



ST. HELENA

## CHAPTER 8

### COURT OF APPEAL ORDINANCE and Related Legislation

#### Non-authoritative Consolidated Text

This is not an authoritative 'revised edition' for the purposes of the Revised Edition of the Laws Ordinance; it has been prepared under the supervision of the Attorney General for the purpose of enabling ready access to the current law, and specifically for the purpose of being made accessible via the internet.

Whilst it is intended that this version accurately reflects the current law, users should refer to the authoritative texts in case of doubt. Enquiries may be addressed to the Attorney General at Essex House, Jamestown  
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Visit our [LAWS page](#) to understand the St. Helena legal system and the legal status of this version of the Ordinance.

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<sup>1</sup> These contact details may change during 2011 or early in 2012. In case of difficulty, email [shgwebsite@sainthelena.gov.sh](mailto:shgwebsite@sainthelena.gov.sh) or telephone (+290) 2470.

**CHAPTER 8****COURT OF APPEAL ORDINANCE****ARRANGEMENT OF SECTIONS****SECTION**

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## CHAPTER 8

### COURT OF APPEAL ORDINANCE

*(Ordinance 6 of 1960 and Legal Notice 4 of 1965 as amended by Ord.2 of 2005)*

AN ORDINANCE TO PROVIDE FOR APPEALS FROM THE SUPREME COURT OF ST. HELENA TO THE ST. HELENA COURT OF APPEAL.

#### Commencement

*[28 September 1960]*

#### Short title and application

1. This Ordinance may be cited as the Court of Appeal Ordinance<sup>2</sup> and it shall apply to St. Helena and the Dependencies.

#### Interpretation

2. In this Ordinance, unless the context otherwise requires—  
“**Court of Appeal**” means the St. Helena Court of Appeal established by the Constitution;  
“**Judgement**” includes a decree, order or finding and a refusal to make any order;  
“**Supreme Court**” means the Supreme Court of St. Helena.

#### Appeals from original judgments of Supreme Court in criminal cases

3. (1) Any person convicted by the Supreme Court and sentenced to death or to a term of imprisonment exceeding twelve months or to a fine exceeding £100 may, subject to the provisions of this Ordinance, appeal to the Court of Appeal—

- (a) as of right, against his conviction on a matter of law or of fact or of mixed law and fact;
- (b) with the leave of the Court of Appeal, against the sentence passed on his conviction, unless the sentence is one fixed by law.

(2) Any person convicted by the Supreme Court and sentenced—

- (a) to any term of imprisonment or to a fine exceeding £10; or
- (b) to a fine not exceeding £10 if, in the opinion of the Supreme Court or the Court of Appeal, his case involves a question of law of great general or public importance;

may, subject to the provisions of this Ordinance, with the leave of the Court of Appeal or upon the certificate of the Supreme Court that it is a fit case for appeal, appeal against his conviction on any grounds which appears to the Court of Appeal or the Supreme Court as the case may be to be a sufficient ground of appeal or against the sentence passed on his conviction unless the sentence is one fixed by law.

(3) No appeal shall be allowed in the case of any person who has pleaded guilty and has been convicted on such plea by the Supreme Court, except as to the extent or legality of the sentence.

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<sup>2</sup> Originally called the “Appeals Ordinance”

## Second appeals

4. Any party to criminal proceedings held before the Supreme Court in its appellate jurisdiction who is dissatisfied with any part of its judgement may appeal to the Court of Appeal on a matter of law (not including severity of sentence) but not on a matter of fact or of mixed law and fact.

## Bail

5. Save in a case where the appellant has been sentenced to death the Supreme Court may in its discretion in any case in which under this Ordinance an appeal to the Court of Appeal is filed, grant bail pending the hearing and determination of the appeal.

## Stay of execution of death sentence

6. In the case of a sentence of death—
- (a) the sentence shall not be executed until after the expiration of the time within which an appeal under this Ordinance may be filed;
  - (b)<sup>3</sup> if an appeal is filed the sentence shall not be executed until the appeal has been disposed of or abandoned;
  - (c) if a petition for leave to file an appeal out of time is presented the sentence shall not be executed until leave to file the appeal out of time has been refused or the appeal has been disposed of or abandoned:

Provided that if the sentence has been confirmed by the Governor it may be executed without further extension notwithstanding that a petition for leave to file an appeal out of time may have been presented after the time for appeal has expired.

## Power of Court of Appeal in determining an appeal under this Part

7. (1) The Court of Appeal in determining an appeal against conviction may—
- (a) dismiss the appeal;
  - (b) allow the appeal and quash the conviction;
  - (c) set aside the conviction and convict the appellant of any offence of which he might be convicted by the Supreme Court on the evidence which has been adduced and sentence him accordingly;
  - (d) order a new trial before the court which passed sentence or before any Court having jurisdiction in the matter;
  - (e) remit the case together with its judgment or order thereon to the Supreme Court or to a Court subordinate to the Supreme Court with such directions as may to the Court of Appeal appear necessary:

Provided that the Court of Appeal, notwithstanding that it is of opinion that the point raised on the appeal might be decided in favour of the appellant, shall dismiss the appeal if it considers that no substantial miscarriage of justice has occurred.

