwarded to the Court as soon as possible.

(2) The Registrar shall-

- (a) compile the record;
- (b) send copies of that record to the Attorney-General for the information of the Committee on the Prerogative of Mercy and the officer-in-charge of the facility where the appellant is in custody;
- (c) cause copies of the record to be delivered to the appellant and the Director of Public Prosecutions; and
- (d) list the case for hearing or consideration by the Court.

(3) The appellant or counsel of the appellant shall, within the time allowed for an appeal serve and file either a notice or grounds of appeal against the conviction and or sentence.

(4) On the determination of the appeal by the Court, the Registrar shall notify the result of that appeal to the appellant if the appellant was not present in person at the hearing, the Attorney-General for the information of the Committee on the Prerogative of Mercy, the Director of Public Prosecutions and the officer-in-charge of the facility where the appellant is in custody.

(5) When the case is called the court shall, where a notice of appeal has been lodged proceed to hear the appeal, or where a notice of appeal has not been lodged, review the record, and after giving the parties the opportunity to be heard, satisfy itself that the conviction is sound and that the finding of no extenuating circumstances has been properly made.

Notification of result of appeal or application

33. (1) The Registrar shall forthwith notify the Registrar of the High Court of the decision of the Court on any appeal or application and of any order and direction made or given by the Court in relation to that appeal or application.

(2) Where the appellant is in custody the Registrar shall similarly notify the officer-in-

charge of the facility in which the appellant is kept.

(3) The Registrar of the High Court shall on receiving the notification referred to in this Rule enter the particulars of the notification in the records of the High Court and, if the appellant was convicted by a subordinate court, the Registrar of the High Court shall send a copy of those particulars to that subordinate court.

Assignment of counsel to appellant

34. (1) In an appeal against a conviction or sentence for murder or treason, an appellant who cannot afford counsel, shall be entitled to *pro deo* representation, at no cost to the appellant, by counsel appointed by the Registrar who shall, in the absence of special circumstances, be the counsel who represented appellant at the trial.

(2) Save where there are irreconcilable differences between the appellant and the appointed counsel, there shall be no substitution or replacement of the assigned *pro deo* counsel.

(3) Notwithstanding sub-rule (2), an appellant in a murder or treason case who cannot afford counsel shall be permitted to choose the *pro deo* counsel from a panel of three (3) provided by the Registrar and provided that counsel agrees in writing to appear and to be remunerated in accordance with the scales payable to *pro deo* counsel.

(4) In any other case of particular complexity, the Registrar may, with the leave of the Chief Justice, appoint *pro deo* counsel to represent an appellant who cannot afford legal representation.

(5) Counsel appointed to represent appellant *pro deo* shall be paid such fees and allowances as may be prescribed.

Costs in criminal proceedings

35. Costs shall not be granted to any party on the hearing and determination of a criminal appeal or any proceedings preliminary or incidental to the appeal, but the Court may order the payment of costs where the original proceedings were instituted by a private prosecutor.

PART 4 CIVIL APPEALS

The record of appeal

36. (1) The appellant shall prepare the record of appeal in accordance with this Rule or any order of this Court and shall within forty (40) days of the date of noting of the appeal file a copy of the record with the Registrar of the High Court for certification as a correct record.

(2) The Registrar of the High Court shall not certify the copy of the record lodged if that copy is not a correct reflection of the record and shall return that copy to the appellant for revision and correction within fifteen (15) days.

(3) The appellant shall re-lodge with the Registrar of the High Court a corrected copy of the record for certification within the time stipulated in sub-rule (2).

(4) Where the appellant has not complied with sub-rule (3), re-lodgement of the record for certification shall not be done without the leave of the Chief Justice or the Judge who presided at the hearing in the court *a quo*.

(5) Subject to rule 21 or 22, where an appellant fails to submit or resubmit the record for certification within the time provided by this rule, the appeal shall be deemed to have been abandoned and struck off the roll.

(6) The appellant shall prepare the record in consultation with the respondent, and shall endeavour to exclude from the record any document which is not relevant to the subject matter of the appeal and to reduce the bulk of the record in so far as practicable.

(7) A document which is purely formal shall be omitted and a document shall not be set forth more than once.

(8) The record shall include a list of documents that were omitted, if any.

(9) Where a document is included or excluded notwithstanding an objection to its inclusion or exclusion by any party, the objection shall be noted in the index of the record.

(10) All copies of the record shall be clearly typed on one side only of an A4-size paper, one and a-half-spaced, in black ink, and every tenth line of each page of the record shall be numbered, and at the top of each page there shall be typed the name of the witness whose evidence is recorded on that page.

(11) Photocopies of original documents shall be permissible only if they are clearly legible.

(12) The pages of the record shall be consecutively numbered on top right corner of each page.

(13) The record shall be properly indexed and securely bound in suitable covers.

(14) A bulky record shall be divided into separate conveniently sized volumes of pages of no more than 250 pages per volume not unless it is essential for the determination of the appeal, the record shall not contain –

- (a) heads of argument;
- (b) a transcript of oral evidence;
- (c) an opening address;
- (d) discovery affidavits and similar documents;
- (e) identical copies of any document; or
- (f) any document not proved or admitted.

(15) Additions to the record may be made at the request of the parties or any of them or at the direction of the Court at any time before the hearing of an appeal, and in each case copies of the added page or pages and an amended index shall be delivered to all parties to the appeal and shall be included in all court copies of the record.

(16) Any evidential material that was not before the High Court shall not be added to the record save with the leave of Court granted in terms of Rule 46 of these Rules.

(17) The Registrar of the High Court shall ensure that the provisions of sub-rules (12), (13), (14), (15) and (16) of this rule have been complied with before furnishing the certificate required under sub-rule (1).

(18) The Registrar of the High Court shall not accept any process or document sought to be filed out of time.

(19) Where the Registrar of the High Court has certified the record, the appellant shall thereafter lodge with the Registrar six (6) copies of the record and deliver to the respondent such number of copies as may reasonably be required by the respondent.

(20) Every copy of the record or part thereof which is lodged with the Registrar shall be certified as correct by the Registrar of the High Court.

(21) Upon receipt of the record the Registrar shall immediately transmit a copy of that record to the Chief Justice who shall thereafter assign a date which may be any date not less than thirty (30) days before the date assigned for the hearing of the appeal.

(22) Where the Chief Justice has assigned a date for the hearing of an appeal, the Registrar shall immediately notify the Registrar of the High Court and the parties to the appeal of the assigned date.

Heads of argument

37. (1) In a civil matter relating to appeals, the appellant or applicant shall, not later than twenty (20) days before the hearing, or such later date as may be determined by the Chief Justice or a Justice designated by the Chief Justice, file with the Registrar six copies of the main heads to be presented on appeal, and serve on the respondent or Counsel of the respondent one copy of the heads of argument, together with bundle of authorities.

(2) In the event that the original record mentioned in sub-section 36 (1) above has not yet been transcribed, or as directed by the Chief Justice or the Justice designated by the Chief Justice, the appeal shall be deemed to be abandoned and struck off the roll.

