

MAURITIUS (APPEALS TO PRIVY COUNCIL) ORDER¹

GN 59 OF 1968 – 12 March 1968

1. This Order may be cited as the Mauritius (Appeals to Privy Council) Order 1968.

2. (1) In this Order—

“appeal” means appeal from a decision of the Court to the Judicial Committee;

“Court” means the Court of Appeal or the Supreme Court of Mauritius;

“decision” means a decision in any proceedings originating in Mauritius;

“record” means the aggregate of papers relating to an appeal (including pleadings, proceedings, evidence and decisions) proper to be laid before the Judicial Committee on the hearing of an appeal;

“Registrar” means the Registrar of the Court or other proper officer having custody of the records of the Court.

(2) The Interpretation Act 1889² shall apply, with the necessary adaptations, for the purpose of interpreting this Order and otherwise in relation thereto as it applies for the purposes of interpreting, and in relation to, Acts of Parliament.

[S. 2 amended by Act 48 of 1991.]

3. Applications to the Court for leave to appeal shall be made by motion or petition within 21 days of the date of the decision to be appealed from, and the applicant shall give all other parties concerned notice of his intended application.

4. Leave to appeal to the Judicial Committee in pursuance of the provisions of any law relating to such appeals 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 90 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 150,000 rupees 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 the costs of the appeal (as the case may be); and

(b) upon any other conditions 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 its despatch to England as the Court, having regard to all the circumstances of the case, may think it reasonable to impose.

¹. This Order was published in the UK as 1968 S.I. 294. It is reproduced as at 30 September 2007. The Judicial Committee Rules 1957 published in the UK as 1957 S.I. 2224 were printed for information in Mauritius under GN 32 of 1958. Those Rules have been revoked and replaced by the Judicial Committee (General Appellate Jurisdiction) Rules 1982 published in the UK as 1982 S.I. 1676. When Mauritius became a Republic, the UK Parliament enacted the Mauritius Republic Act (1992 c. 45) which enabled Her Majesty the Queen to confer jurisdiction, by Order in Council, on the Judicial Committee to entertain appeals from Mauritius. This was done by the Mauritius Appeals to Judicial Committee Order (1992 S.I. 1716).

². 1889 c 63 (UK).

5. A single Judge of the Court shall have power and jurisdiction—

- (a) to hear and determine any application to the Court for leave to appeal in any case where under any provision of law an appeal lies as of right from a decision of the Court;
- (b) generally in respect of any appeal pending before the Judicial Committee, to make such order and to give such other directions as he shall consider the interests of justice or circumstances of the case require:

Provided that any order, directions or decisions made or given in pursuance of this section may be varied, discharged or reversed by the Court when consisting of 3 Judges which may include the Judge who made or gave the order, directions or decisions.

[S. 5 amended by Act 48 of 1991.]

6. Where the decision appealed from requires the applicant to pay money or do any act, the Court shall have power, when granting leave to appeal, either to direct that the decision shall be carried into execution or that its execution shall be suspended pending the appeal, as to the Court shall seem just, and in case the Court shall direct the decision to be carried into execution, the person in whose favour it was given shall, before its execution, enter into good and sufficient security to the satisfaction of the Court for the due performance of such Order as the Judicial Committee shall think fit to make on it.

[S. 6 amended by Act 48 of 1991.]

7. For the purposes of sections 4 and 6, 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.

8. (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 with it to the decision of the Court, and the Court shall give such directions on it 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 (whether in Mauritius or in England) 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 documents was objected to.

(4) The reasons given by Judges of the Court for or against any decision 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.

9. (1) The record may be printed in Mauritius 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 Judicial Committee. If the record is to be printed it shall be printed in accordance with the rules set out in the Schedule.

(2) Where the record is printed in Mauritius the Registrar shall, at the expense of the appellant, transmit to the Registrar of the Judicial Committee 40 copies of such record, one of which copies he shall

certify to be correct by signing his name on, or initialling, every eighth page and by affixing 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 Judicial Committee 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 Mauritius and part is to be printed or duplicated in England, subsections (2) and (3) shall, as far as possible, apply to such parts as are printed in Mauritius and such as are to be printed or duplicated in England respectively.

[S. 9 amended by Act 48 of 1991.]

10. Where there are 2 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.

11. 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 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.

12. (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 Judicial Committee 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.

[S. 12 amended by Act 48 of 1991.]

13. 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 the Judicial Committee.

[S. 13 amended by Act 48 of 1991.]

14. (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, prior to the despatch of the record to England, 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 to the Judicial Committee, 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.

[S. 14 amended by Act 48 of 1991.]

15. 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 despatch 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 where 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 the Judicial Committee, 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.

[S. 15 amended by Act 48 of 1991.]

16. (1) Where at any time between the order granting final leave to appeal and the despatch 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 without express Order of the Judicial Committee.

(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 Judicial Committee 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.

[S. 16 amended by Act 48 of 1991.]

17. The case of each party to the appeal may be printed in Mauritius or printed or duplicated in England and shall, if it is to be printed, be printed in accordance with the rules set forth in the Schedule; and it 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.

18. 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 by it.

19. Where the Judicial Committee directs a party to bear the costs of an appeal incurred in Mauritius, 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.

[S. 19 amended by Act 48 of 1991.]

20. Any Order which the Judicial Committee may think fit to make on an appeal from a decision of the Court may be enforced in like manner as any decision of the Court should or might have been executed.

[S. 20 amended by Act 48 of 1991.]

Schedule

- I. Records and cases in appeals to the Judicial Committee 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 on each page of pica type shall be 47 or thereabouts, and every tenth line shall be numbered in the margin.

[Sch. amended by Act 48 of 1991.]