(2) In determining an appeal the Court of Appeal may increase, reduce or modify the sentence.

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<sup>3</sup> Paragraph (b) amended by Ord. 2 of 2005

**Appeals in civil cases**

- 8.** An appeal shall lie in Civil cases from the Supreme Court to the Court of Appeal—
- (a) as of right, from any final judgment of the Supreme Court where the appeal involves directly or indirectly some claim or question respecting property of the value of £300 or upwards;
  - (b) with the leave of the Supreme Court, from any other judgment of the Supreme Court whether final or interlocutory if in the opinion of the Supreme Court the question involved in the appeal is one of great general or public importance or involves some substantial civil right;
  - (c) with the leave of the Court of Appeal, where the Court of Appeal considers that leave to appeal ought to be granted:

Provided that no appeal shall lie from a decree passed by the Supreme Court with the consent of the parties.

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**COURT OF APPEAL RULES****ARRANGEMENT OF RULES****GENERAL****RULE**

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**COURT OF APPEAL RULES – SECTION 49 CONSTITUTION**

*(Legal Notices 3 of 1998 and 26 of 2009)*

**GENERAL****Short title**

1. These Rules may be cited as the St. Helena Court of Appeal Rules.

**Application**

2. (1) Subject to subrule (2), these Rules shall apply to all proceedings before the St. Helena Court of Appeal.

(2) Where there is no provision in these Rules, the rules of procedure for the time being in force in England and Wales relating to appeals to the Court of Appeal shall apply.

**Interpretation**

3. In these Rules—

“**Advocate**” means a solicitor or barrister entitled to practice in St. Helena, or a Lay Advocate appointed pursuant to section 3(1) of the Lay Advocates and Legal Assistance Ordinance;

“**the Constitution**”<sup>4</sup> ...

“**the Court**”<sup>5</sup> means the Court of Appeal established by section 86 of the Constitution;

“**Judge**”<sup>6</sup> means the President or a Justice of Appeal appointed pursuant to section 86 of the Constitution;

“**Registrar**” means the Registrar of the St. Helena Court of Appeal;

“**Service Officer**” means any police officer or an officer of the Supreme Court authorised to effect service of documents;

“**Supreme Court**” means the St. Helena Supreme Court.

**Extension or abridgement of time**

4. (1) The Court or a single judge may, on such terms as it or he thinks just, order that the time within which a person is required or authorised to do any act be extended or abridged.

(2) Unless otherwise ordered by the Court, when the time for doing any act expires on a day when the Registrar’s office is closed, the act shall be deemed to have been done in time if done on the next day when that office is open.

**Application for leave to appeal**

5. (1) Where leave to appeal is required, application for such leave shall be made within 42 days after the date of the decision appealed.

(2) Application for leave to appeal, or for leave to appeal out of time, shall be made *ex parte* supported by an affidavit.

<sup>4</sup> Definition of “the Constitution” revoked by L.N. 26 of 2009

<sup>5</sup> Definition of “the Court” amended by L.N. 26 of 2009

<sup>6</sup> Definition of “Judge” amended by L.N. 26 of 2009

(3) Immediately upon receipt of such an application the Registrar shall refer it to a single judge who may determine the matter without a hearing.

(4) If leave to appeal is refused by a single judge without a hearing, the application may be renewed with leave of the Court at its next sitting.

(5) If leave to appeal is granted, notice of appeal shall be lodged within 14 days after the date when such leave was granted.

#### CIVIL AND FAMILY JURISDICTION

### Notice of Appeal

6. (1) Subject to rule 5(5), any appeal to the Court in its civil or family jurisdiction shall be made within 42 days after the date of the judgment or order appealed by lodging with the Registrar Notice of Appeal.

(2) Notice of Appeal may be given in respect of the whole or any part of the judgment or order appealed.

(3) Notice of Appeal must be substantially in Form 1 as set out in the Schedule, and shall—

- (a) identify the judgment or order appealed against, stating whether appeal is made against the whole or in part; if in part specifying which part;
- (b) state the form of the order which the appellant seeks; and
- (c) state separately and concisely each ground of appeal, with particulars where appropriate.

(4) Except with the leave of the Court (which may be given by a single judge) an appellant shall not be entitled on the hearing of an appeal to rely on any ground of appeal or to apply for any relief not specified in the Notice of Appeal.

