

EAST AFR. PROT.  
UGANDA

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40771  
REC'D  
17 DEC 1909

L. O. Y. Y. 1

Number No.

645

909

18 Nov.

Previous Paper:

10/73

Court of Appeal Rules

Submits Rules as amended in accordance with suggestions made by the Uganda Bar Association. Proposed to be in force from 1st Jan 1910. See also p. 10 of reply.

Mr Cox

The App Rules are in 437/08

Our draft dealing with them is in 11220/09. The alterations contained in that draft have been accepted and in Rules 9, 12, 22, 25 & 26.

Address The Clerk in accordance with the Rules (see § 914 of the Rules)

JSL 20/12

S. P. Jones  
Attorney  
20/12

20 Dec 1909

4/12  
10/12

C.O  
40771

GOVERNMENT HOUSE,

Nairobi,

318

AFRICA PROTECTORATE.

November 18th 1900.

No. 846

(Incl. 2)

My Lord,

With reference to Your Lordship's despatch No. 396 of July 20th, I have the honour to transmit herewith a copy of the Court of Appeal Rules as amended in accordance with suggestions made by the Acting Governor of Uganda, together with a copy of a Memorandum by the Principal Judge of that Protectorate.

2. Your Lordship will observe that it is proposed to bring the Rules into force on January 1st 1910 and in view of the shortness of the time I should be grateful for a telegraphic reply to this despatch.

I have the honour to be

Your Lordship's humble,

obedient servant,

GVERNOR.

H.M. PRINCIPAL SECRETARY OF STATE

FOR THE COLONIES,

DOWNING STREET,

LONDON, S.W.

In Despatch No. 425 of 16/11/1907

C.O.  
40771

## RULES OF COURT.

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PLD  
27-17 DEC 09

Issued by H.M.'s Court of Appeal for Eastern Africa, with the sanction of the Secretary of State, under the provisions of "The Eastern African Protectorates (Court of Appeal) Order in Council, 1907."

RULES OF APPEAL.

1. For the purpose of every appeal to the Court of Appeal, the appellant shall file with the Registrar or other officer of the High Court of the Protectorate from which the appeal emanates (hereinafter called the High Court), a Memorandum in writing setting forth concisely and under distinct heads, the grounds of objection to the decree appealed against, together with a verified copy of such decree, without any argument or narrative; and such grounds shall be numbered consecutively.

2. The appellant may appeal against the whole or any part of a decree, and the Memorandum of Appeal shall state whether the whole or part only of such decree is complained of and in the latter case shall specify such part. The Memorandum of Appeal shall also state the nature of the relief which is sought.

For the purpose of these Rules, a decree shall include a judgment order or sentence.

Appellant confined to the grounds of appeal.

3. The appellant shall not, without the leave of the Court of Appeal, urge or be heard in support of any ground.

ground of objection not mentioned in the Memorandum, but the Court in deciding the appeal shall not be confined to the grounds set forth by the appellant:

Provided that the Court shall not rest its decision on any ground not set forth by the appellant, unless the respondent has had sufficient opportunity of contesting the case on that ground.

In these Rules the term Respondent shall include any person who has been served with notice of appeal, or who is entitled to be so served.

4. Filing Memorandum of Appeal.

4. The Memorandum of Appeal shall be filed in civil cases within three months, and in criminal cases within thirty days from the date of the decree appealed against.

Provided that in criminal cases, if the appellant is in gaol, he may present his Memorandum of Appeal to the officer in charge of the gaol, within such thirty days, who shall thereupon file such Memorandum in the High Court.

Leave to file out of time necessary.

5. If a Memorandum of Appeal is presented out of time, the High Court shall require the appellant to file a petition for leave to file the Memorandum of Appeal out of time, supported by an affidavit giving reason for the delay, and the High Court, on forwarding the application to the Court of Appeal, may make such remarks as it thinks fit in regard to the statements contained in the affidavit, and until such petition shall have been granted, and a notification thereof forwarded to the said High Court, all proceedings in the appeal shall be stayed.

Fees Payable, and security on appeal.

6. (1) On filing the Memorandum of Appeal, the appellant shall pay to the High Court such fees as may be payable locally. The appellant shall also, within such time as the High Court directs, give reasonable security to the satisfaction of the said Court for the prosecution of the appeal and for payment of the fees of the Court of Appeal, and of any costs that may be ordered by the Court of Appeal to be paid by the appellant, and shall pay such sum as the High Court thinks reasonable to defray the expenses of making up and transmission of the record to the Court of Appeal.

(2) In the event of the fees or charges payable, or the security to be given, not being paid or given or being only partly paid or given, within the time directed by the High Court, all proceedings in the appeal shall be stayed (subject to the Rules with regard to pauper appeals) unless the High Court or the Appeal Court shall otherwise order for reasons to be stated in the order.

