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The Gazette of the Democratic Socialist Republic of Sri Lanka EXTRAORDINARY

අංක 2216/8 - 2021 පෙබරවාරි මස 23 වැනි අඟහරුවාදා - 2021.02.23
No. 2216/8 - TUESDAY, FEBRUARY 23, 2021

(Published by Authority)

PART I : SECTION (I) — GENERAL Government Notifications

L.D. -B. 13/1978 (III)

THE CONSTITUTION OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

The Court of Appeal Rules

RULES made under Article 136 of the Constitution of the Democratic Socialist Republic of Sri Lanka by the Chief Justice and the other Judges of the Supreme Court nominated by him under that Article.

Jayantha Jayasuriya,
Chief Justice.

B. P. Aluwihare,
Judge of the Supreme Court.

P. Padman Surasena,
Judge of the Supreme Court.

Yasantha Kodagoda,
Judge of the Supreme Court.

Colombo,
22nd February, 2021.



RULES

1 These rules may be cited as the Court of Appeal (Electronic Filing and Urgent Digital Virtual Hearings) (Special Provisions) Rules, 2021 and shall come into operation with effect from March 1, 2021.

2. Without prejudice to the generality of the provisions of the Court of Appeal (Appellate Procedure) Rules, 1990 published in *Gazette* Extraordinary No. 645/4 of January 15, 1991, Court of Appeal (Procedure for appeals from High Courts established by Article 154P of the Constitution) Rules, 1988 published in *Gazette* Extraordinary No. 549/6 of March 13, 1989, as amended from time to time (hereinafter referred to as the “existing rules”) and any other written law applicable to applications and appeals in the Court of Appeal, these rules shall apply for-

- (a) electronic filing of applications, appeals, motions and other documents pertaining to such applications and appeals, in the Court of Appeal; and
- (b) conducting urgent digital virtual hearings by the Court of Appeal with regard to applications, appeals and motions, filed under any written law including these rules and existing rules, deemed to be urgent in terms of rule 3.

3. An application, appeal or a motion filed under any written law including these rules and existing rules shall be deemed to be urgent, if the Judge of the Court of Appeal designated in that behalf by the President of the Court of Appeal, having regard to the inability to conduct conventional physical hearings due to any reason prejudicial to national security, public safety or the order and security within the precincts of the Court of Appeal, and the need to make available the smooth and uninterrupted administration of Justice by the Court of Appeal in urgent cases during the aforesaid inability, considers that such application, appeal or motion requires an urgent digital virtual hearing (hereinafter referred to as the “digital hearing”) in terms of these rules.

4. (1) A person who intends to file an application or appeal in the Court of Appeal electronically or a party to an application or appeal already filed in the Court of Appeal under any written law including existing rules who intends to file other documents pertaining to such application or appeal in the Court of Appeal electronically, may, by himself or through an attorney-at-law acting on his behalf submit through electronic mail to the Registrar of the Court of Appeal (hereinafter referred to as the “Registrar”) the application, appeal or other documents along with a motion addressed to the President of the Court of Appeal and other Judges of the Court of Appeal.

(2) (a) An applicant, appellant or other party to any case or matter in the Court of Appeal (hereinafter referred to as the “party”) who seeks to have a digital hearing shall file a motion electronically, as specified in sub-rule (1), by himself or through an attorney-at-law acting on his behalf.

(b) Such motion shall *inter-alia* state specifically and in detail the reason which warrants and justifies the hearing of the application, appeal or motion by a digital hearing and such motion shall contain the full name and contact details including the electronic mail address and mobile telephone number of the party seeking such hearing or such details of an attorney-at-law with whom the Registrar may contact for making arrangements for the digital hearing.

(3) The provisions of existing rules shall apply to every application, appeal, motion or other document referred to in sub-rules (1) and (2) in so far as such provisions are not inconsistent with these rules.

(4) Every application, appeal, motion or other document referred to in sub-rules (1) and (2) shall -

- (a) be computer generated on A4 size page setting, with 4cm margins on left and right sides and 2cm top and bottom borders of the page using font size 12 of Times New Roman with 1.5 line spacing;
- (b) accompany documents in compliance with the existing rules, including signatures or certifications where required;

- (c) be prepared and scanned without any watermark and whenever possible be at 300 dots per inch (dpi) with optical character recognition (OCR);
- (d) be amalgamated wherever possible into a single portable document format (PDF) file with the page number at the bottom of every page in a single series, commencing from the covering motion; and
- (e) in the event of an application, appeal, motion, other documents or attachments thereunder exceeding file size 20 MB, such application, appeal, motion, other documents or attachments shall be split into multiple PDF files as may be required to achieve the designated file size, and be submitted through one or more electronic mails or stored in a suitable data storage web based mechanism such as 'cloud storage' and necessary access to such storage mechanism be provided through electronic mail to the Registrar.

(5) The party or an attorney-at-law filing documents electronically in terms of these rules shall retain the hard copies of such documents so filed in the safe custody of such party or the attorney-at-law as the case may be, and submit them to the Registrar on the direction of the Court of Appeal.

5. (1) A Judge of the Court-of Appeal designated in that behalf by the President of the Court of Appeal sitting in chambers shall consider motions filed electronically in the Court of Appeal under rule 4, and where necessary, the applications, appeals or other documents filed therewith and decide whether such applications, appeals or motions shall be taken up for digital hearing.

(2) Where it appears to the satisfaction of such Judge that the matter pertaining to any motion filed electronically in the Court of Appeal is urgent within the meaning of rule 3 and it is expedient to refer such matter for a digital hearing, he shall make an appropriate direction to the Registrar to arrange a digital hearing pertaining to such matter.

