

## **Order 8**

### **Civil Appeals**

1. This Order shall apply to the Court from the court below in civil cases, and to matters related thereto.
2. (1) All appeals shall be by way of rehearing and shall be brought by notice (hereinafter called 'the notice of appeal') to be filed in the Registry of the court below which shall set forth the grounds of appeal, state whether the whole or part only of the decision of the court below is complained of (in the latter case specifying such part) and state also the exact nature of the relief sought and the names and addresses of all parties directly affected by the appeal, and shall be accompanied by a sufficient number of copies for service on all such parties. It shall also have endorsed on it an address for service.
  - (2) If the grounds of appeal allege misdirection or error in law the particulars and the nature of the misdirection or error shall be clearly stated.
  - (3) The notice of appeal shall set forth concisely and under distinct heads the ground upon which the appellant intends to rely at the hearing of the appeal without any argument or narrative and shall be numbered consecutively.
  - (4) No ground which is vague or general in terms which discloses no reasonable ground of appeal shall be permitted, save the general ground that the judgment is against the weight of evidence, and any ground of appeal or any part thereof which is not permitted under this rule may be struck out by the Court of its own motion or on application by the respondent.
  - (5) The appellant shall not without the leave of the Court urge or be heard in support of any ground of appeal not mentioned in the notice of appeal, but the Court may in its discretion allow the appellant to amend the grounds of appeal upon payment of the fees prescribed for making such amendment and upon such terms as the Court may deem just.
  - (6) Notwithstanding the foregoing provisions the Court in deciding the appeal shall not be confined to the grounds set forth by the appellant:

Provided that the Court shall not, if it allows the appeal, rest its decision on any ground not set forth by the appellant unless the respondent has had sufficient opportunity of contesting the case on that ground.

- (7) The Court shall have the power to strike out a notice of appeal when an appeals is not competent.
3. Deleted
4. A notice of appeal may be amended by or with the leave of the Court at any time.
5. (1) The Court may in any case direct that the notice of appeal be served on any party to the proceedings in the court below on whom it has been served, or on any person not party to those proceedings.
  - (2) The Court may in any case where it gives a direction under this rule –
    - (a) Postpone or adjourn the hearing of the appeal for such period and on such terms as may be just; and
    - (b) Give such judgment and make such order on the appeal as might been given or made if the persons served in pursuance of the direction had originally been parties.
6. (1) An appellant may at any time before the appeal is called on for hearing serve on the parties to the appeal and file with the Registrar a notice to the effect that he does not intend further to prosecute the appeal.
  - (2) If all parties to the appeal consent to the withdrawal of the appeal without order of the Court, the appellant may file in the Registry the document or documents signifying such consent and signed by the parties or by their legal representatives and the appeal shall be struck out of the list of appeal by the Court, and in such event any sum lodged in Court as security for the costs of the appeal shall be paid out to the appellant.
  - (3) Deleted
  - (4) If all the parties do not consent to the withdrawal of the appeal as aforesaid, the appeal shall remain on the list, and shall come on for the hearing of any issue as to costs or otherwise remaining outstanding between the parties, and for the making of an order as to the disposal of any sum lodged in Court as security for the costs of appeal.

- (5) An appeal which has been withdrawn under this Rule, shall be deemed to have been dismissed.
  - (6) Any application under this Rule may be considered and determined by the Court in chambers without oral argument.
7. Where an appeal is withdrawn under rule 6 of this Order any respondent who has given a notice under Rule 3 of this Order may give notice of appeal and proceed therewith in the manner prescribed by the foregoing rules, and in such case the times limited for giving notice of appeal, for depositing the sum estimated to cover the cost of the record and for furnishing the security for costs may, on application to the Court, be extended so far as is reasonably necessary in all the circumstances of the case.
8. (1) If the appellant has complied with one of the requirements of rule 3 of Order 7, the Registrar of the court below shall certify such fact to the Court, which shall thereupon order that the appeal be dismissed with or without costs, and shall cause the appellant and the respondent to be notified of the terms of its order.
- (2) Where an appeal has been dismissed under paragraph (1) of this rule, a respondent who has given notice under rule 3 of this Order may give notice of appeal and the provisions of rule 7 of this Order shall apply as if the appeal were brought under that rule.
- (3) If the respondent alleges that the appellant has failed to comply with any part of the requirements of Rule 2 of this Order and rule 3 of Order 7, the Court, if satisfied that the appellant has so failed, may dismissed the appeal for want of due prosecution or make such other order as the justice of the case may require.
- (4) An Appellant whose appeal has been dismissed under this rule may apply by notice of motion that his appeal be restored. Any such application may be made to the Court and the Court may, where exceptional circumstances have been shown, because such appeal to be restored upon such terms as it may think fit.
- (5) Any application under this Rule may be considered and determined by the Court in chambers without oral argument.
9. (1) It shall be the duty of counsel representing a party to an appeal to give immediate