(3) Should the Court of Appeal not claim payment of fees within one month of the decision in appeal or should it make no order as to costs the security given shall lapse and the High Court may demand any deposit made as way of security.

Declarations and arguments may be filed with  
Memorandum.

7. The appellant may, with his Memorandum of Appeal, file a declaration in writing that he does not wish to be present in person or by pleader on the hearing of the appeal, together with such arguments as he desires to submit to the Court of Appeal.

Service of Notice.

8. (1) The High Court shall serve notice of the appeal together with a duplicate copy of the Memorandum of Appeal, and also of the declaration and Arguments (if any) mentioned in Rule 7.

(2) When a person to be served with any notice under these Rules cannot be found within the jurisdiction of the High Court, the notice shall be advertised in the Official Gazette and no further service shall be necessary.

Persons to be served with Notice.

9. Such notice shall be served upon all parties directly affected by the appeal, and it shall not be necessary to serve parties not so affected; but the Court of Appeal may direct notice to be served upon any person and in the meantime may postpone or adjourn the hearing of the appeal upon such terms as may be just, and may give such judgment and make such order as might have been given or made if the person served with such notice had been parties directly affected by the appeal and originally served with notice.

10. The respondent may, within seven days after receiving such notice, file a declaration, in writing, that he does not wish to be present in person or by pleader at the hearing of the appeal, together with such arguments as he desires to submit to the Court of Appeal.

11. The High Court shall have full power to allow amendment of the Memorandum of Appeal, declarations, and arguments, upon such terms as to service of notice of such amendment, costs and otherwise, as it may think fit.

High Court to make up record

12. The High Court shall, with all convenient speed after the expiration of seven days from the date of service of notice on the respondent or notification in the Official Gazette as the case may be, and without the application of either party, make up the record of appeal which shall consist of the Memorandum of Appeal, declaration and arguments (if any), and copies of material proceedings, including a copy of the evidence and decrees and forward the same to the Registrar of the Court of Appeal. Provided that the High Court may forward all portions of the documentary evidence in original, if for special reasons it sees fit.

Any person, whether appellant or respondent, may apply to the High Court and specify any of the papers or exhibits in the case, copies of which he requires to be made, and thereupon copies of such papers or exhibits shall be made for him at his expense and given to him.

13. After receipt of the record as aforesaid, all applications regarding the appeal must be made to the Court of Appeal.

Notice of hearing

14. On receipt of the record the Registrar of the Court of Appeal will serve notice of the date of hearing upon the appellant and respondent.

Such notice will ordinarily be served through the High Court.

15. The Court of Appeal may hear and determine an appeal without giving notice of the date of hearing to any person who has declared that he does not wish to attend the hearing.



Pauper Appellant.

16. If any appellant alleges that he is unable to pay the fees on appeal, the High Court, upon application being made for that purpose, shall inquire into the question of the poverty of the appellant, and, if it is satisfied that the allegation of poverty is true, it shall forward to the Court of Appeal the record of appeal, together with a declaration to that effect and a statement of the proportion of the fees, if any, the appellant is able to pay, and no fees other than the above shall be payable either in the Court of Appeal or in the High Court. If the High Court is not satisfied as to the poverty of the appellant, it shall forward the application to the Court of Appeal with a report as to the appellant's means, but shall take no other step in the appeal without orders from the Court of Appeal.

Formation of the Court of Appeal.

17. The Court of Appeal shall be summoned in accordance with directions to be given by the Senior Member of the Court.
18. All appeals except as otherwise provided by these Rules shall be heard and decided by three members of the Court of Appeal; and the determination of any question before such Court shall be according to the opinion of the majority of the members of the Court hearing the appeal.
19. In any appeal, whether civil or criminal, pending before the Court of Appeal, any direction incidental thereto, not involving the decision of the appeal, may be given



given by two members of the Court of Appeal; and two members of the Court of Appeal may at any time make any interim order to prevent prejudice to the claims of any parties pending an appeal as they may think fit.

20. The following civil appeals may be disposed of by a Court consisting of two members of the Court of Appeal:-

(a) Appeals in cases in which the subject-matter of the appeal is less than 1,500 rupees in value.

(b) Any appeal with the written consent of both parties: such consent to be filed with the Registrar of the Court of Appeal.

21. No member of the Court of Appeal shall sit for the hearing and determination of an appeal from a decree made by himself alone or jointly with others.

22. The number of acting Judges who may sit at any one time in the Court of Appeal shall not exceed one.

23. Of the members forming a Court of Appeal the senior member shall be president of the Court, and shall have power to appoint any person or persons with special expert knowledge to act as assessor or assessors to the Court in any case where it appears to the Court that such special knowledge is required for the determination of the case.

Where Court equally divided in opinion.

