

RECEIVED
27/01/10

160 U.S.P. VANUATU CENTRE
LIBRARY

FIJI REPUBLIC GAZETTE SUPPLEMENT

No. 15

FRIDAY, 3rd APRIL

1992

[LEGAL NOTICE No. 28]

THE CONSTITUTION OF THE SOVEREIGN DEMOCRATIC REPUBLIC
OF FIJI

SUPREME COURT RULES 1992

In exercise of the powers conferred upon me by section 17 of the Supreme Court Decree 1991 and section 119 of the Constitution, I hereby make the following Rules:

Short title and commencement

1. These Rules may be cited as the Supreme Court Rules 1991.

PART I—GENERAL

Interpretation

2. In these Rules, unless the context otherwise requires:

"appeal" means an appeal to the Supreme Court;
"Appellant" includes the party appealing from a judgment, order or decree and his counsel;
"the Constitution" means the Constitution of the Sovereign Democratic Republic of Fiji which came into force on the 25th day of July, 1990;
"Court" means the Fiji Court of Appeal established by section 101(1) of the Constitution;
"decision" includes an order, judgment or decree;
"Decree" means the Supreme Court Decree, 1991;
"High Court Rules" means the Rules of the High Court;
"judge" means a Justice of Appeal or Justice of the Supreme Court including the President as the context may require;
"judgment" includes any decree, order, sentence or decision of the Court of Appeal or of any Court, judge or judicial officer;
"month" means calendar month;
"record" means the aggregate of papers relating to an appeal (including pleadings, proceedings, evidence and judgments) proper to be laid before the Supreme Court on the hearing of an appeal; or on any application which by these Rules may be made to the Supreme Court;
"registrar" means the Registrar of the Court who shall also be the Registrar of the Supreme Court;
"Respondent" includes Intervener;
"Supreme Court" means the Supreme Court established by section 101(1) of the Constitution.
"taxing officer" means the Registrar of the Supreme Court.

Right of audience

3. Any party to an appeal or petition for special leave to appeal under these Rules may appear before the Supreme Court either in person or may be represented by Counsel of his own choice.

Notice of appeal

4.—(1) An appeal to the Supreme Court pursuant to paragraph (a) or (b) of subsection (1) of section 8 of the Supreme Court Decree 1991 shall be taken by filing a notice of appeal in the Supreme Court and shall be in Form 1 of the First Schedule or with such modifications and variations as the circumstances of the particular case may require.

(2) Every notice of appeal shall specify the grounds of appeal with sufficient particularity and shall be signed by counsel for the appellant or by the appellant himself if he appears in person.

(3) Every notice of appeal shall be filed in the Supreme Court registry within forty-two days from the date of the decision of the Court.

(4) Every notice of appeal shall be served by appellant or his agent upon all parties to the proceedings in the Court who are directly affected by the appeal.

Application for leave to appeal

5.—(1) Every application for leave to appeal pursuant to paragraph (c) of subsection (1) of section 8 of the Supreme Court Decree 1991 shall be made by notice of motion to the Court.

(2) The notice of motion shall specify the question involved in the appeal which by reason of its great general or public importance ought to be submitted to the Supreme Court.

(3) Every application for leave to appeal shall be supported by an affidavit stating succinctly and clearly all such facts as it may be necessary to state relating to the application.

(4) Every application for leave to appeal and affidavit in support shall be lodged in the Court registry within forty-two days from the date of the decision of the Court.

(5) Every application for leave to appeal and affidavit in support shall be served upon the registrar and upon all the parties to the proceedings in the Court who are directly affected by the application.

Petition for special leave to appeal and form of petition

6.—(1) Every application for special leave to appeal pursuant to subsection (2) of section 8 of the Supreme Court Decree 1991 shall be made in the form of a petition to the Supreme Court.

(2) Every petition for special leave to appeal shall:

- (a) state succinctly and clearly all such facts as it may be necessary to state relating to the petition;
- (b) deal with the merits of the case only so far as is necessary to explain the grounds upon which special leave to appeal is sought; and
- (c) be signed by the Counsel for the appellant or by the party himself if he appears in person.

