

SUBORDINATE COURTS ACT
(CHAPTER 6)
MAGISTRATES' COURTS (CIVIL APPEALS)
RULES

S 4/92

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SUBSIDIARY LEGISLATION

Rules under section 25

MAGISTRATES' COURTS (CIVIL APPEALS) RULES

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SUBSIDIARY LEGISLATION

MAGISTRATES' COURTS (CIVIL APPEALS) RULES

Commencement: 27th March 1992

[S 4/92]

PART I

PRELIMINARY

Citation.

1. These Rules may be cited as the Magistrates' Courts (Civil Appeal) Rules.

Interpretation.

2. In these Rules —

“civil proceedings” means a civil action triable by a Magistrate and an order for the payment of a sum of money or for the doing, or abstaining from doing, of any act or thing not enforceable by fine or imprisonment in the first instance;

“Court below” means the Court of a Magistrate from which an appeal is brought;

“High Court” means the High Court of Brunei Darussalam;

“Magistrate” means a Magistrate appointed under the provisions of the Act;

“Magistrate’s Court” means a Court established under the provisions of the Act;

“Registrar” means the Chief Registrar, Deputy Chief Registrar and a Registrar of the High Court.

PART II

APPEALS IN CIVIL CASES

Civil appeal to be in accordance with Rules.

3. The procedure and practice of appeals in civil proceedings shall be in accordance with these Rules.

[Subsidiary]

Notice of appeal.

4. Every appeal shall be brought by notice of appeal. This shall be lodged in the Court below, within a month of the decision appealed from, and served on all other parties affected by the appeal within that period.

Contents of notice.

5. (1) The notice of appeal shall set out the reference number of the proceedings, the names of the parties, the date of such decision, and the grounds for appeal.

(2) The notice of appeal shall be accompanied by a certified copy of the decision appealed against.

(3) Where the appellant appeals against only a part of the decision, the notice of appeal shall specify the part against which the appeal is brought. If it does not, the appeal shall be taken to be against the decision as a whole.

(4) The notice of appeal shall give an address to which notices may be sent for the appellant. Such notices may be sent to him by registered post.

(5) A notice of appeal shall be in Form A in the Schedule. The Form may be varied to suit the circumstances of the case but no variation of substance shall be made.

Copies of proceedings.

6. (1) The appellant shall, within 3 months of the decision appealed from, furnish the Registrar of the Court below with a typewritten copy of the proceedings for each respondent and a copy for the appeal Court.

(2) A request for such copies shall be made within 6 weeks of the decision appealed from. Save where the fees for preparing such copies are remitted, a deposit decided upon by the Registrar as likely to cover such fees, shall be made at the time copies are sought. Thereafter the copies shall be prepared by the Registrar.

Sending of copies.

7. The Registrar of the Court below shall within a week of being supplied with the copies aforesaid send the same to the Registrar.

Notice of hearing.

8. When notifying a respondent of the day fixed for the hearing of the appeal, the Registrar shall send him a copy of the proceedings.

Enlargement of time.

9. (1) The times prescribed in rules 4 to 7 may be enlarged at any time by the High Court on such terms (if any) as may seem fit, after notice is given to the respondent by the appellant of his application for enlargement of time.

(2) The application shall be made by motion (original or interlocutory, as the case may require) supported by an affidavit of the facts relied upon in justification of the delay.

Striking out of appeal.

10. Where the time available to the appellant for the taking of any step has expired before such step has been taken or completed, the respondent may, on notice to the appellant, apply to the High Court to strike out the appeal.

PART III**HEARING AND JUDGMENT****Constitution of Court.**

11. (1) An appeal from a Magistrate's Court shall be heard by one Judge of the High Court.

(2) A Judge of the High Court may reserve for the consideration of the Court of Appeal, on a case to be stated by him, any question of law which may arise on the hearing of such appeal before the Judge.

Time and place for hearing.

12. (1) The appeal shall be heard at such time and at such place as the Registrar shall notify to the parties.

(2) The appellant shall be entitled to be present at the hearing of the appeal and may appear either in person or by an advocate and solicitor.

If appellant fails to appear.

13. (1) If, on the day of hearing or at any adjournment of the case, the appellant does not appear, the case shall be struck out and the decision shall be affirmed, unless the High Court orders otherwise.

