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APPEALS AND REVISIONS

1 Appeals from the Magistrate's Court

1.1 Introduction

The *Magistrates' Courts Act* provides that appeals may lie from the Magistrate's Court to the High Court in both civil and criminal cases.

Civil Cases

All final judgments and decisions and interlocutory orders and decisions can be appealed from the Magistrate's Court to the High Court, as long as the appellant has fulfilled the conditions:

- imposed by the Magistrate's Court; or
- imposed by the High Court; or
- as prescribed by *Rules of Court*.

The High Court is also given discretionary power to hear an appeals in civil cases if the Court thinks it just.

Criminal Cases

Appeals shall lie to the High Court from the Magistrate's Court in accordance with provisions in the *CPC* and any *Rules of Court* made under *s90 Constitution*.

Part IV of the *CPC* sets out that appeals from the Magistrate's Court to the High Court can be made by way of:

- petition of appeal, under *s283*; or
- case stated, under *s298*.

No person who has appealed under *s283* shall be entitled to have a case stated and no person who has applied to have a case stated shall be entitled to an appeal under *s283: s306 CPC*.

1.2 Appeals by Petition: s283 CPC

Any party to a criminal matter who is dissatisfied with any judgment, sentence or order of a Magistrate's Court may appeal to the High Court against such judgment, sentence or order.

The appeal may be on a matter of fact as well as a matter of law. For the purposes of appeals, the extent of sentencing is considered a matter of law.

Limitations

In some cases, appeals from the Magistrate's Court to the High Court will be limited. These limitations are:

1. No appeal shall be allowed in cases where the accused has pleaded guilty and has been convicted of such a plea by the Magistrate's Court *s284(1)*. Note that the only exception is that the extent and legality of the sentence imposed by the Magistrate's Court may be appealed in this case.
2. No appeal shall be allowed where the Magistrate's Court has passed a sentence of a fine not exceeding \$10 and with no substantive prison sentence, unless they have the leave of the High Court: *s284(2)*.
3. If a sentence or conviction is not normally open to appeal, it cannot be made appealable merely on the grounds that the person convicted is ordered to find security to keep the peace: *s283(4)*.
4. No appeal shall lie against an order of acquittal by the Magistrate's Court unless the Director of Public Prosecutions sanctions such an appeal: *s183*.

1.3 Procedure for Appeal by Petition

Every appeal shall be made in the form of a petition in writing signed by the appellant or his or her advocate. The petition shall:

- be presented to the Magistrate's Court within 14 days from the date of the decision being appealed against; and
- contain the grounds upon which it is alleged that the Magistrate's Court erred: *s285 CPC*.

In order to prepare a petition of appeal, a person entitled to appeal, or his or her advocate, shall be entitled to look at the original record of proceedings at such time as the Clerk of Court or Magistrate may allow: *s286(8) CPC*.

Once you have received the petition of appeal, forward the petition and the record of proceedings to the Registrar of the High Court: *s287 CPC*.

When the High Court has received the petition of appeal and the record of proceedings, it may:

- summarily dismiss the appeal because there are not sufficient grounds for an appeal; or
- accept the petition to appeal and schedule a hearing: *ss288 & 289 CPC*.

Upon hearing the appeal, the High Court may:

- confirm, reverse or vary the decision of the Magistrate's Court;
- remit the matter back to the Magistrate's Court after giving its opinion;
- take additional evidence or direct the Magistrate's Court to do so. If additional evidence is taken by a Magistrate's Court, the Court shall certify it to the High Court, who will proceed to dispose of the appeal: *s294 CPC*;

- make such order as it may seem just;
- exercise any power which the Magistrate's Court might have exercised;
- change a sentence; or
- impose a sentence if the appeal is against a conviction alone *and* no sentence has been passed by the Magistrates Court because the appellant was committed to the High Court for sentencing under s. 208 *CPC* prior to the presentation of an appeal: *s293 CPC*.