(3) The petition shall be supported by an affidavit verifying the allegations made in the petition.

(4) For the purposes of this Rule Forms 6 and 7 set out in Atkin's Encyclopaedia of Court Forms (Second Edition) Volume 5 (1984 issue) at page 189 *et sequentes* shall be used in the Supreme Court with such modifications and variations as the circumstances of the particular case may require.

Time for lodging petition and service

7. A petition for special leave to appeal and affidavit in support shall be lodged at the Supreme court registry within forty-two days of the date of the decision from which special leave to appeal is sought and be served upon the registrar and upon all parties to the proceedings in the Court who are directly affected by the petition.

Security for costs

8.—(1) The registrar shall within one month of the lodging of the Notice of Appeal (where the appeal lies as of right) or of the petition for special leave to appeal or where leave to appeal has been granted by the Court notify the appellant or petitioner of the sum not exceeding five thousand dollars, fixed by him to be deposited as security for costs or for which recognizance shall be given by bond in Form 1 set out in the First Schedule to these Rules, with one or more sureties as the registrar may direct, for the due presentation of the appeal or petition for special leave to appeal and the payment of any costs that may become payable to the respondent in the event of the appeal or petition being dismissed for non-presentation, or the Supreme Court ordering the appellant or petitioner to pay the respondent's costs of the appeal, as the case may be.

(2) The security for costs or the bond therefor shall be deposited with the registrar or executed as the case may be, within one month.

(3) The Supreme Court may where necessary, require security for costs or for the performance of the orders to be made on appeal or petition, in addition to the sum determined under the provisions of this Rule.

Six copies of petition to be lodged together with affidavits in support

9. A petitioner for special leave to appeal shall lodge:

- (a) six copies of the petition and of the judgment from which special leave to appeal is sought;
- (b) an affidavit in support of the petition as prescribed by Rule 7.

Record to be transmitted to Supreme Court registry

10. After the notice of appeal or petition for special leave to appeal has been lodged, the registrar shall transmit to the Supreme Court registry, such record which shall comprise the following documents:

- (a) a certified copy of the record of the Court of Appeal;
- (b) a certified copy of the proceedings of the Court of Appeal;
- (c) a certified copy of the judgment appealed from;
- (d) a certified copy of the drawn up order of the judgment appealed from;
- (e) a certified copy of the order of the Court granting leave to appeal (where applicable);
- (f) a signed list of all the exhibits forming part of the record of the Court of Appeal together with the originals of all such exhibits; and
- (g) all other documents necessary for the prosecution of the appeal or petition.

Sending record of appeal

11. On receipt in the Supreme Court registry of the record prescribed under Rule 10, the registrar shall issue a summons set out in Form 2 in the First Schedule to these Rules requesting the parties and their counsel to appear before him at the time and place stated in the summons to settle the documents to be included in the record of appeal or in the record of petition for special leave to appeal and shall, whether any of the parties attend to the summons or not, settle and sign, and in due course file, a list of such documents.

Exclusion of unnecessary documents from the record

12. The registrar as well as the parties and their counsel, 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 unnecessary repetition of documents and headings and other merely formal parts of the documents. The documents so excluded shall be enumerated in a list to be attached to the record by the registrar.

Documents objected to, to be indicated

13. Where in the course of settling the 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 prepared, 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.

Appellant or petitioner to deposit sum for record

14. The appellant or petitioner shall within such time as the registrar may direct being not less than fourteen days and not more than twenty-one days deposit with him a sum fixed to cover the estimated cost of making up the record:

Provided that in special circumstances such period of time may be extended by the registrar.

Notice to be served on parties that record is ready

15. Registrar shall, after the record is prepared and made up, cause to be served on all parties mentioned in the notice of appeal or petition for special leave to appeal a notice that the record is ready for collection after payment of the prescribed fees.

Typewriting of record

16. The record may be typewritten, duplicated or printed.

Cross appeal by respondent

17.—(1) A respondent may cross appeal under the provisions of paragraphs (a) and (b) of subsection (1) of section 8 of the Supreme Court Decree by lodging a notice of cross appeal within one month from the date of the service of the Notice of Appeal on him.