(3) The respondent shall, not later than fifteen (15) days before the hearing or such earlier or later date as may be determined by the Chief Justice or a Justice designated by the Chief Justice, file with the Registrar six (6) copies, and serve on the appellant or applicant or Counsel of the appellant or applicant one copy of the heads of argument, together with a list of authorities.

(4) Where an appellant files heads of argument in terms of sub-rule (1) or any extended time, and the respondent fails to file heads of argument within the time specified in sub-rule (3) or any extended time, the appeal shall proceed as enrolled and, in that event, the Court may, in the presence or absence of the defaulting party hear argument and make such order as it considers fit.

(5) Where the respondent had entered opposition to the appeal the respondent shall be heard on the materials before Court.

(6) Heads of argument filed with the Court in terms of these rules shall –

- (a) be set out in separate paragraphs for each ground, indicating, where evidence is referred to, the volume, page and line numbers where that evidence appears on the record;

- (b) be clear and concise and shall not contain unnecessary elaboration;
- (c) state, in respect of each authority cited, the proposition of law that the authority makes;
- (d) not contain lengthy quotations from the record or authorities;
- (e) make specific, not general, reference to pages and paragraphs in a cited authority or a record;
- (f) indicate, by an asterisk, the authority to which particular reference shall be made during argument;
- (g) clearly set out the order sought from the Court;
- (h) be indexed and paginated;
- (i) not exceed forty (40) A4-size pages, unless a judge on request, directs otherwise, and
- (j) set out concisely the issue or issues for determination.

Power of the Court to amend, vary or correct the judgment

38. (1) Where a party to an appeal seeks to have a part of the judgment reversed, varied or corrected, the party shall file a notice of appeal that seeks to have only a part of the judgment reversed or varied or corrected and filed as specified in form 7 of the Second Schedule.

(2) The Court may, on receipt of the notice, draw any inference of fact, give any judgment, and make any order which ought to have been made and may make such further or other order as the case may require, and such powers may be exercised in favour of all or any of the respondents or parties whether or not they have appealed from or complained of the decision under appeal.

(3) The Court may make such order as to the whole or any part of the costs of the appeal as may be just.

(4) Where an administrative error has occurred in any part of a judgment of the Court, the Court shall have the power, *mero motu* or at the instance of an affected party, to correct that error at any time after the judgment has been delivered but not perfected.

Power to order new trial

39. (1) Where upon hearing of an appeal it appears to the Court that a new trial ought to be had, the Court may order that the judgment be set aside, and a new trial be had.

(2) In issuing an order in terms of this rule, the Court may make any such further orders as it deems fit.

Respondent applying to vary order appealed against

40. (1) A respondent who intends to apply to the Court for a variation of the order appealed against shall within the time specified in sub-rule (6), or such time as the Court may order, give

notice of that intention to any party who may be affected by that variation as specified in Civil Form 7 the First Schedule.

(2) The respondent shall deliver the notice referred to in sub-rule (1) together with six (6) copies of the notice to the Registrar of the High Court and shall serve a copy of the notice on the appellant.

(3) On receipt of the notice the Registrar of the High Court shall forward it together with four (4) copies to the Registrar.

(4) The respondent shall state fully in that notice the particulars in respect of which the respondent seeks a variation of the order and the ground upon which the order is sought.

(5) The omission to give the notice under sub-rule (1) shall not affect or in any manner prejudice the power of the Court to vary that order but it may, in the discretion of the Court, be a ground for an adjournment of the appeal, or for a special order as to costs.

(6) Subject to any special order which may be made, notice by a respondent under this rule shall be given-

- (a) in the case of an appeal from a final judgment, not less than twenty (20) days; and
- (b) in the case of an appeal from an interlocutory order, not less than fifteen (15) days before the date on which the appeal has been set down for hearing.

Security for costs (Due execution)

41. (1) Where the High Court grants to a party leave to execute its judgment, the party requesting execution shall, before such execution, enter into good and sufficient security in the event the execution is reversed.

(2) Where execution of a judgment is suspended pending appeal, the appellant shall, before lodging copies of the record, enter into good and sufficient security for the costs of appeal of the respondent, unless-

- (a) the respondent waives the right to security within fifteen (15) days of the receipt of the notice of appeal of the appellant; or
- (b) the High Court on application of the appellant made within fifteen (15) days after service of the notice of appeal or such longer period as the High Court on good cause shown, allows the appellant to be released wholly or partially from this obligation.

(3) Where the execution of a judgment is suspended pending appeal, the appellant shall, when copies of the record are lodged, inform the Registrar in writing whether the appellant -

- (a) has entered into security in terms of this rule; or
- (b) has been released from this obligation, either by a waiver from the respondent or by the High Court, in terms of sub-rule (2).

(4) The Registrar of the High Court shall, whenever the parties disagree as to the amount of security, determine and fix the amount.

(5) This rule shall not apply to the Government.

(6) Where the appellant fails to comply with this rule, the Registrar of the High Court shall so inform the Registrar and the Court may thereupon order that the appeal be dismissed with or without costs.

Taxation costs in civil proceedings

42. (1) The Registrar shall be the taxing master with power to tax the cost between party and party of or arising out of an application or appeal to the court.

(2) The taxing master shall tax costs incurred in an appeal or application on the scale set out in the Second Schedule to these rules.

(3) Save where the Court authorises fees consequent upon the employment of more than one advocate to be included in a party and party bill of costs, only such fees as are consequent upon the employment of one advocate are allowed as between party and party.

(4) A person aggrieved by any order, decision or ruling of the taxing master may apply to a single Justice delegated by the Chief Justice to review and set aside that order, decision or ruling and to make such further order as the Justice think fit.

(5) An order or decision made by the Justice shall be subject to appeal to the Court as if it were an order or decision of the High Court.

Fees

43 (1) Save as provided in this rule, the fees prescribed in the Second Schedule shall be charged in respect of the civil matters to which they are respectively assigned and shall be paid to the Registrar of the High Court or the Registrar, as the case may be, by means of revenue stamps issued under the Stamp Duties Act, No. 37 of 1970, or any other approved payment means including electronic payments.

(2) Every physical stamp shall be affixed to the document in respect of which the court fee is payable and shall be defaced by the public officer responsible for so affixing it. In the case of electronic proof of payment of the stamp duty shall be attached.

(3) Every physical stamp shall be defaced by writing or impressing in ink on or across the stamp the name or initials of the public officer affixing it to the document together with the true date of defacement in such manner as effectually and permanently to render the stamp incapable of being used for stamping any other document.

(4) In the circumstances and subject to the condition mentioned in section 33 of the Stamp Duties Act, No. 37 of 1970, or the relevant section of its successor, the Accountant-General with the approval of the Registrar may make a refund of any court fee payable under this section, as if such court fee was a duty payable under such Act.

(5) A fee shall not be payable in respect of any matter where that fee would be payable by the Government.