After the High Court has decided an appeal, it shall:

- certify its judgment; or
- order it to the Court from which the judgment, sentence or order was appealed from. The Magistrate's Court must then make orders that conform to the judgment set out by the High Court and take steps to enforce the judgment: *s297 CPC*.

Unrepresented parties

When you convict a person who is not represented by an advocate, you must inform the person of his or her right to appeal at the time sentence is passed: *s283(2) CPC*.

If an appellant is not represented by an advocate, the petition may be prepared by or under your direction: *s286(2) CPC*.

If the appellant is in prison custody and not represented by an advocate, the petition may be prepared by the officer in charge of the prison and then forwarded to the Magistrate's Court: *s286(3) CPC*.

Extending the time to lodge an appeal

The Magistrate's Court or the High Court can extend the period of time to lodge an appeal if there is good cause. Good cause includes:

- a case where the advocate engaged by the appellant was not present at the hearing before the Magistrate's Court and therefore requires more time for preparation of the petition;
- any case in which a question of law is unusually difficult;
- a case where an the sanction of the Director of Public Prosecutions is required for an appeal against an order of acquittal: *s285 CPC*.

1.4 Appeals by Cases Stated

After the hearing and determination by any Magistrate's Court of any summons, charge or complaint, any party to the proceedings who is dissatisfied with the determination may apply to that Magistrate's Court to state and sign a special case for the opinion of the High Court.

The party must be dissatisfied with the determination because:

- they believe it to be erroneous on a point of law; or
- they believe it is in excess of the Magistrate's Court's jurisdiction: *s298(1) CPC*.

In order to have a case stated, the party must apply in writing within one month from the date of the Magistrate's Court's determination: *s298(1) CPC*.

Upon receiving the application, draw up the special case and give it to the Registrar of the High Court along with:

- a certified copy of the conviction, order or judgment appealed from; and
- all documents alluded to in the special case: *s298(2) CPC*.

A case stated by you shall set out:

- the charge, summons, information or complaint;
- the facts found by the Magistrate's Court to be admitted or proved;
- any submission of law made by or on behalf of the complainant during the trial or inquiry;
- any submission of law made by or on behalf of the accused during the trial or inquiry;
- the finding, or sentence of the Magistrate's Court; and
- any question or questions of law which you or any of the parties, or the Director of Public Prosecution, want submitted to the High Court for their opinion: *s307 CPC*.

Once the Registrar of the High Court receives the stated case, they shall set down the case for hearing and give notice to the parties about when and where the hearing will take place.

The High Court may, if it thinks fit, increase the time limit for the appellant to apply to the Magistrate's Court for a case stated, or increase the time for the appellant to apply to the High Court for a rule after a Magistrate has refused to state a case.

The High Court shall hear and determine the question or questions of law arising on the case stated. They have the power to:

- cause the case to be sent back to the Magistrate's Court for amendment or restatement;
- remit the case to the Magistrate's Court for rehearing and determination with such directions as it thinks necessary;
- reverse, affirm or amend the determination in regards to which the case has been stated;
- remit the matter to the Magistrate's Court after giving their opinion in relation to the matter; and
- make an order as to costs.

The orders of the High Court shall be final and binding on the parties.

Refusal to state a case

You may refuse to state a case only if you are of the opinion that the application is frivolous. If you refuse to state a case, you must sign and deliver a certificate of refusal on the request of the appellant: *s301 CPC*.

You cannot refuse to state a case when the application is made to you by, or under the direction of, the Director of Public Prosecutions, even if the case to be stated is reference to a proceeding where the Director of Public was not a party: *s301 CPC*.

If you have refused to state a case because you determine the application is merely frivolous, the appellant may apply to the High Court for a rule calling upon you and the respondent to show why the case should not be stated. The appellants must:

- apply within one month of such a refusal; and
- apply on an affidavit of facts.

The High Court may make such a rule or they may discharge it. If you are served with such a rule, you must state the case accordingly: *s302 CPC*.