notice to the death of that party to the Registrar of the court below or to the Registrar of the Court (as the case may require) and to all other parties affected by the appeal as soon as he becomes aware of the fact.

- (2) It is necessary to add or substitute a new party for the deceased, an application shall, subject to the provisions of Rule 11 of this Order, be made in that behalf of the court below or to the Court either by any existing party to the appeal or by any person who wishes to be added or substituted.
  - (3) The notice prescribed by sub-rule (1) of this rule shall be given to the Registrar of the court to which the application mentioned in sub-rule (2) ought to be made.
  - (4) All actions or other things whatsoever taken or done by the Registrar of the court below or by any other person for the purpose of completing the Record and transmitting the same to this Court shall not be open to objection on the ground that it was taken or done after the death of a party to the appeal.
  - (5) Where an appeal has been down for hearing and the Court is or becomes aware that a necessary party to the appeal is dead the appeal shall be struck off the hearing list.
10. (1) Subject as hereinafter provided each party shall, immediately after an appeal becomes pending before the Court, deliver to the court below all documents (being exhibits in the case or which were tendered as exhibits and rejected) which are in his custody or were produced or put in by him at the trial.
- (2) Subject as hereinafter provided, each party to an appeal shall be prepared to produce at the hearing of the appeal all exhibits, other than documents, which are in his custody or were produced or put in by him at the trial.
  - (3) In case any party finds it difficult to comply with the preceding provisions of this rule owing to the nature of documents or other exhibits or owing to their being in possession of a third party or for any other reason, he may apply to the Registrar of the Court for directions.
  - (4) The Registrar of the court below may, either of his own motion or upon application, give any directions he sees fit, whether dispensing with the provisions of the Rule or modifying its application in any way or for securing compliance with it.

(5) All original documents delivered to the court below under this Rule shall remain in the custody of the court below until the record of appeal has been prepared, and shall then be forwarded with the record to the Registrar and shall remain in the custody of the Court until the determination of the appeal:

Provided that the Court or Registrar may allow the return of any document to any party pending the hearing of the appeal and subject to such conditions as it or he may impose.

11. After an appeal has been entered and until it has been finally disposed of, the Court shall be seised of the whole of the proceedings as between the parties thereto, and except as may be otherwise provided in this Order, every application therein shall be made to the Court and not to the court below, but any application may be filed in the court below for transmission to the Court.
12. (1) In relation to an appeal the Court shall have all the powers and duties as to amendment and otherwise of the court of first instance, and, where that court is not the court of trial, the court of trial.  
(2) The Court shall have power to draw inferences of fact and to give any judgment and make any order which ought to have been given or made, and to make such further or other order as the case may require, including any order as to costs.  
(3) The Court shall have power to make orders by way of injunctions or the appointment of a receiver or manager and such other necessary orders for the protection of property or persons pending the determination of an appeal to it even though no application for such an order was made in the court below.  
(4) The powers of the Court in respect of an appeal shall not be restricted by reason of any interlocutory order from which there has been no appeal.  
(5) The powers of the Court under the foregoing provisions of this rule may be exercised notwithstanding that no notice of appeal has been given in respect of any particular party to the proceedings in that court, or that any ground for allowing the appeal or for affirming or varying the decision of that court is not specified in such a notice; and the court may make any order, on such terms as the Court thinks just,

to ensure the determination on the merits of the real question in controversy between the parties.