(2) Where a respondent cross appeals, the provisions of these Rules shall apply *mutatis mutandis*.

Service of Notice of cross-appeal by the respondent

18. A respondent who lodges a notice of cross appeal shall, within fourteen days of lodging his notice of cross appeal, serve a copy thereof on the appellant, and where there are more than one appellant, on each appellant, and shall, before service endorse such copy with a certificate of the date of the lodging of the notice of cross appeal.

Withdrawal of appeal or petition after notice or petition has been lodged

19. Where an appellant or petitioner who has lodged his notice of appeal or petition for special leave to appeal desires to withdraw his appeal or petition, he shall give notice to that effect to the registrar and to any respondent upon whom a copy of

the notice of appeal or petition for special leave to appeal may have been served in accordance with the Rules. Subject to any agreement between such appellant or petitioner and the respondent to the contrary, the respondent shall be entitled to apply to the Supreme Court by motion supported by affidavit for his costs.

Default in prosecution of appeal

20.—(1) Where an appellant or petitioner who has lodged his notice of appeal or petition for special leave to appeal makes default in doing any act or taking any step within the time provided by these Rules, the registrar shall inform the Chief Justice of such default and the Chief Justice may cause the appeal to be entered on a list of the Supreme Court for mention on a particular day and time. The registrar shall give not less than fourteen days' notice of such day, time and place to the parties.

(2) On the day of mention the Supreme Court may order that the appeal or petition be struck out for want of prosecution or make such other order as in the circumstances may seem fit.

Non-compliance with conditions of appeal

21.—(1) Where an appellant or petitioner has not fulfilled the conditions of appeal or petition imposed by these Rules, the registrar shall certify such fact to the Supreme Court in Form 3 set out in the First Schedule to these Rules, and the Supreme Court may thereupon upon notice to all parties order that the appeal or petition be dismissed with or without costs.

(2) Where a respondent alleges that the appellant or petitioner has failed to fulfil any of the conditions of appeal or petition imposed by these Rules the Supreme Court may, if satisfied that the appellant or petitioner has so failed, upon notice to all parties dismiss the appeal or petition for want of prosecution or make any other order as the justice of the case may require.

(3) An appellant or petitioner whose appeal or petition has been dismissed pursuant to the provisions of this Rule may apply by notice of motion to have his appeal restored, and the Court may, for good and sufficient cause, order that the appeal be restored upon such terms as it may think fit.

(4) Notwithstanding the preceding provisions of this rule an appellant or petitioner may apply to the Supreme Court for an extension of time within which to fulfil the conditions of appeal to be complied with in accordance with these Rules and the Supreme Court may, for good and sufficient cause shown, grant an extension of time subject to such conditions as the Supreme Court may impose.

Substituting parties

22. Where at any time between the lodging of the notice of appeal or petition for special leave to appeal and the hearing of the appeal or petition the record becomes defective by reason of the death or change of status of a party to the appeal or petition, the Supreme Court may, on an application in that behalf made by any person interested, grant an order showing who, in the opinion of the Supreme 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 the Supreme Court.

Consolidation of appeals

23. Where there are two or more appeals or petitions arising out of the same matter, and the Court is of opinion that it would be for the convenience of the Supreme Court and all parties concerned that the appeals or petitions should be consolidated, the Court may order the appeals or petitions to be consolidated.

PART II—CASE

Lodging of case

24. (a) No party to an appeal shall be entitled to be heard by the Supreme Court unless he has previously lodged his case in the appeal.
- (b) The appellant shall, within one month of being notified that the record is ready in accordance with Rule 15, lodge with the registrar his Case.
- (c) The respondent shall, within one month of the receipt of the appellant's Case lodge with the registrar his Case:

Provided that the Supreme Court may enlarge the time prescribed by sub-rules (b) and (c) as circumstances may require.