### Respondent's notice

7. (1) A Respondent who is served with Notice of Appeal and who wishes—

- (a) to contend that the decision of the Supreme Court should be varied, whether in any event or in the event of the appeal being allowed in whole or in part; or
- (b) to contend that the decision of the Supreme Court should be affirmed on grounds other than those relied upon by that Court; or
- (c) to contend by way of cross-appeal that the decision of the Supreme Court was wrong in whole or in part;

shall within 42 days after service on him of Notice of Appeal lodge with the Registrar a Respondent's Notice.

(2) A Respondent's Notice must—

- (a) where rule 7(1)(a) or 7(1)(c) applies, state the form of the order sought; and
- (b) state concisely the grounds of his contention.

(3) Except with the leave of the Court (which may be given by a single judge) a Respondent shall not be entitled on the hearing of an appeal to rely on any ground of appeal or to apply for any relief not specified in the Respondent's Notice.

### Amendment of Notices

8. (1) Notice of Appeal or a Respondent's Notice may be amended without leave, by lodging with the Registrar a Notice incorporating the amendments desired.

(2) An amended Notice may be lodged—



- (a) if the appeal is to be determined on written submissions under rule 18, not later than the date upon which the documents are to be sent to the members of the Court; and
- (b) in any other case, not later than 28 days before the Court is due to commence sitting.

### **Documents to be served personally**

**9. (1)** Subject to rules 11 and 12, every document required to be served shall be served personally by delivering a sealed copy to the party required to be served.

**(2)** Where a party acts in person, service of any document on him or by him must be effected by a service officer.

### **Who must be served**

**10.** The party lodging any document with the registrar (unless lodged in connection with an *ex parte* application) shall within 14 days after it was lodged serve—

- (a) every other party who is directly affected by the appeal; and
- (b) such other persons as the Court or a single judge may direct.

### **Service by or on Advocate**

**11.** Where an advocate has notified the Court in writing that he represents any party—

- (a) service of any document required to be served shall be effected by that advocate; and
- (b) service of any document on that party shall be effected by delivering a sealed copy to that advocate.

### **Substituted service or dispensing with service**

**12. (1)** If it appears to the Registrar that it is impracticable for any reason to serve any document in accordance with rules 9 to 11, he may grant leave to substitute some other form of service which it appears to him is likely to bring that document to the notice of the person required to be served.

**(2)** If it appears to a judge that it is impracticable to serve a party in accordance with rules 9 to 12(1), or that it is otherwise necessary or expedient to dispense with service of any document on any party, he may make an order dispensing with such service.

**(3)** Application for an order under rules 12(1) or 12(2) must be made *ex parte* on affidavit showing what steps have already been taken to effect service and stating the grounds of the application.

### **Proof of service**

**13. (1)** A person serving any document under these Rules shall promptly endorse the original with details of the time, date and mode of service, and the server's means of knowledge of the identity of the person served.

**(2)** Such endorsement shall be lodged promptly with the Registrar and shall be *prima facie* evidence that the document was duly served as stated thereon.

**Mode of application**

**14. (1)** Any application relating to an appeal (save for application for leave to appeal or to appeal out of time) shall be made on notice substantially in Form 2 set out in the Schedule, supported by an affidavit.

**(2)** Any party served with notice of application may file an affidavit in reply within 14 days after service of the notice on him.

**(3)** If the Court is then sitting, the Registrar shall notify the parties of the time and date when the application will be heard.

**(4)** If the Court is not then sitting—

**(a)** after 14 days from the date of service of the notice of application the Registrar shall send to a single judge—

**(i)** the notice of application;

**(ii)** the affidavit(s) filed in support; and

**(iii)** any affidavit(s) filed in reply.

**(b)** the judge may determine the matter without a hearing and shall notify the Registrar in writing of his order.

**(c)** upon receipt of the judge's order the Registrar shall give notice to the parties in Form 3 as set out in the Schedule.

**Renewal of application**

**15.** If an application is refused by a single judge without a hearing it may be renewed with the leave of the Court at its next sitting.

**General powers of the Court**

**16. (1)** Subject to rule 16(3), an appeal shall be by way of consideration of the documents.

**(2)** On determining an appeal the Court shall have all the powers of the Supreme Court.

**(3)** The Court may receive further evidence on questions of fact—

**(a)** without leave as to matters which have occurred since the trial in the Supreme Court; and

**(b)** otherwise only with leave.

**(4)** The Court may draw inferences of fact and may give any judgment or make any order which in its opinion ought to have been given or made, and may make such further order as the justice of the case may require.

**(5)** The Court may exercise the powers under the foregoing paragraphs in respect of any part of the decision of the Supreme Court even though that matter has not been raised in the notice of appeal or respondent's notice; and the court may make any order, on such terms as it thinks just, to ensure the determination on the merits of the real question in issue between the parties.

**(6)** On the hearing of an appeal the Court may make any order which could be made on application for a new trial or to set aside a verdict, finding or judgment of the Supreme Court:

Provided that the Court shall not be bound to order a new trial on the ground of misdirection or improper admission or rejection of evidence, unless in the opinion of the Court it has caused some substantial wrong or miscarriage of justice.