PART 5
PAUPER APPELLANTS

Pauper appellants

44. (1) Where an appellant alleges being unable to pay the fees of the appeal, the Registrar of the High Court, upon application being made for that purpose, shall enquire into the question of the inability of the applicant to pay the fees and for that purpose may require the applicant to give evidence on oath, either in person or by affidavit.

(2) The decision of the Registrar of the High Court shall be final as to whether the applicant is a pauper or not, and if the Registrar of the High Court is satisfied as to the lack of means of the applicant the Registrar of the High Court shall refer the case to counsel for consideration on the prospects of success of the appeal.

(3) Where counsel certifies that, counsel has considered the case and that believes the applicant has good grounds of appeal the Registrar of the High Court shall forward the record of the appeal, certificate of counsel and a statement of the proportion of the fees which the applicant is able to pay, to the Registrar.

(4) The Registrar shall thereupon assign counsel to the applicant, but counsel shall not take any further fee from the applicant for anything done in the conduct of the appeal.

(5) The fees, other than those in the statement referred to in sub-rule (3), shall not be payable by the applicant.

(6) The applicant shall be responsible for the cost of preparing the record in terms of Rule 36, but the applicant shall not be required to deposit or find security for the prosecution of the appeal or for the payment of costs other than the amount certified in the statement in terms of sub-rule (3).

(7) Where the pauper appellant succeeds in any appeal which results in an order for payment to the appellant of any sum of money from the other side, whether by way of costs or otherwise, the Court may order that the appeal fees shall be a first charge on any moneys recovered under that order and from the balance of the moneys recovered, counsel for the pauper appellant shall be entitled to such costs as may be allowed on taxation.

PART 6
NEW EVIDENCE

New evidence on appeal

45. (1) A party may, with leave of Court, allege any new facts essential to the issue that have come to the party's knowledge after the decision from which the appeal is brought and adduce evidence in support of such allegations and filed as specified in form 9 for criminal matters and form 6 for civil matters

(2) A party to an appeal shall not be entitled to adduce new evidence in support of the original action unless the Court, on application in the interest of justice, allows or requires new or further evidence relevant to the issue before the Court to be adduced.

(3) New evidence shall not be allowed unless the Court is satisfied that with due diligence or enquiry the evidence could not have been and was not available to the party at the hearing of the original action to which it relates.

(4) Any new evidence may be by oral examination in Court, by an affidavit or by deposition taken before an examiner as the Court may direct.

Examination regarding new evidence

46. (1) Where the Court orders the examination of a witness to be conducted otherwise than before the Court, the order shall specify the person or office of the person appointed as examiner to take the evidence, the place of taking the evidence, the examination and the witness to be so examined.

(2) The Registrar shall furnish the examiner with any documents or exhibits and any other material relating to the issue before the Court as and when required by the examiner.

(3) The documents, exhibits and other materials furnished pursuant to sub-rule (2) shall be returned to the Registrar by the examiner together with any depositions taken and any report made by the examiner in accordance with the provisions of this rule upon the conclusion of the examination.

(4) When the examiner has appointed the day and time for the examination, he shall request the Registrar to notify the parties and their counsel, if any, and the facility authorities if any of the parties is in a facility.

(5) Every witness examined before an examiner in accordance with this rule shall give evidence upon oath or affirmation to be administered by the examiner.

(6) The examination of every witness shall be in public in the form of a deposition unless otherwise ordered by the Court.

**PART 7
REVIEW**

Grounds for review

47. (1) Pursuant to section 148 (2) of the Constitution, the Court shall not reopen or review any decision made or given by it except on any of the following grounds-

- (a) exceptional circumstance exists which has resulted in miscarriage of justice;
- (b) the decision of the Court was influenced by- fraud; or
- (c) the discovery of new and material matter or evidence which, after the exercise of due diligence, was not within the knowledge of the applicant or could not have been produced by the applicant at the appeal.

(2) For the avoidance of doubt, where an application for review of any judgment or order has been heard and disposed of, there shall be no further review.

(3) In proceedings under this rule, the Bench shall be composed of five or seven Judges depending on whether the appeal was heard by three (3) or five (5) Judges.

(4) Where on an application for review the Court sets aside or modifies its decision on appeal on any ground not attributable to the fault of the applicant, the Court may, if it deems fit in the interest of justice, direct the refund to the applicant of any court fee paid on the

application in whole or in part.

Time and procedure for applying for review

48. (1) An application for review shall be filed with the Registrar not later than twenty (20) days from the date of the decision sought to be reviewed.

(2) An application for review shall be by motion supported by an affidavit clearly setting out the relevant grounds on which the application is based, including prospects of success, and served on all parties affected.

(3) A respondent to the application shall, within seven (7) days of receiving the application, file a notice of opposition if the respondent desires to oppose the application, and fifteen (15) days thereafter, file the opposing or answering affidavit.

(4) The applicant for the review shall, within ten (10) days after receiving the answering affidavit, file an affidavit in reply, if any, dealing strictly with new matters raised in the answering affidavit.

(5) The applicant shall within fifteen (15) days from the last day of filing any replying affidavit prepare and lodge with the Registrar the record on review in the manner provided under Rule 29 in respect of criminal matters and Rule 36 in respect of civil matters, subject to any modifications as may be necessary.

(6) The applicant shall file heads of argument within fifteen (15) days from the date on which the Registrar shall communicate in writing receipt of the correct copy of the record and the respondent shall file heads of argument within fifteen (15) days from the date on which the respondent is served with the heads of argument of the applicant.

(7) Whether the respondent has filed a notice of opposition or answering affidavit or heads of argument or not as required under this rule, the Registrar shall, subject to the directions of the Chief Justice, allocate and notify the parties of the date and time for the hearing of the application not earlier than twenty (20) days before the hearing of the application.

(8) A respondent who fails to file a notice of opposition or an answering affidavit or heads of argument within the time limit specified under this Rule, shall not be heard on the merits of the application, except as to the question of costs.

(9) An application for review shall not automatically suspend the operation of the Judgment on Appeal unless the Court, on Application, so directs.

(10) The applicant shall serve and file and serve the record on appeal duly certified by the Registrar of the Supreme Court within seven (7) days of service of the application for review.

PART 8
SUPERVISORY JURISDICTION

Application to invoke supervisory jurisdiction.

49. (1) An application invoking the supervisory jurisdiction of the Court under section 148 (1) of the Constitution shall be brought on notice of motion and shall-

- (a) be supported by an affidavit or affidavits stating the facts on which the relief is sought and the grounds for the application; and,
- (b) in the case of an application for a declaration of invalidity or interdict, be accompanied by a copy of the decision, order, determination or other proceeding against which the application is sought.

(2) An application to invoke the supervisory jurisdiction of the Court shall be filed and served on all interested parties including the presiding officer at the earliest convenient time and not later than twenty-five (25) days after the date when the ground for the application first arose or within such time as the Court may specify.

(3) A party upon whom the application is served shall, where the party intends to oppose the application, within fifteen (15) days of service, or within such time and terms as the Court may direct, file a notice of intention to oppose the application accompanied by an affidavit in answer to the application.