- (d) Where the appellant fails to lodge his case in accordance with the provisions of this Rule the registrar shall certify such fact to the Supreme Court which may thereupon order that the appeal be dismissed with or without costs.
- (e) Where a respondent fails to lodge his case in accordance with the provisions of this rule he shall not be allowed to be heard at the hearing of the appeal save as to the question of costs.
- (f) Where a respondent does not desire to lodge a case in the appeal he may give the registrar notice in writing of his intention not to lodge any case while reserving his right to address the Supreme Court on the question of costs.

Typewriting etc. of Case

25. The Case may be typewritten or lithographed or printed.

Number of copies to be filed

26. Each party shall file six copies of his case and shall forthwith serve a copy each on all parties concerned.

Form of Case

- 27.—(1) The form of the case shall comply with the following requirements:

- (a) it shall consist of paragraphs numbered consecutively;
- (b) it shall state, as concisely as possible, the circumstances out of which the appeal arises, the contentions to be urged by the party lodging it, and the reasons of appeal;
- (c) references by page and line to the relevant portions of the Record as reproduced shall, as far as practicable, be reproduced in the margin;
- (d) care shall be taken to avoid, as far as possible, the recital of long extracts from the Record.

(2) For the purposes of this Rule Forms 20 and 21 set out in Atkins Encyclopaedia of Court Forms (Second Edition) at page 201 *et sequentes* shall be used in the Supreme Court with such modifications and variations as the circumstances of the appeal may require.

(3) The taxing officer, in taxing the costs of the appeal, may, either of his own motion or at the instance of the opposite party, inquire into any unnecessary prolixity in the case and disallow the costs occasioned thereby.

Separate Cases by two or more respondents

28. Two or more respondents may, and at their own risk as to costs, lodge separate Cases in the same appeal.

Notice of lodging of Case

29. Each party shall, within seven days after lodging his Case give notice thereof to the other party.

Case Notice

30. Subject as hereinafter provided, the party who lodges his Case first may, at any time after the expiration of seven clear days from the day on which he has given the other party the notice prescribed by the last preceding rule, serve such other party, if the latter has not in the meantime lodged his Case, with a "Case Notice", requiring him to lodge his case within one month from the date of the service of the said Case Notice and informing him that, in default of his so doing, the appeal will be set down for hearing *ex parte* as against him; and if the other party fails to comply with the said Case Notice, the party who has lodged his Case may, at any time after the expiration of the time limited by the said Case Notice for the lodging of the Case, file an affidavit of Service (which shall set out the terms of the said Case Notice) and the appeal shall thereupon, if all other conditions of its being set down are satisfied, be set down *ex parte* as against the party in default:

Provided that a Case Notice shall not be served until after the completion of the preparation of the record in accordance with Rule 15.

Provided further that nothing in this Rule contained shall preclude the party in default from lodging his Case, at his own risk as regards costs and otherwise, at any time up to the date of hearing.

Setting down appeal

31. Subject to the provisions of Rules 30 and 34 an appeal shall be deemed to be set down as soon as the Cases on both sides are lodged.

Amending Case

32. Notwithstanding anything to the contrary contained in these Rules, any party to an appeal may, at any time before judgment, by leave of a judge of the Supreme Court amend any part of his Case upon such terms as the Supreme Court may think fit.

Dispensing with the Case

33. Notwithstanding anything to the contrary contained in these Rules, any party to an appeal may, at any time within the time provided for in paragraph (b) or (c) of Rule 24 as the case may be, apply to the Supreme Court by motion supported by affidavit and served on all parties for leave to dispense with the lodging of a Case; and the Supreme Court may order that the lodging of a case by any party to the appeal be dispensed with or make such order as it may think just.

Non-application to Criminal matters

34. This Part shall not apply to criminal matters.

PART III—BINDING RECORD, ETC.

Mode of Binding record, etc. for use of Supreme Court

35. The registrar shall cause to be bound not less than six copies of the Record and Cases for the use of the Supreme Court at the hearing. The several documents shall be arranged (as applicable) in the following order:

- (i) Appellant's Notice of Appeal;
- (ii) Appellant's Case (if any);
- (iii) Respondent's notice of appeal (if any);

- (iv) Respondent's Case (if any);
- (v) Petition for special leave to appeal;
- (vi) Record (all parts being paged at the top of the page);
- (vii) Supplemental record (if any);

and the short title and Supreme Court number of the appeal shall also be shown.