(2) If on any such appeal the respondent appears, the appellant shall be ordered to pay the costs of the appeal, unless the High Court orders otherwise. If the respondent does not appear, the costs of the appeal shall lie in the discretion of the High Court.

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If appellant appears.

14. (1) If, on the day of hearing, and at every adjournment of the case, the appellant appears, the High Court shall, whether the respondent appears or not, proceed to the hearing or further hearing and the determination of the case, and shall give judgment according to the merits of the case, without regard to any defect of form.

(2) If it appears to the High Court that the appellant has not complied with the requirements precedent to the hearing of an appeal, the High Court shall dismiss the appeal and affirm the decision, with or without costs of appeal against the appellant.

Appeal limited to grounds given in notice.

15. (1) On the hearing, it shall not be competent for the appellant to argue any other reasons for appeal than those set forth in his notice of grounds for appeal.

(2) If in the opinion of the High Court, other grounds for appeal than those set forth in the memorandum of grounds for appeal should have been given, or the statement of grounds of appeal is defective, the High Court may allow amendments of the memorandum of grounds for appeal upon such conditions as to service upon the respondent and as to costs as it may think fit.

Objections to form of grounds for appeal.

16. (1) No objection on account of any defect in the form of any ground for appeal shall be allowed, unless the High Court is of the opinion that the ground of appeal is so incorrectly stated as to be insufficient to enable the respondent to prepare for the hearing.

(2) If the High Court is of opinion that an objection to a ground of appeal ought to prevail, the Court may cause the ground for appeal to be amended by the Registrar, upon such terms and conditions as the High Court may think just.

Additional evidence.

17. (1) The High Court may either —

- (a) order evidence to be adduced before the High Court on a day to be fixed; or
- (b) refer the case back to the Magistrate to take such evidence.

(2) If a case is referred back under rule 17(1)(b) the High Court may direct the Magistrate to report specific findings of facts for the information of the High Court. On any such reference the case shall be dealt with as if it were being heard in the first instance.

Mode of taking additional evidence.

18. (1) If additional evidence is to be taken by a Magistrate and specific findings of fact reported, he shall certify such evidence to the High Court, which shall thereupon proceed to dispose of the appeal.

(2) Unless the High Court otherwise directs, the appellant shall be present when the additional evidence is taken.

(3) Evidence taken in pursuance of rule 17(1)(a) shall be taken as if it were evidence taken at the trial before the Magistrate's Court.

(4) When forwarding to the High Court any additional evidence taken in pursuance of rule 17(1)(b) the Magistrate may, if he is the Magistrate against whose decision the appeal has been brought, state whether or not he would have come to a different decision had the additional evidence been adduced at the trial.

Order of High Court to be certified.

19. (1) When the case is decided on appeal, the High Court shall certify its judgment or order to the Court below.

(2) The Court below shall thereupon make such orders as are necessary to give effect to the judgment or order of the High Court, and, if necessary, the records of the Court below shall be amended in accordance therewith.

Enforcing of judgment.

20. After the pronouncement of the judgment of the High Court, the Magistrate of the Court below shall have the same jurisdiction and power to enforce any judgment of the High Court, as if the judgment had been pronounced by himself.

Enforcement of orders.

21. An order by the High Court may be enforced by the High Court or by the Court below as may be most expedient.

Fees.

22. The fees set out in the Magistrates' Courts (Court Fees and Costs) Rules shall be chargeable in civil appeals, save where the Magistrate or the High Court remits them on the ground of the poverty of the person chargeable therewith.

PART IV

STAY OF EXECUTION

Conditions of stay.

23. (1) On application being made for a stay of execution, the Court below or the High Court may impose one or more of the following conditions —

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(a) that the appellant shall deposit a sum fixed by the High Court not exceeding the amount of the money or the value of the property affected by the judgment appealed from or shall give security to the High Court's satisfaction for the said sum;

(b) that the appellant shall deposit a sum equal to the amount of the costs allowed against him or give security to the High Court's satisfaction for the said sum;

(c) that the appellant shall, where the judgment appealed from relates to possession of lands or houses, give security to the High Court's satisfaction for the performance of the judgment if the appeal is dismissed;

(d) that the appellant's property shall be seized and attached pending the making of a deposit or the giving of security as aforesaid, including a deposit or security for the expenses incidental to the seizure and attachment;

(e) that the appellant's property shall be seized, attached and sold and the net proceeds deposited in the High Court pending determination of the appeal.