(7) Where damages awarded by a judge are found to be excessive or inadequate, the Court may substitute such sum as appears to it to be proper.

### **Transcripts**

**17. (1)** A transcript of the proceedings in the Supreme Court will not be prepared unless requested by a party when lodging notice of appeal or respondent's notice, as the case may be.

(2) A party may request a transcript of a specified part of the proceedings in the Supreme Court.

(3) The party requesting a transcript shall pay the prescribed fee.

### **Determination of appeals on written submissions**

**18. (1)** An appeal shall be determined on written submissions without a hearing if—

(a) it is an appeal from an interlocutory order, judgment or decision; or

(b) (i) the appellant includes in his notice of appeal a statement that he consents to his appeal being determined in this manner; and

(ii) the respondent within 14 days after service of the notice of appeal lodges his written consent in Form 4 with the Registrar; or

(c) at any time before the appeal is set down for an oral hearing all parties lodge their written consent in Form 4 as set out in the Schedule with the Registrar;

and in all such cases the procedure set out in the following subrules shall apply.

(2) The appellant shall, within 28 days after service on him of the Respondent's consent, lodge with the Registrar written arguments in support of his appeal.

(3) The respondent shall, within 28 days after service on him of the appellant's written arguments, lodge with the Registrar written arguments in opposition to the appeal.

(4) The appellant may, within 14 days after such service as is referred to above, lodge with the Registrar further written arguments in reply.

(5) Save for interlocutory appeals, any party may at any time before expiry of the time for lodging written arguments in reply under rule 18(4), withdraw his consent to the appeal being dealt with on written submissions and the appeal shall thereupon proceed in accordance with rule 19.

(6) On expiry of the time for lodging written arguments in reply under rule 18(4) the Registrar shall send to each member of the Court a copy of—

(a) the judgment appealed;

(b) the notice of appeal and any respondent's notice and amended notice;

(c) every written submission;

(d) the pleadings and orders in the action;

(e) if requested, a transcript of the proceedings in the lower court;

(f) all documentary exhibits relevant to the stated grounds of appeal;

(g) a list of all other exhibits relevant to the stated grounds of appeal;

and shall notify all parties when this has been done.

(7) Each member of the Court shall consider the documents and give his determination of the appeal, either in the form of a judgment or by concurring with one or both of the judgments of the other members of the Court, and shall sign the same.

(8) The judgment of the majority of the members of the Court shall be the judgment of the Court on that appeal.

(9) The President shall send the judgments of the Court to the Registrar, who upon receipt shall supply a copy to each party.

- (10) The judgment shall be effective on the date on which it is served upon the parties.

### **Determination of appeals at oral hearing**

**19. (1)** This rule applies to all appeals except those dealt with in accordance with rule 18.

(2) After expiry of the time for lodging a respondent's notice the Registrar shall, after conferring with the President, fix a date for hearing and notify the parties of that date.

(3) The Registrar shall prepare a bundle of documents comprising those documents listed in rule 18(6) and supply a copy to each member of the Court and to each party.

(4) Each party or their advocates shall, not later than 14 days before the date of hearing, lodge with the Registrar—

- (a) skeleton arguments;
- (b) where appropriate, a chronology of events; and
- (c) a list of authorities upon which he intends to rely and copies thereof.

(5) The Court may give directions as to the order in which the parties shall be heard; but if no such directions are given—

- (a) the appellant shall present his case;
- (b) each respondent in turn shall present his case; and
- (c) the appellant may reply.

(6) (a) The judgment shall be the opinion of the whole or of a majority of the members of the Court.

(b) Only one judgment shall be given, but a member of the Court who dissents may briefly state his reasons for so doing.

(7) Unless otherwise ordered by the Court or by the Supreme Court, an appeal shall not stay execution or proceedings of the Supreme Court.

## **CRIMINAL JURISDICTION**

### **Notice of appeal**

**20. (1)** An appeal to the Court in its criminal jurisdiction shall be commenced by lodging with the Registrar notice of appeal.

(2) Notice of appeal must be lodged—

- (a) if leave to appeal is required, within 14 days after leave is granted;
- (b) if no leave is required, within 42 days after the date of the decision appealed.

(3) Notice of appeal may be given in respect of conviction or sentence, or both conviction and sentence.

(4) Notice of appeal must be substantially in Form 5 set out in the Schedule hereto and shall state separately and concisely each ground of appeal, with particulars.

### **Action by Registrar**

**21.** On receipt of notice of appeal the Registrar shall—

- (a) cause a copy to be served on the respondent;
- (b) prepare a transcript of any part of the proceedings in the court below relevant to the stated grounds of appeal;
- (c) prepare a bundle of documents comprising copies of—
  - (i) the indictment;
  - (ii) the transcript;
  - (iii) all documentary exhibits relevant to the stated grounds of appeal;

- (iv) a list of other exhibits relevant to the stated grounds of appeal; and
- (v) if the appeal is against sentence, details of previous convictions cited to the lower court, and of any social enquiry report.