PART IV—HEARING

Notice to parties of day fixed for hearing appeal or petition

36. The registrar shall subject to the provisions of Rule 37 notify the parties to each appeal or petition by written notice of the day appointed by the Chief Justice or a presiding judge for the hearing of the appeal or petition and the parties shall be in readiness to be heard on the day so appointed.

Statement of written submissions to be lodged by appellant and respondent

37.—(1) An appellant shall file a statement of written submissions within thirty days after the lodging of the appellant's Case in the Supreme Court registry as prescribed by Rule 24.

(2) A copy of the appellant's statement of written submissions shall be served on the respondent not later than fourteen days after lodging in the Supreme Court registry.

(3) The respondent shall file in the Supreme Court registry within thirty days after receiving the appellant's statement, a statement of written submissions.

(4) A statement of written submissions shall set out succinctly and clearly the issues giving rise to the appeal or the argument in support of any such issues with supporting authorities.

(5) A statement of written submissions shall not exceed thirty pages of typewritten or printed foolscaps with one and half spacing between the lines.

Statement of written submissions to be lodged by petitioner and respondent

38. A petitioner shall file a statement of written submissions within one month after the settlement of the record has been notified under Rule 15 and thereafter provisions of Rule 37 shall apply *mutatis mutandis*.

Oral argument—time limitation

39.—(1) At the hearing of an appeal or petition each side shall be allowed to present its case in oral argument for not longer than thirty minutes.

Provided that the Supreme Court may extend the time as it may deem necessary but any such additional period shall not exceed fifteen minutes.

(2) A reply to oral argument may be allowed at the discretion of the Supreme Court but the period for this shall not exceed fifteen minutes.

Supreme Court to exercise under this Part power and authority of High Court and Court of Appeal

40. In exercising its jurisdiction under this Part the Supreme Court shall have the power and authority of the High Court and Court of Appeal.

PART V—JUDGMENT AND ORDERS

Judgment on the appeal

41. After hearing oral argument on appeal, the Supreme Court may reserve its judgment thereon to be delivered during the same session of the Supreme Court or at a later session of the Supreme Court, as circumstances may require.

Decision on the petition for special leave to appeal

42. After hearing oral argument on the petition, the Supreme Court may:
- (a) refuse the petition; or
 - (b) grant the petition and treat the matter as an appeal and reserve its judgment on the appeal to be delivered during the same session of the Supreme Court or at the next following session or with the consent of the parties to be delivered by the Chief Justice as early as possible notwithstanding the absence of any or all the judges who heard the petition; and
 - (c) grant the petition and adjourn the matter for further argument during the same session of the Supreme Court or at the next following session or make such other orders as the circumstances may require.

PART VI—ADVISORY JURISDICTION OF SUPREME COURT

Reference by way of case stated

43.—(1) Any reference made to the Supreme Court pursuant to the provisions of section 120 of the Constitution shall be by way of case stated.

- (2) A case stated shall contain:
- (a) a summary of the facts or circumstances which makes necessary a reference to the Supreme Court for an advisory opinion; and
 - (b) the question raised for the opinion of the Supreme Court on the effect of a provision of the Constitution.

Costs

44. The costs of any appeal, petition, application or matter shall be at the discretion of the Supreme Court.

Fees

45.—(1) Save as hereinafter provided, the fees, prescribed in the Second Schedule shall be charged in respect of the matters to which they are respectively assigned, and shall be paid to the registrar.

(2) No fee shall be payable in respect of any matter where such fee would be payable by the State or any Government Department.

Provided that when any person is ordered to pay the costs of the State or any Government Department in any case all fees which would have been payable but for the provisions of this sub-rule shall be taken as having been paid and shall be recoverable from such person.

State bound by Rules

46. The State is bound by these Rules except those provisions relating to payment of fees and security for costs.

Application of High Court Rules and of the Court of Appeal Rules

47. The High Court Rules and the Court of Appeal Rules together with the prescribed Forms set out therein shall apply *mutatis mutandis* to the practice and procedure of the Supreme Court.