(4) The applicant may, within ten (10) days of being served with the answering affidavit, file and serve a replying affidavit, if any.

(5) Upon receipt of the replying affidavit or five (5) days after the expiry of the time for filing the reply, the Registrar shall set down the application for hearing on a date convenient to the Court and the parties.

(6) An application to invoke the supervisory jurisdiction of the Court shall not be made after the expiration of thirty-five (35) days from the date when the ground for the application first arose.

PART 9 USE OF AUDIO-VISUAL LINKS IN PROCEEDINGS

Application of this part and interpretation

50. This part shall apply to the Audio Visual Link in proceedings –

“The Audio-visual link or the AVL” means facilities that enable both audio and visual communication between participants, when some of them are not physically present at the place of hearing of all or part of the proceedings; and

“participant” means a person, who in relation to the proceedings before court, is any of the following-

- (a) a party;
- (b) accused person;
- (c) counsel;
- (d) *amicus curiae*;
- (e) a witness;
- (f) a member of the bench;

- (g) registrar, assistant registrar, or clerk;
- (h) a judge presiding over the proceedings; or
- (i) any other person who has a direct interest in the matter, or a person who the Judge considers appropriate.

General criteria for allowing use of audio-visual Links

51. (1) In every criminal or civil proceedings, the presiding Judge shall make a determination on whether or not to use the AVL for the appearance of any participant in the proceeding.

(2) In making the determination, the presiding Judge shall consider the following as criteria for the use of the AVL -

- (a) the nature of the proceeding;
- (b) the availability of the technology that is to be used;
- (c) the potential impact of the use of technology on maintenance of the rights of other parties to the proceeding, including the-
 - (i) ability to assess the credibility of witnesses and the reliability of evidence presented to the court;
 - (ii) level of contact with other participants; and
- (d) any other relevant matters.

(3) The Registrar may make a determination on the use of the AVL in the allocation of hearing dates where counsel or parties need to be consulted and in matters falling within the ambit of the office of the Registrar including-

- (a) security for costs; and
- (b) taxation.

(4) A participant who appears in proceedings under this Part is regarded as being present in the place of hearing at the proceedings.

(5) Sub-rule (4) shall apply whether or not the participant is in Eswatini.

Additional criteria for allowing use of audio-visual links in criminal proceedings

52. The presiding Judge shall also consider, in making a determination under this Part, whether or not to allow the use of the AVL for the appearance of any participant in a criminal proceeding, the potential impact of the use of the AVL on the right of the accused person to a fair trial, in particular -

- (a) the ability of the accused person to -
 - (i) comprehend the proceedings,

- (ii) participate effectively in the conduct of their defence;
 - (iii) consult and instruct counsel privately;
 - (iv) access relevant evidence; and
 - (v) examine the witness for the prosecution;
- (b) the level of contact to accused person has with other participants, and
- (c) any adverse impression that may arise through the accused person or any participant appearing by means of the AVL, and whether that adverse impression may be mitigated.

Use of Audio-Visual Links in Civil Proceedings

53. (1) AVL shall be used in civil proceedings for the appearance of a participant unless due to the existence of compelling circumstances, the presiding Judge determines otherwise.

- (2) A Judge may make a determination under sub-rule (1) –
- (a) at the Judges own instance; or
 - (b) on the application of any participant in the proceeding.

(3) A determination under sub-rule (1) shall be made in accordance with the criteria set out in rule 51.

Use of Audio-Visual Links in Criminal Procedural Matters

54. (1) The presiding Judge may determine whether to require any one or more of the participants in a criminal procedural matter to use the AVL for the participant's court appearance, where the AVL is available for that appearance.

(2) Any determination made under this rule shall be made in accordance with the criteria under this Part.

Use of Audio-Visual Links in Criminal Substantive Matters

55. (1) The AVL, shall not be used in a criminal trial for the appearance of a participant unless the presiding Judge determines to allow its use for the appearance of that participant in the proceedings-

- (a) in accordance with the criteria under this Part; and
- (b) taking into account whether the parties to the proceedings consent to the use.

(2) Notwithstanding sub-rule (1) and subject to sub-rule (3), the AVL, shall not be used for the appearance of the accused person in the trial that determines the guilt or innocence of the accused person unless the accused person consents to its use.

(3) Where, the presiding Judge after due determination, is of the view that justice shall be best served by the use of the AVL and that the objection in terms of sub-rule (2) by accused

person to the use of the AVL is meant to delay or frustrate the criminal trial the presiding Judge shall order the use of the AVL.

Judge may vary or revoke determination

56. The presiding Judge may at any time vary revoke a determination for the use of the AVL for the appearance of a participant if the presiding Judge considers that the reason for the determination, with respect to the criteria under this Part no longer applies or that justice shall no longer be attained by its continued use.

Judge may make directions

57. The presiding Judge who makes a determination under this Part in relation to the use of the appearance of a participant in a proceeding may make direction in accordance with that determination.

Documents and Other Exhibits at proceedings by use of the AVL

58. A document may be put to or by a person appearing at a proceeding by the use of the AVL or other exhibit may be shown to or by that person, by –

- (a) transmitting the documents or other exhibit electronically;
- (b) use of the AVL; or
- (c) any other method that the presiding Judge deems fit.

Remote participation practice directive

59. (1) Participants shall adhere to the Third Schedule to these rules relating to the conduct of the AVL hearings.

- (2) The Chief Justice may from time to time amend the Third Schedule.

PART 10
MISCELLANEOUS

Matters not expressly provided for

60. Where no provision is expressly made by these rules regarding the practice and procedure which shall apply to any cause or matter before the Court, the Court shall prescribe or adopt such practice and procedure as the justice of the cause or matter may require.

Repeal and Savings

61. (1) The Court of Appeal Rules, 1971 are repealed.

(2) Notwithstanding sub-rule (1), the conduct of any appeal or review filed before the commencement of these Rules shall, as far as may be practicable, be regulated to its conclusion by the repealed rules.

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FIRST SCHEDULE

CRIMINAL FORMS

CRIMINAL FORM NO. 1

(Under Rule 10)

**NOTICE OF APPEAL AGAINST CONVICTION OR
SENTENCE BY HIGH COURT**

(1) To the Registrar of the Supreme Court

(2) To the Director of Public Prosecutions

..... having
been convicted of a crime of

.....
.....and being now a prisoner in the goal at

.....
.....

(or now living at)

DO HEREBY GIVE NOTICE OF APPEAL against my conviction and/or sentence (particulars
of which hereinafter appear) to the Supreme Court on the following grounds.

(Signed)

Appellant

(on mark)

Witness attesting mark:

Signature:

Address:

.....

Dated this day of 20.....

PARTICULARS OF TRIAL AND CONVICTION

1. Date of trial
2. In what Court tried
3. Sentence

The Supreme Court will, if you desire it, consider your case and argument if put into writing by you or on your behalf, instead of your case and argument being presented orally in Court. If you desire to present your case and argument in writing, set out on a separate sheet of paper attached to this form your case and argument in support of your appeal.