24. If on the hearing of an appeal the Court is equally divided in opinion, the appeal shall be dismissed.

If on the hearing of an interlocutory application,  
the

the Court is equally divided in opinion, the opinion of the senior member of such Court shall prevail.

26. Unless a Court hearing a criminal appeal direct to the contrary in cases where, in the opinion of such Court, the question is a question of law on which it would be convenient that separate judgments should be pronounced by the members of such Court the judgment of such Court shall be pronounced by the President of the Court or such other member of the Court hearing the appeal as the President of the Court directs, and no judgment with respect to the determination of any question shall be separately pronounced by any member of such Court.

Powers of the Court of Appeal.

26. If for any reason it appears right to adjourn an appeal or application, the Court of Appeal shall have full power to do so upon such terms and for such time as seems fit.

27. The Court of Appeal shall have the same powers to deal with cases of contempt of its authority as the High Court of Justice in England.

28. In civil appeals the Court of Appeal shall have the power :-

- a. To dismiss an appeal
- b. To reverse a decree on a preliminary point and on such reversal to remand the case to the Court against whose decree the appeal is made with directions to proceed to determine the case on the merits.
- c. To resettle issues and finally to determine a case, notwithstanding that the judgment of the Court against whose decree the appeal is made has proceeded wholly on some other ground than that on which the Court of Appeal proceeds.

- d. To call additional evidence or to direct the Court against whose decree the appeal is made or any other subordinate Court to take additional evidence
- e. To make any amendment or any consequential or incidental order that may be just and proper.
- f. To confirm, reverse or vary the decree against which the appeal is made.
- g. To order that a decree shall be set aside and a new trial be had.
- h. To make such order as to costs in the appeal Court and in the Court or Courts below as may be just.

29. In a criminal appeal the Court of Appeal shall have power to-

- a. To dismiss the appeal.
- b. In an appeal from an order of acquittal, to reverse such order and direct that further enquiries be made, or direct that the accused be retried, or find him guilty and pass sentence on him according to law.
- c. In an appeal from a conviction to :-
  - I. Reverse the finding and sentence and acquit or discharge the accused or order the accused to be retried.
  - II. Alter the finding maintaining the sentence, or, with or without altering the finding, reduce the sentence.
  - III. With or without such reduction and with or without altering the finding alter the nature of the sentence but not so as to enhance the same.
- d. In an appeal from any other order above or reverse such order.
- e. Make any amendment or any consequential or incidental order that may be just and proper.
- f. To call for a report from the Judge who tried the case.

30. Additional evidence taken on appeal shall be either by oral examination in Court, by affidavit, or by deposition taken before an examiner or commissioner.

Interlocutory order not to prejudice Appeal.

31. No interlocutory order or rule from which there has been no appeal shall operate so as to bar or prejudice the Court of Appeal from giving such decision upon the appeal as may be just.

Stay of proceedings on appeal.

32. In civil matters an appeal shall not operate as stay of execution or of proceedings under the decree appealed from except so far as the High Court or the Court of Appeal may order and any proceedings or execution which shall be invalidated except so far as the Court of Appeal may direct.

Interest where execution delayed by Appeal.

33. On an appeal from the High Court, interest for such time as execution has been delayed by the appeal shall be allowed, unless the High Court or the Court of Appeal orders otherwise, and the taxing officer may compute such interest without any order for that purpose.

Pleaders and costs in criminal appeals.

34. (a) The President of the Court may at any time ~~may~~ assign to a pauper appellant in a criminal appeal a pleader in an appeal in which it appears desirable in the interests of justice that the appellant should have legal aid.

(b) The expenses of any pleader assigned to an appellant under this rule shall be defrayed out of the general revenue of the Protectorate from which the appeal emanates.

35. On the hearing and determination of a criminal appeal or any proceedings preliminary or incidental thereto no costs shall be allowed on either side.

36. Where costs are allowed in a civil appeal they shall be taxable according to the rules for the taxation of costs for the time being in force in East Africa.

Fees, etc. on appeals.

37. The following fees shall be taken by the Court of Appeal on setting an appeal down for hearing in the Appeal Court list.

(A) - IN CIVIL MATTERS.

	Rs.	Cts.
1. In final appeals where the amount or value of the subject matter in dispute does not exceed 100 rupees.	8.	00
Where the amount or value of the subject matter in dispute exceeds 100 rupees, for every 100 rupees or part thereof to 1,000 rupees	8.	00
Where such amount or value exceeds 1,000 rupees, for the first Rs.1,000 Rs.80 and for every 100 rupees or part thereof in excess of 1,000 rupees up to 5,000 rupees	8.	00
Where such amount or value exceeds 5,000 rupees, for the first Rs.5,000 Rs.280 and for every 500 rupees or part thereof in excess of 5,000 rupees up to 10,000 rupees	10.	00
Where such amount or value exceeds 10,000 rupees, for the first Rs.10,000 Rs.480 and for every 500 rupees or part thereof in excess of 10,000 rupees up to 20,000 rupees	15.	00
Where such amount or value exceeds 20,000 rupees, for the first Rs.20,000 Rs.780 and for every 1,000 rupees or part thereof in excess of 20,000 rupees up to 30,000 rupees	20.	00