- (6) The Court may, in special circumstances, order that such security shall be given for the costs of an appeal as may be just.
  - (7) Documents impounded by order of the Court shall not be delivered out of the custody of the Court except in compliance with an order of the Court: Provided that where the Attorney-General of the Federation or of a State or the Director of Public Prosecutions of the Federation or of a State or the Director of Public Prosecutions of the Federation or of a State makes a written request in that behalf, documents so impounded shall be delivered into his custody.
  - (8) Documents impounded by order of the Court, while in the custody of the Court, shall not be inspected except by a person authorised to do so by an order of the Court.
13. (1) On the hearing of any appeal the Court may, if it thinks fit, make any such order as could be made in pursuance of an application for a new trial or to set aside a verdict, finding or judgment of the court below.
- (2) The Court shall not be bound to order a new trial on the ground of misdirection, or of the improper admission or rejection of evidence, unless in the opinion of the Court some substantial wrong or miscarriage of Justice has been thereby occasioned.
  - (3) A new trial may be ordered on any question without interfering with the finding or decision on any other question and if it appears to the Court that any such wrong or miscarriage of justice as is mentioned in paragraph (2) of this rule affects part only of the matter in controversy, or one or some only of the part, the Court may order a new trial as to that part only, or as to that part or those parts only and give final judgment as to the remainder.
  - (4) In any case where the Court has power to order a new trial on the ground that damages awarded by the court below are excessive or inadequate, the Court may, in lieu of ordering a new trial –
    - (a) substitute for the sum awarded by the court below such sum as appears to the Court to be proper;

(b) reduce or increase the sum awarded by the court below by such amount as appears to the Court to be proper in respect of any distinct head of damages erroneously included in or excluded from the sum so awarded; but except as aforesaid, the Court shall not have power to reduce or increase the damages awarded by the court below.

(5) A new trial shall not be ordered by reason of the ruling of any judge of the court below that a document is insufficiently stamped or does not require to be stamped.

14. (1) The judgment of the Court shall be pronounced in open Court, either on the hearing of the appeal or at any subsequent time of which notice shall be given by the Registrar to the parties to the appeal.

(2) Wherever a reserved judgment is to be given and the counsel concerned are duly notified in that behalf, the presence of such counsel or of their juniors is required in Court when judgment is being delivered. Failure to observe this will be regarded as an act of disrespect to the Court.

(3) A certified copy of the judgment shall be sent by the Registrar to the court below.

15. (1) Every judgment of the Court shall be embodied in an order.

(2) A seal or certified copy of the order shall be sent by the Registrar to the court below.

(3) Interlocutory orders shall be prepared in like manner.

16. The Court shall review any judgment once given and delivered by it save to correct any clerical mistake or some error arising from any accidental slip or omission, or to vary the judgment or order so as to give effect to its meaning or intention. A judgment or order shall be varied when it correctly represents what the Court decided nor shall the operative and substantive part of it be varied and a different form substituted.

17. Any judgment given by the Court may be enforced by the Court or by the court below or by any other court which has been seised of the matter, as the court may direct.

18. When the Court directs any judgment to be enforced by another court, a certificate under the seal of the Court and the hand of the presiding Justice setting forth the

judgment shall be transmitted by the Registrar to such other court, and the latter shall enforce such judgment in terms of the certificate.

19. Where the costs of an appeal are allowed they may either be fixed by the Court at the time when the judgment is given or may be ordered to be taxed.

**Practice Direction**

With effect from 1st day of October, 1991, the costs to be awarded by the Supreme Court in a civil appeal and an application in a civil appeal have been increased to N1, 000.00 (one thousand naira) and N100.00 (one hundred naira) respectively.

20. (1) Leave to proceed as a poor person granted pursuant to the provisions of Order 2 Rule 14 of these Rules shall not exempt such person from liability to an order for costs in favour of his opponent.
- (2) If a poor person is not awarded costs in the proceedings, no fees shall be taken from him by a legal practitioner assigned to him.
- (3) If a poor person is awarded costs against his opponent he shall be entitled to include and receive in such costs fees of any legal practitioner assigned to him and all other fees and costs remitted by his admission to proceed as a poor person.