

**COURT OF CIVIL APPEAL ACT**  
Act 8 of 1963 – 9 September 1963

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**COURT OF CIVIL APPEAL ACT**

**1. Short title**

This Act may be cited as the Court of Civil Appeal Act.

**2. Constitution of Court of Civil Appeal**

(1) There shall be a Court of Civil Appeal and the Judges of the Supreme Court shall be Judges of that Court.

(2) The Court of Civil Appeal shall be a division of the Supreme Court.

(3) For the purpose of hearing and determining appeals under this Act, the Court of Civil Appeal shall be constituted by 2 or 3 Judges as the Chief Justice shall in any case direct, but shall not include the Judge from whose decision the appeal is made.

(4) The Chief Justice, or where he is absent or is for any reason unable to sit on the Court of Civil Appeal, the Senior Puisne Judge, shall preside over the Court of Civil Appeal.

**3. When appeal lies**

(1) Subject to this Act and to any rules of Court made under it, any party aggrieved by any judgment or order of a Judge sitting alone in the exercise in Court of his original civil jurisdiction may appeal from such judgment or order to the Court of Civil Appeal.

(2) No appeal shall lie, except by leave of the Judge—

- (a) from an order as to costs only;
- (b) from an order made by consent of the parties; or
- (c) from an interlocutory judgment or order.

#### **4. Reserving questions of law for the Court**

In addition and without prejudice to the right of appeal conferred by section 3, the Judge may, either *proprio motu* or on the application of any party to a case, reserve for consideration by the Court of Civil Appeal, on a case to be stated by him, any question of law which may arise at the hearing of any matter in the exercise in Court of his original civil jurisdiction, and may give his judgment or decision, subject to the opinion of the Court of Civil Appeal, and the Court of Civil Appeal may hear and determine every such question.

#### **5. Notice and grounds of appeal**

(1) Any person wishing to appeal under this Act to the Court of Civil Appeal shall serve notice of appeal on the other party to the case and lodge his appeal in the Registry within 21 days from the date of the judgment or an order appealed from.

(2) The notice of appeal shall distinctly set out the grounds of such appeal and no grounds other than those specified shall be brought forward when the appeal is heard.

(3) (a) Every appellant shall, not less than 45 days before the date of the hearing of the appeal, serve on the other parties to the appeal and lodge in the Registry, in such form and manner as may be prescribed by rules of Court, skeleton arguments and submissions on the grounds of appeal.

(b) Every other party to an appeal shall, not less than 30 days before the date of the hearing of the appeal, serve on the other parties to the appeal and lodge in the Registry, in such form and manner as may be prescribed, by rules of Court, skeleton arguments and submissions on the grounds of appeal.

(c) Where any appellant or party to an appeal does not comply with any provisions of paragraph (a) or (b), the Court may make—

- (i) such order as to costs as it thinks fit; or
- (ii) any wasted costs order.

(4) (a) The notice of appeal shall contain a warning to the party on whom it is served to the effect that he shall, if he wishes to resist the appeal, comply with paragraph (b).

(b) Every person who is served with a notice of appeal and who wishes to resist the appeal shall, not later than 2 months after the date of service, serve on the appellant, and file in the Registry, a notice of his intention so to do.

(c) Any person on whom notice of appeal is served and who fails to comply with paragraph (b) shall be deemed to have elected not to resist the appeal.

[S. 5 amended by Act 29 of 1992; Act 15 of 1994; Act 15 of 2000.]

**6. Ex parte application**

Where an *ex parte* application has been refused by the Judge, an application for a similar purpose may be made to the Court of Civil Appeal *ex parte* within 10 days from the date of the refusal or within such enlarged time as the Judge or the Court of Civil Appeal may allow.

**7. Stay of proceedings**

An appeal made under this Act to the Court of Civil Appeal shall operate as a stay of execution of proceedings under the judgment or order appealed from.

**8. Appeals how decided**

(1) Appeals shall be decided by the unanimous opinion of the Judges where the Court of Civil Appeal is composed of 2 Judges and in accordance with the opinion of the majority of the Judges where it is composed of 3 Judges.

(2) Where the Court of Civil Appeal is composed of 2 Judges, in the event of any difference of opinion between them, their decision shall be suspended until a third Judge is present.

**9. Determination by Court**

On the hearing of an appeal under this Act, the Court of Civil Appeal may draw any inferences of fact and give any judgment and make any order which ought to have been made, and make such further or other order as the case may require.

**10. Interlocutory order not appealed from**

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

**11. New trial**

(1) Where on the hearing of an appeal under this Act it appears to the Court of Civil Appeal that a new trial ought to be granted, the Court of Civil Appeal may, if it thinks fit, order that the judgment or order appealed from be set aside, and that a new trial be had.

(2) A new trial shall not be granted on the ground of improper admission or rejection of evidence unless in the opinion of the Court of Civil Appeal some substantial wrong or miscarriage of justice has been thereby occasioned, and if it appears to the Court of Civil Appeal that such wrong or miscarriage of justice affects part only of the matters in controversy, or some or one only of the parties, the Court of Civil Appeal may give final judgment as to part thereof, or as to some or one only of the parties, and direct a new trial as to the other part only, or as to the other party or parties.

(3) A new trial may be ordered on any question without interfering with the finding or decision upon any other question.

**12. Immaterial errors**

No judgment or order of the Judge shall be reversed or substantially varied on appeal, nor a new trial ordered by the Court of Civil Appeal, on account of any error, defect, or irregularity, whether in the decision or otherwise, not affecting the merits, or the jurisdiction of the Judge.

**13. Costs of appeal**

The Court of Civil Appeal may make such order as to the whole or any part of the costs of appeal or in the Court below as seems just.

**14. Rules of Court**

The Judges may make Rules of Court for regulating and prescribing the procedure in appeals made under this Act.

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