Note that Magistrates who state a case, or refuse to state a case, shall not be liable to any costs with respect to an appeal by case stated: *s303 CPC*.

2 Appeals to the Magistrate's Court

Any person aggrieved by any order or decision of a Local Court may, within thirty days from the date of such order or decision, appeal to the Magistrate's Court having jurisdiction in that area: *s28 Local Courts Act (LCA)*.

A Magistrate may require the aid of any person or assessor he or she thinks fit in order to hear and determine an appeal: *s29 LCA*.

In exercising your appellate jurisdiction, you may

- make any order or pass any sentence that the Local Court could have in such a matter; or
- order the matter to be reheard before the Local Court or before any other Local Court: *s29 LCA*.

3 Revisions by the High Court

3.1 Monthly List of Criminal Cases

At the end of every month, you must send to the Chief Justice, or to a Judge the Chief Justice has appointed, a complete list of all criminal cases decided by or brought before you during that month: *s46 MCA*.

The list of criminal cases must set out:

- names, sex and age of each defendant;
- the offence with which he or she was charged;
- the defendant's plea;
- whether the defendant was convicted and the date of the conviction; and
- the sentence or order in full: *s46 MCA*.

3.2 Action to be Taken by a Judge

Once the list of criminal cases is received, the Judge receiving them may call for a copy of the record of any case. Either with or without seeing the record of the case, or with or without hearing the case, the Judge may:

- impose, reduce, enhance or alter the nature of any sentence provided that:
 - ≡ no sentence shall be imposed which the Magistrate's Court could not have imposed; and
 - ≡ no order shall be made which prejudices a person unless he or she has had an opportunity of being heard, either personally or by counsel or solicitor in his or her defence;
- make, set aside, or modify an order;
- set aside the conviction, upon which the person convicted will be freed or the fine paid will be refunded;
- set aside the conviction of the Magistrate's Court and, on the evidence, convict the accused person of any offence which he or she has not been specifically acquitted and which he or she might have been convicted on, and sentence him or her accordingly;
- set aside the conviction and substitute a special finding that the person convicted was guilty of the act or omission charged, but was insane so as not to be criminally responsible for his or her actions. The Judge shall order the person to be confined in a mental hospital, prison or other suitable place of custody;
- set aside the conviction and order a new trial or preliminary inquiry before the Magistrate who made the conviction in question, or before any other Magistrate;

- order further evidence to be taken, either generally or on some particular point, by the Magistrate who passed the sentence or by any other Magistrate; and
- make such order as justice may require and give all necessary directions: *s47 MCA*.

A Judge may require any Magistrate to give a report of any civil or criminal case, in a manner the Judge prescribes and as he or she thinks fit: *s48 MCA*.

3.3 Limits to Revision

In cases where a person has appealed their conviction or the sentence passed according to *s283 CPC* or by way of case stated under *s298 CPC*, a Judge may not use the power of revision conferred under *s47 MCA*.

Note that *s47 MCA* does not allow a Judge or the Chief Justice to convert an acquittal into a conviction.

If no action is taken upon cases on the list for three months after the list is received, the Judge shall no longer have any power to act upon those cases.

4 Revisions by the Magistrate's Court

Every Magistrate shall have access to:

- the Local Courts in his or her district at all times;
- the records of such Courts: *s27 Local Courts Act*.

On an application by any person concerned, or on your own motion, you may:

- revise any of the proceedings of the Local Court; and
- make order or pass sentence that a Local Court itself could have in the same matter; and
- order any case to be re-tried, either before the same Local Court or any other Local Court of competent jurisdiction at any stage of the proceedings: *s27 LCA*.

No sentence of fine or imprisonment or other sentence in criminal proceedings shall be increased without first giving the accused an opportunity to be heard: *s27(a) LCA*.

If you increase the sentence on revision, there shall be an appeal from your order of to the Chief Justice, who may reduce, remit or increase any such sentence: *s27(a) LCA*.