### **General powers of the Court**

- 22.** The provisions of rules 16(1) to 16(6) shall apply to appeals in criminal matters.

### **Determination of appeals without a hearing**

- 23. (1)** An appeal may be determined without a hearing—
- (a) if the President so directs; or
  - (b) if the appellant so requests in writing.
- (2)** If the President so directs—
- (a) the Registrar shall immediately notify all parties in Form 6 set out in the Schedule hereto; and
  - (b) the appellant shall within 28 days after service of such notice lodge written arguments in support of his appeal.
- (3)** If the appellant so requests—
- (a) he shall do so in his notice of appeal; and
  - (b) he shall within 28 days after lodging notice of appeal lodge written arguments in support of his appeal.
- (4)** (a) the respondent may, within 28 days after service upon him of the appellant's written arguments, lodge with the Registrar written arguments in opposition to the appeal; and if he does;
- (b) the appellant may, within 14 days after service on him of the respondent's arguments, lodge with the Registrar further written arguments in reply.
- (5)** On expiry of the time for lodging written arguments in reply the Registrar shall send to each member of the Court—
- (a) the documents listed in rule 21(c); and
  - (b) all written submissions,
- and shall notify the parties when this has been done.
- (6)** Thereafter the provisions of rules 18(7) to 18(10) shall apply.

### **Determination of appeals on oral hearing**

- 24.** The provisions of rule 19 shall apply, save that the documents shall be those listed in rule 21(c).
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**SCHEDULE  
FORMS**

FORM 1

(NOTICE OF APPEAL – CIVIL)

**IN THE ST. HELENA COURT OF APPEAL**  
**(on appeal from the Supreme Court)**

**Appeal No**

**BETWEEN**

<b>A. B.</b>	<b>Appellant</b>
<b>and</b>	
<b>B. C.</b>	<b>Respondent</b>

**NOTICE OF APPEAL**

**TAKE NOTICE** that I intend to apply to the Court of Appeal against the judgment/order of Mr Justice ..... given/made in this action on ..... whereby it was adjudged/ordered that .....

*(set out the terms of the judgment or order)*

**FOR AN ORDER that**

*(set out the terms of the order sought)*

**ON THE GROUNDS that**

*(set out the grounds of appeal)*

**\*AND FURTHER TAKE NOTICE** that the Appellant consents to the appeal being determined on written submissions without a hearing

Dated

(Signed)

(Advocate for) the above Appellant

of (address)

To: The Respondent

of (address)

(\* delete if inappropriate)

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FILED ON

Registrar

FORM 2  
(NOTICE OF APPLICATION)

IN THE ST. HELENA COURT OF APPEAL  
(on appeal from the Supreme Court)

Appeal No

BETWEEN

A. B.                      Appellant  
and  
B. C.                      Respondent

To:            (name)  
of:            (address)

**TAKE NOTICE THAT**

1. The ..... (party) ..... has applied to a single judge for an order that

*(set out the terms of the order sought)*

in support of which he has lodged an affidavit a copy of which is annexed.

2. If you object to the order sought you must lodge an affidavit in reply within 14 days from the date of service of this notice on you.

3. After 14 days has elapsed the application will be determined by a judge without a hearing.

Dated

Registrar

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## FORM 3

## (NOTICE OF ORDER OF SINGLE JUDGE)

IN THE ST. HELENA COURT OF APPEAL  
(on appeal from the Supreme Court)

Appeal No

BETWEEN

A. B.                      Appellant  
                                    and  
B. C.                      Respondent

To:        *(the parties)*

**TAKE NOTICE THAT** the application of the *(party applying)*

made on *(date)* has been determined by a single judge who has ordered that:

*(set out terms of order made)*

Dated

Registrar

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FORM 4

(CONSENT TO DETERMINATION OF APPEAL ON WRITTEN SUBMISSIONS)

**IN THE ST. HELENA COURT OF APPEAL**  
**(on appeal from the Supreme Court)**

**Appeal No**

**BETWEEN**

**A. B.**

**Appellant**

**and**

**B. C.**

**Respondent**

**TAKE NOTICE THAT** the (*party*) consents to this appeal being determined on written submissions in accordance with rule 18 of the Court of Appeal Rules.