CRIMINAL FORM NO. 2

(Under Rule)

JUDGE'S CERTIFICATE

In the High Court of ESwatini

Rex

vs

.....(Appellant)

Whereas the appeal of the said appellant from the Subordinate Court at.....

was dismissed by me in the High Court of ESwatini sitting at Mbabane on the day of

.....20.....

I DO HEREBY CERTIFY that the case is a fit case for an appeal upon the following grounds:

Dated at..... on this day of.....20..........
Judge**CRIMINAL FORM NO. 3**

(Under Rule 14)

APPLICATION FOR LEAVE TO APPEAL

(1) To the Registrar of the Supreme Court

(2) To the Director of Public Prosecutions

WHEREAS I.....(Appellant)

was convicted by the Subordinate Court at.....

of the crime of

on the..... day of 20.....

AND WHEREAS my appeal was dismissed by the High Court of Eswatini sitting at Mbabane

on the day of20.....

I, the said appellant, HEREBY PETITION the Supreme Court for leave to appeal on the following questions of law, that is to say:

(Signed).....
Appellant

(Or mark)

Witness attesting mark:

Signature:

Address:.....

Dated at this day of20.....

CRIMINAL FORM NO. 4

(Under Rule 18)

**NOTICE OF ABANDONMENT OF APPEAL AGAINST
CONVICTION OR SENTENCE**

Rex

vs.

(1) To the Registrar Supreme the Court

(2) To the Director of Public Prosecutions

I.....

having been convicted of the crime of.....
..... by the High Court of ESwatini on
the.....day of..... 20 and being desirous of
appealing and having duly sent Notice to that effect to the Supreme Court against my
conviction (or sentence of passed upon me on my conviction).

Further proceedings in regard thereto from the date hereof.

Dated at on this day of 20.....

(Signed).....

Appellant

(Or mark)

Witness attesting mark:

Signature.....

Address.....

CRIMINAL FORM NO. 5

(Under Rule 21)

NOTICE OF APPLICATION FOR EXTENSION OF TIME WITHIN WHICH TO APPEAL

(1) To the Registrar of the Supreme Court

(2) To the Director of Public Prosecutions

I..... having been convicted of the crime of

by the High Court of ESwatini at Mbabane on the.....

(or now living at.....

HEREBY GIVE NOTICE that I apply to the Supreme Court for an extension of time within which I may give notice of appeal (or notice of application for leave to appeal) on the grounds set forth in my attached affidavit.

Dated at on this day of 20.....

(Signed).....

Appellant

(Or mark)

Witness attesting mark:

Signature.....

Address.....

NOTE --- The affidavit should set out reasons for extending the time and also the grounds of appeal.

CRIMINAL FORM NO. 6

(Under Rule 28) (3)

**NOTICE OF APPLICATION BY APPELLANT FOR BAIL
PENDING APPEAL**

To the Registrar of the High Court. or

To the Registrar of the Supreme Court and

To the Director of Public Prosecutions

I..... having been convicted of the crime of

.....
and being now a prisoner in the goal at

..... and having given Notice of Appeal/been
granted leave to appeal

DO HEREBY GIVE NOTICE that I desire to apply to the High Court/Supreme Court for bail
with/without sureties on the following grounds:

Dated at..... this..... day of..... 20.....

(Signed)
Appellant

(Or mark)

Witness attesting mark:

Signature.....

Address

.....

CRIMINAL FORM NO. 7

(UNDER RULE 28) (3)

RECOGNISANCE OF BAIL OF APPELLANT'S SURETIES

Be it remembered that whereas.....
was convicted of the crime of.....

.....
on the..... day of..... 20.....

and was thereupon sentenced to.....

and is now in lawful custody in goal at
 and has duly appealed against his conviction (and sentence) to the Supreme Court/High Court
 for bail pending the determination of his appeal, and the Supreme Court/High Court has
 granted him bail on entering into his own recognisance in the sum of E
 (with sureties each in the sum of E) the said
 personally comes before me the undersigned being the Registrar of the Supreme
 Court /High Court and acknowledges himself to owe to His Majesty the King the said sum of
 E..... of good and lawful money to be made and levied on his goods, chattels,
 lands and tenements to the use of His Majesty if he the said fail in the
 conditions endorsed.

Taken and acknowledged this.....day of.....20..... before
 me.

(Signed).....
 Appellant

Registrar, High Court

Registrar, Supreme Court

CONDITION

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

When released on bail my residence, to which any Notices etc., are to be addressed will be as
 follows: -

.....

(Signed).....
 Appellant

CRIMINAL FORM NO. 8

(Under Rule 28)

RECOGNISANCE OF BAIL OF APPELLANT'S SURETIES

Be it remembered on this..... day of20.....,
 of and
 of came before me,
 the undersigned, being Registrar of the Supreme Court/High Court, and severally
 acknowledged themselves to owe to His Majesty the King the several sums following, that is
 to say, the said.....
 the sum of E..... and the said.....

..... the sum of E..... of good and lawful money, to be made and levied of their goods, chattels, lands and tenements to the use of His Majesty and successors, if now in lawful custody in the goal at..... fail in the condition hereon endorsed.

Taken and acknowledged this day of20..... before me.

Signed).....

First Surety

.....

Second Surety

Registrar, High Court

Registrar, Supreme Court

CONDITION

The condition of the within written recognisance is such that whereas the said..... having been convicted of the crime of and now in lawful custody as above mentioned (under sentence offor such crime) has duly appealed to the Supreme Court against his said conviction (and sentence), and having applied to the Supreme Court/High Court for bail, pending the determination of his appeal, has been granted bail on his entering into recognisances in the sum of E..... with..... sureties, each in the sum of E..... if the said..... shall appear and surrender himself at and before the Supreme Court at each and every hearing of his said appeal to such Court and at the final determination thereof, and to there and then abide by the judgment of the said Court and not to depart from the said Court at any such hearing without the leave of the Court, and in the meantime not to depart out of the kingdom, then this recognisance to be void, otherwise of full force and effect.

(Signed) (1) Surety.....
Address.....
.....

(Signed) (2) Surety.....
Address
.....

CRIMINAL FORM NO. 9

(Under Rule 45)

APPLICATION FOR FURTHER WITNESS

HEADING

(1) To the Registrar of the Supreme Court

(2) To the Director of Public Prosecutions

I having
 appealed to the Supreme Court, hereby make application that I desire that the said Court shall
 order the witnesses hereinafter specified to attend the Supreme Court and be examined on my
 behalf.

Dated at on this day of 20

(Signed)
 Appellant

(Or mark)

Witness attesting mark:

Signature
 Address

You are required to fill up the following and sign the same -

1. Names and addresses of witnesses
2. Whether such witnesses have been examined at trial
3. If not, state reason why they were not so examined
4. On what matters do you wish them to be examined on the appeal? State shortly the
 evidence you think they will give.