Where

Where such amount or value exceeds 30,000 rupees, for the first Rs.30,000 Rs.980 and for every 2,000 or part thereof in excess of 30,000 rupees up to 50,000 rupees. Rs. Cts.  
20 - 00

Where such amount exceeds 50,000 rupees, for the first Rs.50,000 Rs.1180 and for every 5,000 rupees or part thereof in excess of 50,000 rupees. 20 - 00

(Provided that the maximum fee leviable shall be 2,000 rupees)

2. In appeals in which it is impossible to estimate the subject matter in dispute at a money value ) twice the fee taken in the High Court.
3. In all interlocutory matters and motions 20 - 00
4. In the event of an appeal depending on an appeal it shall be discretionary with the Court to remit not more than one half the fees charged by it.

(B) CRIMINAL MATTERS.

1. On setting appeal down for hearing Rs. Cts.  
50 - 00
- (Provided that the Court may reduce this fee in whole or in part if in its opinion the circumstances warrant it)

(C) APPEALS TO HIS MAJESTY IN COUNCIL.

1. On application for leave to appeal 50 - 00
2. On making up the record of appeal such sum as the Court thinks fit

The fee list at present in force in His Majesty's High Court of East Africa, or any other fee list that may be substituted for it, shall be deemed to be the list of fees that shall be taken in matters other than those mentioned above.

Address.

38. All communications and applications should be addressed to :-

The Registrar,

His Majesty's Court of Appeal  
for Eastern Africa,

Mombasa

East Africa Protectorate.

Rules.

39. The Court of Appeal shall ordinarily sit at Mombasa, but may sit at such other place from time to time as occasion may render necessary or convenient.

40. (1) The Court of Appeal shall hold two ordinary sessions in each year which shall commence on or as soon after the 1st of March and the 1st of November respectively as shall be found convenient. Notice of each such session and a cause list shall be published by the Registrar in the East Africa Gazette at least 14 days before the time appointed for such session, and notice of each session and so much of the cause list as relates to appeals from Uganda and Unswatini shall be published in the respective Gazettes of those Protectorates at least one month before the time appointed for such session; but nothing herein shall prevent the Court from sitting during vacation.

(2)



40. (2) Special sessions may be held at any time, when it may be considered desirable by the senior member of the Court.

.....  
Senior Member H.M.Court of Appeal for Eastern Africa.

.....  
Member.

.....  
Member.

INCLOSURE

In Despatch No. 445 of 15-7-1909

C. O.  
40771AL-0  
Recd 17/7/09

## MEMORANDUM

January  
To consider that 1st 1910 would be a convenient date for the Ordinances to come into operation.

Rule 22. Sub-Sections (h) and (i) should be (g) and (h).

Rule 2. 6th line "given to" should be altered to "served upon" as directed by the Secretary of State.

Rule 24 (b). In view of the alteration suggested by the Secretary of State, it would seem to be desirable to add the words "from which the Appeal emanates" to make it clear which Protedorate bears the cost.

When published the Rules should be dated.

Sd/- J.P.M. ERNIS,

Principal Judge, Uganda.

June 17th 1909.

Gov Gov  
4077/09

321

Eng

DRAFT

Telegram

Governor Nairobi

sent 6/12/09  
2/12/09

MINUTE.

- Mr. Smith 2/12/09
- Mr. Reilly 2/12
- Mr. Fadden 2/12
- Mr. Just
- Mr. Coz
- Sir C. Lucas
- Sir F. Hopwood
- Col. Seely
- Lord Cromer

In answer to your despatch  
unrelaxing  
of the 18th November, 1905

Associate  
Court of Appeal Rules

attached

9 This matter is really for the  
Geog. Dept. to deal with. The Geol.  
Dept. is concerned with the Appeals  
to Privy Council rules, & not with  
the Court of Appeal.

? The Tel should be followed  
by a formal despatch. 2/12/09

334A

you  
40771/09  
EAL

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EAL No 771

you

Ground

MINUTE. 24/12

Mr. Noall 23/12

Mr. Butler 23/12

Mr. Fiddes.

Mr. Just.

Mr. Cox.

Sir G. Lucas.

Sir F. Hopwood.

Col. Seely.

Lord [unclear]

Sir

I have the honour  
to inform you in  
confirmation of my tel of  
the 21<sup>st</sup> of Dec that the  
~~power of disallowance~~  
~~will not be exercised~~  
~~with regard to~~ the Court  
of Appeal Rules, a copy  
of which was enclosed in