Dated

(Advocate for) the (*party*)

Filed on (*date*)

Registrar

## FORM 5

## (NOTICE OF APPEAL – CRIMINAL)

IN THE ST. HELENA COURT OF APPEAL  
(on appeal from the Supreme Court)

Appeal No

BETWEEN

A. B.

Appellant

and

The Crown

Respondent

**TAKE NOTICE THAT** I wish to appeal to the Court of Appeal against my conviction/sentence/conviction and sentence before the Supreme Court on *(date)*

for the offence(s) of

*(set out relevant offences)*

for which I was sentenced to

*(set out relevant sentences)***ON THE GROUNDS THAT***(set out concise grounds of appeal)*

(If appropriate)

**AND FURTHER TAKE NOTICE** that I request that this appeal be determined without a hearing in accordance with rule 18 of the Court of Appeal Rules.

(Advocate for) Appellant

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Filed on *(date)*

Registrar

FORM 6

(NOTICE OF PRESIDENT'S DIRECTION)

**IN THE ST. HELENA COURT OF APPEAL**  
**(on appeal from the Supreme Court)**

**Appeal No**

**BETWEEN**

**A. B.**

**Appellant**

**and**

**B. C.**

**Respondent**

To: *(the parties)*

**TAKE NOTICE THAT** the President of the Court of Appeal has directed that this appeal be determined without an oral hearing in accordance with rule 23 of the Court of Appeal Rules.

Dated

Registrar

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**ST. HELENA COURT OF APPEAL  
(APPEAL TO PRIVY COUNCIL) ORDER 1964**

*(Statutory Instruments 1964 No. 1846 and 1990 No. 991 (U.K.))*

Her Majesty, by virtue and in the exercise of the powers in that behalf by section 1 of the Judicial Committee Act 1844<sup>(a)</sup> or otherwise in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows—

**Short title**

1. (1) This Order may be cited as the St. Helena Court of Appeal (Appeal to Privy Council) Order 1964.

(2) This Order shall come into operation on the date on which the St. Helena Court of Appeal Order 1964<sup>(b)</sup> comes into operation.

**Interpretation**

2. (1) In this Order, unless the context otherwise requires—

“**appeal**” means appeal from a judgment of the Court to Her Majesty in Council;

“**Court**” means the St. Helena Court of Appeal established by the St. Helena Constitution Order 1988;

“**judgment**” means a judgment of the Court given in the exercise of any jurisdiction conferred upon it by any law for the time being in force in St. Helena and includes a decree, order, ruling, sentence or decision of the Court;

“**record**” means the aggregate of papers relating to an appeal (including pleadings, proceedings, evidence and judgments) proper to be laid before Her Majesty in Council on the hearing of an appeal;

“**St. Helena**” means the Colony of St. Helena and its Dependencies.

(2) The Interpretation Act 1889<sup>(c)</sup> shall apply, with the necessary adaptations, for the purpose of interpreting this Order and otherwise in relation thereto as it applies for the purpose of interpreting, and in relation to, Acts of Parliament.

**Right of appeal**

3. Subject to the provisions of this Order, an appeal shall lie—

(a) as of right from any final judgment, where the matter in dispute on the appeal amounts to or is of the value of one thousand pounds sterling or upwards, or where the appeal involves directly or indirectly some claim or question to or respecting property or some civil right amounting to or of the said value or upwards; and

(b) at the discretion of the Court, from any other judgment, whether final or interlocutory, if, in the opinion of the Court, the question involved in the appeal is one which, by reason of its great or general importance or otherwise, ought to be submitted to Her Majesty in Council for decision.

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<sup>(a)</sup> 7 & 8 Vict. c. 69

<sup>(b)</sup> S.I. 1964/1845

<sup>(c)</sup> 52 & 53 Vict. c. 63

**Application for leave to appeal**

4. Applications to the Court for leave to appeal shall be made by motion or petition within twenty-one days of the date of the judgment to be appealed from, and the applicant shall give all other parties concerned notice of his intended application.

**Conditional leave to appeal**

5. Leave to appeal under section 3 of this Order shall, in the first instance, be granted by the Court only—

- (a) upon condition of the appellant, within a period to be fixed by the Court but not exceeding ninety days from the date of the hearing of the application for leave to appeal, entering into good and sufficient security to the satisfaction of the Court in a sum not exceeding 500 pounds sterling for the due prosecution of the appeal and the payment of all such costs as may become payable by the applicant in the event of his not obtaining an order granting him final leave to appeal, or of the appeal being dismissed for non-prosecution, or of the Judicial Committee ordering the appellant to pay costs of the appeal (as the case may be); and
- (b) upon such other conditions (if any) as to the time or times within which the appellant shall take the necessary steps for the purposes of procuring the preparation of the record and the despatch thereof to England as the Court, having regard to all the circumstances of the case, may think it reasonable to impose.

**Powers of a single judge**

6. All or any of the powers and functions of the Court under this Order, except the exercise of the discretion conferred by section 3(b) of this Order; may be exercised by any judge of the Court.

Provided that any order, directions or decision made or given in pursuance of this section may be varied, discharged or reversed by the Court when consisting of three judges which may include the judge who made or gave the order, directions or decision.