CIVIL FORMS

CIVIL FORM NO. 1
THE SUPREME COURT RULES
 (Under Rule 10)

**NOTICE OF APPEAL FROM FINAL DECISION OF
 HIGH COURT IN ITS ORIGINAL JURISDICTION**

Between Appellant
 and
 Respondent

TAKE NOTICE that the Appellant, who was the plaintiff/defendant in the High Court of
 Swaziland, being dissatisfied with the judgment of the said Court contained in the order dated
 the day of 20, do hereby appeal
 to the Supreme Court on the following grounds:

Dated at on this day of 20

.....
 Appellant

To the Registrar of the Supreme Court

And to (Respondent)

CIVIL FORM NO. 2

THE SUPREME COURT RULES
(Under Rule 10)

JUDGE'S CERTIFICATE

In the High Court of Eswatini

Between

..... Appellant

and

Respondent

WHEREAS the appeal of the said from the
Subordinate Court at ... was dismissed by me in
the High Court sitting at Mbabane on theday of.....
20.....

I DO HEREBY CERTIFY that the case is a fit one for appeal on the following grounds:

Dated at Mbabane on this day of 20

Judge

CIVIL FORM NO. 3

THE SUPREME COURT RULES
(Under Rule 14)

NOTICE OF MOTION FOR LEAVE TO APPEAL

Between Appellant

and

..... Respondent

TAKE NOTICE THAT the Supreme Court will be moved at Mbabane on the.....day
of 20 at o'clock in the forenoon or as soon as
possible thereafter by the appellant (who was the plaintiff/defendant or appellant/respondent in
the High Court) or his counsel on the hearing of an application for leave to appeal against the
judgment of the said High Court given on theday of..... 20

And further take notice that the grounds of this application are as follows -

Dated at.....on this ... day of 20.....

(Signed)

Appellant or his Counsel

To the Registrar, Supreme Court

And to (Respondent)

S90

CIVIL FORM NO. 4

**THE SUPREME COURT RULES
(Under Rule 18)**

NOTICE OF ABANDONMENT OF APPEAL

Between Appellant

and

..... Respondent

TAKE NOTICE THAT the appellant hereby wholly withdraws his appeal against the respondent.

(Signed)

Appellant

Before me the

Registrar of the Supreme Court

.....

To the Registrar of the Supreme Court

CIVIL FORM NO. 5

**THE SUPREME COURT RULES
(Under Rule 21)**

**NOTICE OF MOTION FOR EXTENSION OF TIME
WITHIN WHICH TO APPEAL**

Between Appellant

and

..... Respondent

TAKE NOTICE THAT the Supreme Court will be moved at Mbabane on the
day of 20 at o'clock in the forenoon or as
soon as possible thereafter by the appellant (who was the plaintiff/defendant in the High Court
of Swaziland) or his counsel on the hearing of an application for an order that notwithstanding
that the time limited by the Rules of the Supreme Court for doing so has expired, the appellant
may be at liberty to appeal/apply for leave to appeal from the judgment of the said High Court
dated the day of 20, on the grounds set
forth in the attached affidavit of the appellant.

(Signed)

Appellant or his Counsel

Dated at this day of 20

To the Registrar, Supreme Court

And to (Respondent)

CIVIL FORM NO. 6

THE SUPREME COURT RULES
(Under Rules 45 and 47)

**NOTICE OF INTENTION TO APPLY FOR LEAVE TO PRODUCE
FRESH EVIDENCE**

Between Appellant
and Respondent

TAKE NOTICE that the above-named appellant/respondent intends at the hearing of the appeal herein to apply to the Supreme Court for leave to produce, in addition to the evidence produced at the trial of the action, the following evidence:

(Here state shortly the fresh evidence desired to be produced)

Dated this day of 20

(Signed)
Appellant/Respondent or his Counsel

To the Registrar, Supreme Court

And to (Appellant/Respondent)
.....

CIVIL FORM NO. 7

(Under Rule 40)

**NOTICE OF INTENTION TO CONTEND THAT THE JUDGMENT OF THE
HIGH COURT SHOULD BE VARIED**

Between Appellant
and Respondent

TAKE NOTICE that the above-named respondent intends upon the hearing of the appeal to apply to vary the judgment of the High Court of Swaziland dated the day of 20....., in the following respect -

(Here specify variation required)

Dated this day of 20

(Signed)
(Respondent or his Counsel)

To the Registrar, Supreme Court

And to (Appellant)
At
.....

SECOND SCHEDULE**LEGAL PRACTITIONERS FEE**

(Under Rule 43)

Attorney's Fees.

The following fees shall be allowed to attorneys conducting appeals or other matters before the Court:

Section A. – TAKING INSTRUCTIONS

E

- | | |
|---|----------------------|
| a) To note an appeal or cross-appeal when leave to appeal is not required | 1,000.00 |
| b) To prosecute or defend an appeal, including continuation of a cross-appeal | 1,000.00 to 1,800.00 |
| c) To make or oppose an application | 1,000.00 to 1,800.00 |
| To draft any petition or affidavit | 1,000.00 to 1,800.00 |

Section B. – PREPARATION OF RECORDS

Making, for the purpose of preparing copies of the record on appeal (except where a charge is made under sub-paragraph 5 hereof), a copy of such particulars of the record as were not in the possession of the appellant or his attorney at the time when the order appealed from was made, per folio

2.50

- | | |
|---|------------------|
| 2. Arranging record for printing or typing, excluding unnecessary documents therefrom, and preparing index and list of documents not included in record on appeal, per hour or part thereof | 500.00 to 900.00 |
| 3. Correcting printer's proof or typed or renewed copy, per hour or part thereof | 200.00 to 500.00 |
| 4. Attending at the office of the Registrar or Officer of the Court appealed from to peruse or authenticate the record, per hour or part thereof | 200.00 |
| 5. a) Making typed copies of record of appeal and heads of arguments, per folio | 2.50 |
| | |
| b) Where copies are made other typing, the charge shall be for the first copy E5.00 per page, for the next four copies, 0.60c per page and for further copies per page | 5.00 |

(NOTE I. – In the calculation of the number of folios the total number of words of all necessary documents is to be divided by 100 i.e. the entire record is to be treated as one document)

(NOTE II. – In the calculation of the number of pages, the total number of words of all necessary documents is to be divided by at least 250, i.e. the entire record is to be treated as one document:

Provided that in the case of printed documents or forms, for example, publications, bonds, contracts, credit agreements and special procurations, each page thereof is to be treated as only one page)

Section C. – PERUSAL

1. a) Perusing judgment of Court *a quo* when taking instructions for the continuation of an appeal or cross-appeal, where leave to appeal is not required, per page 70.00
- b) Perusing record on appeal, for each page or part thereof 20.00
- c) Perusing judgment of Court *a quo* by which leave to appeal was denied, when instructions are taken to address a petition to the Chief Justice, per page 70.00

(NOTE – The minimum fee under items (a) and (b) shall be E100.00

2. Perusing any plan, diagram, photograph or other annexure to the record to which the remuneration herein before set out cannot be applied 60.00 to 600.00
per item
3. a) Attendance on and perusal of any petition or affidavit or any other document not elsewhere provided for, per page 60.00
- b) Attendance on and perusal of any annexure to a petition and answering affidavit, per page 20.00
- c) Attendance on and perusal of a petition or affidavit composed or corrected by counsel, per page 20.00

(NOTE I. - The minimum fees under item (a) shall be as follows:

For formal affidavits – E12.00; for affidavits other than formal affidavits E25.00)

(NOTE II. – In the calculation of the number of pages the total number of words of all necessary annexures, judgments of court or copies of publications attached as confirmation of heads of arguments, for every 10 pages or portion thereof 150.00
.....