(3) It shall be the duty of the Registrar to comply with the provisions specified in rule 6 in order to make arrangements for a digital hearing.

6. (1) The Registrar shall require the party or the attorney-at-law who has been nominated by the party -

- (a) to pay the relevant fees applicable in respect of electronic filing and digital hearing, and submit proof of payment to the Registrar;
- (b) to notify all the parties to such application or appeal, regarding the filing of the application, appeal or the motion, in the manner specified by the Registrar, and to submit proof of such notice to the Registrar.

(2) The Registrar, shall not process any such application, appeal or motion unless he is satisfied that the party or the attorney-at-law, as the case may be, has acted in compliance with sub-rule (1) (a).

(3) Where the party or the attorney-at-law fails to comply with the preceding provisions of this rule at the first instance, such party or the attorney-at-law shall be notified by the Registrar through electronic mail that such application, appeal or motion will not be processed unless he acts in compliance with this rule within a period specified in such notification.

(4) Where the party or the attorney-at-law fails to comply with the notification of the Registrar within the period specified in such notification, the application, appeal or motion shall be forwarded to the Judge referred to in rule 5 for an appropriate direction.

(5) Where it has been decided under sub-rule (2) of rule 5 that any motion filed under rule 4 warrants a digital hearing and the party or the attorney-at-law, as the case may be, complies with the provisions of this rule, the Registrar shall fix a date and time for the digital hearing on the direction of the Judge referred to in rule 5.

(6) The date and time fixed for the digital hearing shall be informed either through electronic mail or by telephone to the Judges designated by the President of the Court of Appeal to hear the case or matter and to the parties or to their attorneys-at-law, as the case may be.

7. (1) With the view to ensuring the conduct of a proper digital hearing, every party shall ensure that-

- (a) the digital hearing be conducted using a real time contemporaneous or near contemporaneous internet based video conferencing platform specified by the Registrar;
- (b) he shall be equipped with a properly functioning computer with a web cam, microphone and a speaker when participating in a digital hearing;
- (c) a suitable and quiet location be used when participating in the digital hearing and shall locate himself in a place which has a non-descriptive and plain background behind him that will be displayed on the screen;
- (d) he be available online at least fifteen minutes prior to the scheduled time of the digital hearing, in order to verify the proper functioning of the internet connection and network among all parties in order to commence the digital hearing.

(2) An attorney- at- law who participates in the digital hearing shall use his name with surname as the “display name”.

8. (1) The following persons shall be entitled to participate at a digital hearing: -

- (a) attorneys- at- law of the respective parties ;
- (b) parties to the application, appeal or motion or their authorized representatives with the permission of the Court of Appeal obtained through their attorneys-at- law, who may observe the proceedings of the digital hearing, by remaining in the vicinity of the computer used by such attorneys-at-law;
- (c) parties to the application, appeal or motion not represented by an attorney- at- law; and
- (d) officials of the Court of Appeal.

(2) All such Persons are required to inform the Registrar of their names, identification details and contact details, prior to the commencement of the proceedings of the digital hearing, including details of persons not captured within the video frame:

Provided however, every endeavor shall be made to have all the persons present, to be seated within the range of the web cam of the computer.

(3) A person shall not attend or be present in the vicinity of a digital hearing unless the prior permission of the Court of Appeal has been obtained for such attendance or presence.

(4) A person shall not address the Court or display any matter for the attention of the Court without obtaining prior permission from such Court.

(5) The parties shall ensure that the webcam of the computer and the “video” option in the video conferencing platform remains turned “on” at all times during the digital hearing, unless prior permission is obtained from the Court.

(6) All persons are strictly prohibited from recording, copying, storing, sharing, broadcasting, telecasting or otherwise transmitting the whole or part of a digital hearing in the form of a video, audio, digital or in any other form.

(7) All parties taking part in a digital hearing shall remain online until the Court concludes the hearing:

Provided however, a party may leave the venue from which he is participating in the digital hearing, or switch “off” the “video” option, with the prior permission of the Court.

(8) A party may seek permission from the Court to adjourn the digital hearing, if such party undergoes any difficulty which requires technical assistance, until such difficulty is resolved or an alternate system is implemented with the permission of the Court.

(9) Proceedings relating to an application, appeal or a motion commenced or dealt with in a digital hearing, may be subsequently proceeded with, either as a further session of digital hearing or as a conventional physical hearing.

9. (1) Subject to the provisions of section 350 of the Code of Criminal Procedure Act, No. 15 of 1979, the Court of Appeal may permit a remand prisoner, a convicted prisoner or a person detained at a detention facility in terms of any written law, to observe through a contemporaneous or near contemporaneous audio-visual linkage, the proceedings instituted by, on behalf of, or relating to such prisoner or person, conducted under these rules either as a digital hearing or a conventional physical hearing.

(2) The Registrar shall make necessary arrangements in the Court to facilitate the proceedings to be observed as referred to in sub-rule (1).

(3) The Superintendent of the prison wherein such prisoner is detained or the officer-in-charge of the detention facility wherein such person is detained, shall in consultation with the Registrar provide necessary facilities to such prisoner or person being detained, to observe the proceedings of the Court as referred to in sub-rule (1).

10. Every digital hearing shall be conducted in compliance with the existing Rules made under Article 136 of the Constitution generally applicable for hearings in the Court of Appeal, to the greatest extent possible and be deemed to be a proceeding conducted in the Court of Appeal with the physical participation of the Judges and the persons referred to in sub-rule (1) of rule 8.

11. For the purposes of these rules “other documents” include objections, counter affidavits, written submissions and any other documents permitted to be filed in the Court of Appeal with regard to any-case or matter in the Court of Appeal.