**Stay of execution**

7. Where the judgment appealed from requires the appellant to pay money or do any act, the Court shall have power, when granting leave to appeal, either to direct that the said judgment shall be carried into execution or that the execution thereof shall be suspended pending the appeal, as to the Court shall seem just, and in case the Court shall direct the said judgment to be carried into execution, the person in whose favour it was given shall, before the execution thereof, enter into good and sufficient security, to the satisfaction of the Court, for the due performance of such Order as Her Majesty in Council shall think fit to make thereon.

**Manner of providing security**

8. For the purposes of sections 5 and 7 of this Order, a person may provide security in any manner that the Court may approve in his case, and for the avoidance of doubts it is declared that such security may with the approval of the Court consist in whole or in part of a deposit of money.

### Preparation of record

9. (1) The preparation of the record shall be subject to the supervision of the Court, and the parties may submit any disputed question arising in connection therewith to the decision of the Court, and the Court shall give such directions thereon as the justice of the case may require.

(2) The Registrar, as well as the parties and their legal agents, shall endeavour to exclude from the record all documents (more particularly such as are merely formal) that are not relevant to the subject matter of the appeal and, generally, to reduce the bulk of the record as far as practicable, taking special care to avoid the duplication of documents and the unnecessary repetition of headings and other merely formal parts of documents; but the documents omitted to be copied or printed shall be enumerated in a list to be placed after the index or at the end of the record.

(3) Where in the course of the preparation of a record one party objects to the inclusion of a document on the ground that it is unnecessary or irrelevant and the other party nevertheless insists upon its being included, the record, as finally printed shall, with a view to the subsequent adjustment of the costs of and incidental to such document, indicate in the index of papers or otherwise, the fact that, and the party by whom, the inclusion of the document was objected to.

(4) The reasons given by Judges of the Court for or against any judgment pronounced in the course of the proceedings out of which the appeal arises shall be communicated by them in writing to the Registrar, and shall be included in the record.

### Printing of record

10. (1) The record may be printed in St. Helena or may be printed in England if the parties agree to its being printed but in the absence of such agreement shall be duplicated by process approved by the Registrar of the Privy Council. If the record is to be printed it shall be printed in accordance with the Rules set forth in the Schedule to this Order.

(2) Where the record is printed in St. Helena the Registrar shall, at the expense of the appellant, transmit to the Registrar of the Privy Council forty copies of such record, one of which copies he shall certify to be correct by signing his name on, or initialling, every eighth page thereof and by affixing thereto the seal of the Court.

(3) Where the record is to be printed or duplicated in England, the Registrar shall, at the expense of the appellant, transmit to the Registrar of the Privy Council one certified copy of such record, together with an index of all the papers and exhibits in the case. No other certified copies of the record shall be transmitted to the agents in England by or on behalf of the parties to the appeal.

(4) Where part of the record is printed in St. Helena and part is to be printed or duplicated in England, subsections (2) and (3) of this section shall, as far as possible, apply to such parts as are printed in St. Helena and such as are to be printed or duplicated in England respectively.

### Consolidation of appeals

11. Where there are two or more applications for leave to appeal arising out of the same matter, and the Court is of opinion that it would be for the convenience of the Lords of the Judicial Committee and all parties concerned that the appeals should be consolidated, the Court may direct the appeals to be consolidated and grant leave to appeal by a single order.

**Failure to prosecute appeal**

**12.** Where an appellant, having obtained an order granting him conditional leave to appeal, and having complied with the conditions imposed on him by such order, fails thereafter to apply with due diligence to the Court for an order granting him final leave to appeal, the Court may, on an application in that behalf made by the respondent, rescind the order granting conditional leave to appeal, notwithstanding the appellant's compliance with the conditions imposed by such an order, and may give such directions as to the costs of the appeal and security entered into by the appellant as the Court shall think fit, or make such further or other order in the premises as, in the opinion of the Court, the justice of the case requires.

**Notice to other parties**

**13. (1)** On an application for final leave to appeal, the Court may enquire whether notice or sufficient notice of the application has been given by the appellant to parties concerned and, if not satisfied as to the notices given, may defer the granting of the final leave to appeal, or may give such other directions in the matter as, in the opinion of the Court, the justice of the case requires.

**(2)** The Registrar shall, with all convenient speed, transmit to the Registrar of the Privy Council a certificate to the effect that the respondent has received notice, or is otherwise aware, of the order of the Court granting final leave to appeal and of the transmission of the record to England.

**Prosecution of appeal**

**14.** An appellant who has obtained final leave to appeal shall prosecute his appeal in accordance with the Rules for the time being regulating the general practice and procedure in appeals to Her Majesty in Council.

**Withdrawal of appeal**

**15. (1)** An appellant who has obtained an order granting him conditional leave to appeal may at any time prior to the making of an order granting him final leave to appeal withdraw his appeal on such terms as to costs and otherwise as the Court may direct.