(2) Any order made on any such application shall limit the time (not being more than 30 days) for the performance of the conditions imposed and direct that in default of performance within the time so limited execution may issue or proceed.

Application for stay.

24. (1) An application for stay of execution may be made at any time after entry of the notice of appeal and shall in the first instance be made to the Court below.

(2) If execution has been ordered by the High Court, the application shall be made to the High Court.

(3) The application may be *ex parte* but the High Court may direct notice thereof to be given to the other party to the appeal. Where an order is made *ex parte*, the Registrar shall notify the other party of the order made.

(4) If the applicant proposes to give security instead of making a deposit, the application shall state the nature of the security and the name of the surety proposed (if any).

Appeal not a stay.

25. An appeal shall not operate as a stay of proceedings under the judgment appealed from except so far as the Court below or the High Court may order; and no intermediate act or proceeding shall be invalidated except so far as either Court may direct.

PART V**COSTS****General power of the High Court as to costs.**

26. Subject to rule 28, the High Court may make any order as to the costs be of any appeal both in the Court below and in the High Court.

Costs on abandonment of withdrawal of appeal.

27. If an appeal is abandoned or withdrawn, the High Court may, on proof of notice of appeal having been given to the respondent, order that he shall receive such costs as the High Court may think fit, notwithstanding that the appeal has not been proceeded with.

Costs in Magistrate's Court.

28. In exercising its powers under rule 26, the High Court shall, in relation to proceedings before a Magistrate, be bound by the provision of the Magistrates' Courts (Court Fees and Costs) Rules.

Security for costs of appeal.

29. (1) The High Court may, on notice by motion supported by affidavit, order the appellant to give security for the respondent's costs of appeal.

(2) The order shall limit the time (not exceeding 30 days) within which the security shall be given and may direct that, in default of its being given within the time so limited, the appeal shall be dismissed.

(3) If an appeal is so dismissed, the respondent shall be entitled to the costs of the appeal. The amount of such costs may be stated in the order or may be assessed at any time by the High Court of its own motion or on application made *ex parte* or on notice.

(4) If an appeal is so dismissed, the appellant shall not, save by leave of the High Court, reinstate it. Reinstatement may be granted on such terms as may seem fit, upon application by motion or notice given within a month of such dismissal.

(5) Without prejudice to the High Court's discretion to grant costs on an application made under rule 29(1), costs shall not normally be granted to the applicant save where the net proceeds of execution levied on the appellant's goods are insufficient to satisfy the amount payable under the judgment appealed from.

SCHEDULE

MAGISTRATES' COURTS (CIVIL APPEALS) RULES

FORM A

NOTICE OF APPEAL (CIVIL)

(Rule 5)

In the Magistrate's Court of No.

A.B. Vs. C.D.

This is to give notice of appeal against the judgment dated , 20 A certified copy of this is attached hereto.

This notice is given by A.B. (or C.D., as the case may be), who complains of *the judgment as a whole; or *that part of the judgment which is marked with a bracket in the margin on the copy attached hereto; the signature of the appellant (or *of the advocate and solicitor acting on behalf of the appellant) appears outside the bracket.

The appellant's address for service is

The grounds of appeal are

.....
A.B. (or C.D.) or advocate and solicitor acting for the appellant.

Dated, 20

To :

C.D. or A.B.

of

NOTES. — This notice must be filed with the Registrar of the Magistrate's Court within a month of the decision appealed from and served on all other parties affected by the appeal within that period.

If the appellant complains only of a part of the judgment he should specify that part.

The grounds of appeal should be given in full.

The rules on civil appeals from Magistrates should be read carefully.

SCHEDULE — continued

FORM A — continued

* Strike out what is not required.

Amount due to judgment creditor \$

Costs of this summons \$

TOTAL AMOUNT DUE \$

This summons is issued at the request of the judgment creditor.

.....
Clerk

Fee: \$10. Paid vide Receipt No.