All prior Rules relating to appeals to the Supreme Court superceded and savings

48. The Supreme Court Rules 1992 shall supercede all prior Rules on practice and procedure in the Supreme Court.

Provided that every act or thing done before the commencement of these Rules under any prior Rules of the Supreme Court shall remain in force and be deemed to have been done under these Rules.

And provided that any intended application for leave to appeal or petition for special leave to appeal that may have arisen after the 25th day of July 1990 and before the coming into force of these Rules may be admitted by the Supreme Court provided that the application or petition shall be lodged within one month from the date of these Rules.

Made this 10th day of March 1992.

T. U. TUIVAGA
President, Supreme Court of Fiji

FIRST SCHEDULE

FORM 1

NOTICE OF APPEAL TO THE SUPREME COURT

Appeal No. _____

IN THE SUPREME COURT

Between _____ Appellant

AND _____ Respondent

NOTICE OF APPEAL

Notice is hereby given that (appealing party), by and through his counsel (name of counsel), pursuant to section (cite relevant section of Supreme Court Decree) appeals to the Supreme Court from judgment, order, decree or decision of the Court of Appeal, filed herein, and (attached hereto as Exhibit "A").

The grounds of appeal are as follows:

(Set out with sufficient particularity).

Dated at Suva this day of , 19 .

Counsel (Appellant)
for Appellant

FIRST SCHEDULE
CIVIL APPEAL
FORM 2

Rule 8(1)

Appeal No. _____

IN THE SUPREME COURT OF FIJI
BOND FOR COSTS ON A CIVIL APPEAL

Between _____ Appellant
and _____ Respondent

Know all men by these presents, that we _____

of

and _____ of
and _____ of

are jointly and severally held and firmly bound to

in the sum of \$ _____ of lawful money to be paid to the said _____ his
executors, administrator or assigns, of us for himself, in the whole our and every of
our heirs, executors and Sealed with out seals.

Dated the _____ day of _____ in the year of our Lord, 19 _____

Whereas a suit is now pending before the Supreme Court wherein
the above-bounden
is appellant and the said
is respondent:

And whereas a judgment was given by the Court of Appeal, on the _____ day of
_____, 19 _____

for the said _____

and the said _____

has filed notice of appeal from the said judgment:

And whereas it is by law provided that the party appealing shall give security to
the satisfaction of the Registrar of the Supreme Court for the due prosecution of the
appeal and for the payment of any costs which may be ordered to be paid by the
appellant:

And Whereas the abovenamed

and _____, at the request of the said
have agreed to enter into this obligation for the purposes aforesaid:

Now the condition of this obligation is such, that if the said
shall duly prosecute the appeal and if the above-bounden
and _____ any or either of them shall pay any
cost which may be ordered to be paid by the appellant this obligation shall be void,
otherwise remain in full force.

Signed, sealed delivered in the presence of

(L.S.)

(L.S.)

(L.S.)

FORM 3

Rule 11

Appeal No. _____

IN THE SUPREME COURT OF FIJI

SUMMONS TO PARTIES TO SETTLE RECORD

Between _____ Appellant
and _____ Respondent

Take notice that all parties concerned are required to attend before me at my
office at _____
on _____ day the _____ day of _____
19____ at the hour of _____ o'clock in the _____
noon to proceed with settling of the record of appeal herein.

Dated this _____ day of _____, 19

Registrar Supreme Court

Filing Case	20
Filing Amended Case	20
Filing affidavit	10
Filing each document or Exhibit	5
Filing Recognisance	10
On filing motion for extension of time if the time has not yet expired	20
if the time has already expired	25
On filing motion for stay of execution	20
On filing motion to restore appeal struck out or dismissed	20
On filing motion for extension of time within which to fulfil conditions	20
of appeal	20
On filing motion against taxation by Taxing Officer	25
On filing Certificate of service of notice of appeal or cross appeal	20
Order determining an Appeal	25
Any other Order	15
Certified copy of order	25
On inspection of record	15