**(2)** Where an appellant, having obtained final leave to appeal, desires to withdraw his appeal, the Court may, upon an application in that behalf made by the appellant, grant him a certificate to the effect that the appeal has been withdrawn, and the appeal shall thereupon be deemed, as from the date of such certificate, to stand dismissed without express Order of Her Majesty in Council, and the costs of the appeal and the security entered into by the appellant shall be dealt with in such manner as the Court may think fit to direct.

**Dismissal for non-prosecution**

**16.** Where an appellant, having obtained final leave to appeal, fails to show due diligence in taking all necessary steps for the purpose of procuring the dispatch of the record to England, any respondent may after giving the appellant due notice of his intended application, apply to the Court for a certificate that the appeal has not been effectually prosecuted by the appellant, and if the Court sees fit to grant such a certificate the appeal shall be deemed, as from the date of such certificate, to stand dismissed for non-prosecution without express Order

of Her Majesty in Council, and the costs of the appeal and the security entered into by the appellant shall be dealt with in such manner as the Court may think fit to direct.

### **Substitute parties**

**17. (1)** Where at any time between the order granting final leave to appeal and the dispatch of the record to England, the record becomes defective by reason of the death or change of status of a party to the appeal, the Court may, notwithstanding the order granting final leave to appeal, on an application in that behalf made by any person interested, grant a certificate showing who, in the opinion of the Court, is the proper person to be substituted or entered on the record in place of or in addition to the party who has died or undergone a change of status, and the name of such person shall thereupon be deemed to be so substituted or entered on the record as aforesaid without express Order of Her Majesty in Council.

**(2)** Where the record subsequently to its despatch to England becomes defective by reason of the death or change of status of a party to the appeal, the Court shall, upon an application in that behalf made by any person interested, cause a certificate to be transmitted to the Registrar of the Privy Council showing who, in the opinion of the Court, is the proper person to be substituted, or entered on the record, in place of, or in addition to, the party who has died or undergone a change of status.

### **Printing case**

**18.** The case of each party to the appeal may be printed in St. Helena or printed or duplicated in England and shall, in any event, be printed in accordance with the Rules set forth in the Schedule to this Order, and shall be signed by at least one of the counsel who attends at the hearing of the appeal, or by the party himself if he conducts his appeal in person.

### **Form of case**

**19.** The case shall consist of paragraphs numbered consecutively and shall state, as concisely as possible, the circumstances out of which the appeal arises, the contentions to be urged by the party lodging the case, and the reasons of appeal. Reference by page and line to the relevant portions of the record as printed shall, as far as practicable, be printed in the margin, and care should be taken to avoid, as far as possible, the reprinting in the case of long extracts from the record. The taxing officer in taxing the costs of the appeal shall, either of his own motion or at the instance of any party, inquire into any unnecessary prolixity in the case, and shall disallow the costs occasioned thereby.

### **Cost in St. Helena**

**20.** Where the Judicial Committee directs a party to bear the costs of an appeal incurred in St. Helena, such costs shall be taxed by the proper officer of the Court in accordance with the rules for the time being regulating taxation in the Court.

### **Enforcing judgment**

**21.** Any Order which Her Majesty in Council may think fit to make on an appeal from a judgment of the Court may be enforced in like manner as any judgment of the Court should or might have been executed.



**Pending proceedings**

**22. (1)** In respect of any judgment of the St. Helena Court of Appeal established by the St. Helena Court of Appeal Order 1964, or of the Court, given before the commencement of this Order, an appeal may be commenced, continued and concluded or continued and concluded, as the case may be, in accordance with the provisions of this Order as nearly as may be as if it were an appeal from a judgment of the Court given after the commencement of this Order.

**(2)** Any Order that Her Majesty in Council may see fit to make on any such appeal or any Order on an appeal from the St. Helena Court of Appeal established by the St. Helena Court of Appeal Order 1964 or from the Court made by Her Majesty before the commencement of this Order, but not enforced before such commencement, may be enforced as if it were an Order made on an appeal from a judgment of the Court given after the commencement of this Order.

**Special leave to appeal**

**23.** Nothing in this Order contained shall be deemed to interfere with the right of Her Majesty upon the humble petition of any person aggrieved by any judgment of the Court, to admit his appeal therefrom upon such conditions as Her Majesty in Council shall think fit to impose.

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**THE SCHEDULE**

**I.** Records and cases in appeals to Her Majesty in Council shall be printed in the form known as demy quarto.

**II.** The size of the paper used shall be such that the sheet, when folded and trimmed, will be 11 inches in height and 8½ inches in width.

**III.** The type to be used in the text shall be pica type, but long primer shall be used in printing accounts, tabular matter and notes.

**IV.** The number of lines in each page of pica type shall be 47 or thereabouts, and every tenth line shall be numbered in the margin.

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