(NOTE III. Attendance on and perusal of heads of argument, including 150.00
for every 10 pages or portion thereof

(NOTE – The minimum fee under this item shall be E50.00)

Section D. – ATTENDANCE

1. Any formal attendance on an acknowledgement, receipt etc 50.00
.....
2. Attendance of any letter, email, document or telephone call,
or any other necessary attendance not otherwise provided for 60.00 to 360.00
.....

(NOTE – A composite fee shall be charged for all letters received: provided that a short summary of the contents of such letters be attached to the bill of costs before taxation)

3. a) Attendance at office of Registrar to deliver a letter or document,
or to uplift an order etc 50.00

b) Attendance on business other than formal business per hour or
part thereof 360.00 to 600.00
4. a) Attendance at any consultation with counsel or client, per
hour or part thereof 360.00

b) A comprehensive fee for attendance, obtaining and payment
of counsel for noting of judgment 1,800.00
5. Attendance at court, to enter judgment if counsel employed;

a) By an Attorney 1,600.00

b) By a Clerk 500.00

6. Attendance at court on hearing or application, per hour or part thereof – if counsel employed
 - a) By an Attorney 700.00 to 1,300.00
 - b) By a Clerk 500.00
7. If counsel not employed and attorney appearing on hearing or application:
 - a) Preparing for trial per hour 400.00 to 800.00
 - b) Appearing first day or part thereof 2,400.00 to 5,000.00
 - c) Refresher 2/3 of fee in 7(b) above

Section E. – DRAWING UP OF DOCUMENTS

1. Any petition or affidavit, per page 100.00
2. Instructions to counsel, whether written or verbal –
 - a) On appeal 300.00 to 1,200.00
 - b) On petition 300.00 to 1,200.00
 - c) In justifiable cases, for the drawing up or correcting of petition or affidavit for an application for leave to appeal or disputing thereof 300.00 to 1,200.00
3. Drawing up notices of appeal or other necessary notices per folio 2,000.00 to 5,000.00
4. Letters and emails, per page, including copies to keep 200.00

(NOTE – A composite fee shall be charged for all letters and emails written;

Provided that a short summary of such letters to be attached to the bill of costs before taxation)
5. Drawing up power of attorney, per page or part thereof 240.00
6. Drawing up short brief to counsel 240.00
7. Drawing up bond of security, per page or part thereof 240.00

Section F. – COPYING

Other documents not specially provided for:

- | | |
|--|------|
| a) First copy, per page | 4.00 |
| b) Each further necessary copy, per page | 2.50 |

Section G. – BILL OF COSTS

In connection with a Bill of Costs for work done or service rendered by an attorney, such attorney shall be entitled to charge the following:

1. For drawing up the Bill of Costs, making the necessary copies and attending settlement: 5 per cent of the amount of attorney's fees, either as charged in the bill if not taxed, or as allowed on taxation 180.00
2. For arranging and attending taxation: 5 per cent of the fees allowed.
(NOTE I. – The minimum fee under each of these items shall be E200.00)

(NOTE II. – The Fees under each item are calculated on the same amount)
3. For perusal of the other party's bill of costs, as submitted for taxation, including preparation for taxation, per page or part thereof E8.50
4. For attending taxation of the other party's bill of costs: 5 per cent on fees appearing in the bill of costs as submitted before taxation.

(NOTE – The minimum fee under this item shall be E100.00)

5. Before the taxing master taxes the bill of costs, he shall be convinced that the party who has to pay the account, or his legal representative, was properly notified of the time and place of such taxation and of his right to be present: Provided that such notice is unnecessary where the person liable of payment of costs has consented, in writing, to taxation in his absence.

(NOTE I. - With a view to affording the party who has been awarded an order for costs full indemnity for all costs reasonably incurred by him in relation to his claim or defence and to ensure that all such costs shall be borne by the party against whom such order has been made, 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 counsel or by other unusual expenses).

(NOTE II. - The taxing master shall be entitled in his discretion at any time to depart from any of the provisions of this tariff in extraordinary or exceptional circumstances where the strict execution thereof will be unjust, and in this regard shall take into account the time necessarily taken, the complexity of the matter, the nature of the subject matter in dispute, the amount in dispute and any other factors he considers relevant).

(NOTE III. - In order to diminish as much as possible, the costs arising from the copying of the record or of documents to accompany the briefs of counsel, the taxing master shall not allow the costs of any unnecessary duplication).

(NOTE IV. - Where in the opinion of the taxing master more than one attorney has been necessarily engaged in the performance of any of the work covered by this tariff, each such attorney shall be entitled to be remunerated, on the basis set out in this tariff, for the work necessarily done by him. In each such instance the bills of costs shall be taxed jointly and at the same time).

(NOTE V. - A page means any typed A4 Page or part thereof. This provision bears no relevance to a document which in totality consists of less than 250 words).

(NOTE VI. - When the services of a cost consultant are used to draft the bill of costs, a certificate from the attorney shall accompany the bill of costs and shall indicate:

- a) that the bill was properly perused and found correct after receipt thereof; - Spacing 1.5
- b) that each description therein with reference to work, time and numbers is in concurrence with what was necessarily done by him; and - 12/13 points
- c) that the items and tariff are drafted and claimed strictly according to party and party practice rules.

The taxing master may, where it is evident from the bill of costs that the requirements of the above-mentioned (a), (b) and (c), or parts thereof, are not complied with, refuse to tax such bill.

The taxing master may also, when he is convinced that a party and party bill of costs is claimed for work not done, or for work which belongs in an attorney and client bill of costs or that excessive fees are being charged, deny the attorney the remuneration mentioned in item G.1 if more than 20% of the numbers of items or the total of fees of the bill are taxed off).

Counsel's Fees

	Senior	Junior
1. Motion for leave to appeal unopposed	E1,200.00 to E1,800.00	E800.00 to E1,200.00
2. Motion for leave to appeal opposed	E1,800.00 to E2,400.00	E1,200.00 to E1,800.00
3. Drawing and settling grounds of appeal or cross appeal	E900.00 to E1,200.00	E600.00 to E800.00
4. Attending Court of Appeal arguing Appeal	E6,000.00 to E9,000.00	E4,000.00 to E6,000.00

Provided that on application the Court of Appeal may increase these maxima in any appeal of special difficulty.

- | | | |
|--------------------------------------|-------------------------------|-----------------------|
| 5. Refresher for each day | Two thirds of
fee on brief | |
| 6. Consultations per half hour | E720.00 to
E1,200.00 | E480.00 to
E800.00 |

Travelling and Subsistence Allowances

7. 1) A travelling allowance for advocates and attorneys shall be allowed at the rate of E1.50 per kilometre, where the advocate or attorney travels to court by car:

Provided that the kilometre rage shall not, unless for special cause shown, be greater than the distance there and back, between the courthouse and the nearest place where there is an advocate or attorney available.

- 2) A subsistence allowance for advocates and attorneys shall be allowed at the rate of E600.00 for every night it is necessary for the advocate or attorney employed to remain at the place where the Court of appeal is situated.

THIRD SCHEDULE
(Under Rule 59)

The purpose of this schedule is to prescribe the manner in which virtual hearings under Part IX are to be conducted. Insofar as possible given the nature of the technology being used for the hearing, it will be conducted in the same manner as a conventional hearing in the Supreme Court.

Hearing, Platform and Administration

1. The hearing will use the Microsoft Teams, Zoom or any other platform approved by the Registrar in writing which should have the capacity to show at least nine (9) participants at any one time. This should be sufficient for all the Judges and Counsel who will be addressing the Court to be visible at all times. If any problem arises during the course of the hearing, it will be possible to make alternative arrangements using a different platform.
2. The Administrator for the hearing will be allocated Judge's Secretary or the IT Officer. Not later than one (1) week prior to the hearing, the correspondent Attorneys in Mbabane are to provide to the Administrator a list of participants in the hearing including their email addresses and mobile phone numbers. Any alteration to that list occasioned by last minute changes must be furnished to the Administrator as a matter of urgency. No-one whose name does not appear on the list will be admitted to the hearing. A monitor or screen for the public must be provided by the Registrar during the hearing to ensure that the hearing is open to the public. During the hearing the Administrator shall be in attendance to attend to any technical problems that may arise.

Times of sittings

3. At least fifteen (15) minutes before the hearing, all Counsel shall meet remotely to enable the Administrator to inform the presiding Judge of any actual or potential technical problems such as poor connectivity in relation to the hearing. This is to ensure that all members of the Court are present and able to connect to the hearing before the hearing commences.
4. After meeting with the presiding Judge, Counsel will leave the meeting to enable the members of the bench to assemble by joining the meeting.
5. Counsel, Attorneys and other attendees shall then enter the meeting but will remain in the waiting room until admitted by the Administrator. The intention is that everyone must have assembled in sufficient time to enable the hearing to commence at the scheduled hearing time.
6. After commencement, the proceedings will proceed in accordance with normal Court hours. Adjournments shall be at the discretion of the presiding Judge.

Procedure during the hearing

7. The Judges and Counsel will be robed and attired as they would be in a conventional hearing. Counsel will however remain seated during the hearing so as to minimize any distracting movement. Counsel may not leave their seat during the hearing.
8. The Judges will remain visible on their screens throughout the hearing.
9. Upon entering the hearing, Counsel and other attendees shall keep their microphones muted and their videos must be turned off with the exception of Counsel, or if more than one Counsel is appearing the Counsel who will be addressing the Court. During the hearing only the Judges and Counsel will be visible to attendees.
10. At the commencement of the hearing, the presiding Judge will inform those attending of the identity of the Judges, so that those who are not familiar with any member of the bench will be able to identify each Judge.

11. The presiding Judge will then call the name of the case and Counsel will announce their appearances in the normal way. Argument will then proceed. To try and minimise interference with the audio feed, only Counsel who is addressing the Court should have their microphone on.
12. Counsel must be alert to questions from the bench and present their arguments in a way that enables questions to be asked and responded to. Bear in mind that participants should be aware of the visual feed that a Judge wishes to ask a question, before hearing the question. Presenting the argument at a slightly slower pace than participant might normally do will assist in enabling the Judges to ask questions during the course of the argument. The presiding Judge will also try to alert Counsel to the fact that members of the bench wish to ask questions.

Technical issues

13. Insofar as possible, it is desirable that all participants should arrange the room from which they are appearing so that there is nothing distracting in the background, e.g. furniture, paintings and the like. If possible, participants should position themselves with their backs to a blank wall or one that can be covered with fabric so as to appear blank. Ornaments and paintings should be removed from the backdrop as they may create very peculiar visual effects and this can be distracting. Likewise, a bookcase (other than one with law reports and similar legal materials) should be distracting as the attention may wander to seeing what books are in the bookcase. Check these matters in advance of the hearing.
14. Participants should not position themselves with a light source behind them as it makes it very difficult to see their faces. Participants also try to avoid sitting in a position where an overhead light casts shadows over their faces. A light source from the front is the best. Light sources from above may cause problems for the follically challenged.
15. Participants must ensure that their camera is level with their faces and the screen is upright so that they do not appear to be looking up or down, or leaning back and away from the screen, which then shows the ceiling or the upper part of the wall. Participants should position themselves so that viewers will see a head and shoulders picture filling the centre of the screen.
16. Where it is necessary from time to time to refer to documents or law reports in the course of argument, Counsel shall ensure that these are placed in a reasonably accessible position to the side of the screen and that Counsel is able to refer to them without obstructing the view that members of the court have of Counsel or any participants. If Counsel is looking at such materials on a separate screen, it should be positioned so that Counsel does not have to turn away from the screen e.g. at an elevation to the screen on which the meeting is being shown. Similarly place a glass of water where it can be readily obtained. Participants do not drink from a bottle of water, drink a cup of tea or coffee or eat anything during the hearing, any more than you would in the ordinary course. A water bottle is particularly intrusive in a virtual hearing and you must not fill a glass from a water bottle where it is visible on the screen.
17. Counsel and/or participants should avoid unnecessary movements during the course of the hearing, whether they are speaking or their opponent is doing so. It is extremely distracting. Practice sitting consistently still before the hearing. Counsel should avoid using visible hand gestures during argument as they obstruct the face by coming between you and the camera, unlike in a courtroom. Also Counsel should place anything that they may need to pick up during the hearing e.g. a book, document or glass in such a position that they do not have to lean forward or reach in front of their faces in order to obtain the item in question.

18. In circumstances where Counsel may need to interact with their juniors, Attorneys or clients in the course of the hearing, this must be done in a discreet manner so as not to interrupt the proceedings. The messaging service attached to Microsoft Teams should not be used.
19. The room from which Counsel will appear must as far as possible be private and closed. No other person (or animal if Counsel have pets) should enter the room during the course of the hearing. As far as possible external sources of noise should be excluded. This is best achieved closing windows and doors and wearing headphones or ear pods.
20. Many Counsels will be using computers and have tablets or phones on which they receive emails, sms messages or WhatsApp messages. Ensure that on all of these devices the warning sounds indicating receipt of such a communication are switched to silent so that the hearing is not disturbed by them. Taking a phone call, responding to emails or messages (other than communications with other members of the legal team about the case), updating profiles on social media or anything similar should not occur during the hearing.

M. C. B MAPHALALA
CHIEF JUSTICE