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LEGAL NOTICE NO. 11 OF 1997

INDUSTRIAL RELATIONS ACT, 1996

(Act No. 1 of 1996)

INDUSTRIAL COURT OF APPEAL RULES, 1997

(Under Section 20)

In exercise of the powers conferred upon me by Section 20 of the Industrial Relations Act 1996 and after consultation with the Attorney General, I hereby make the following Rules-

Citation and commencement.

1. These Rules may be cited as the Court of Appeal Rules, 1997 and shall come into force on the date of publication.

Interpretation.

2. In these rules, unless the context otherwise requires -

“Act” means the Industrial Relations Act, 1996.

“Appellant” means the party appealing from a judgement and includes his legal representative;

“Counsel” includes an advocate and an attorney;

“Industrial Court of Appeal” means the Industrial Court of Appeal established by section 17 of the Act.

“judgement” includes decree, order, and decision;

“party” means any party to the appeal and includes his legal representative;

“record” means the aggregate of papers relating to an appeal (including the pleadings, proceedings, evidence and judgements) proper to be laid before the Industrial Court of Appeal on the hearing of the appeal;

“Registrar” means Registrar of the High Court of Swaziland and includes a deputy Registrar thereof; who shall *ex officio* be the Registrar of the Industrial Court of Appeal.

Sittings of Industrial Court of Appeal.

3. (1) The date, time and place of a sitting of the Industrial Court of Appeal shall be determined by the Judge President of the Industrial Court of Appeal, who shall select the judges to form the court at any sitting.

(2) Two judges shall constitute a quorum, provided that should the Judges fail to concur in a judgement, the Court shall be reconstituted as a full court of three judges to rehear the matter.

Delivery of Judgement.

4. Every judgement of the Industrial Court of Appeal shall be delivered in open Court.

Register of Appeals.

5. The Registrar shall keep a register of all appeals brought before the Industrial Court of Appeal.

Noting of appeal (Form 1).

6. (1) Every appeal shall be instituted by the filing and service of a notice of Appeal as far as possible in accordance with form 1, signed by the appellant.

(2) Subject to the proviso to Rule 8 (1), the appellant shall deliver such notice or cause it to be delivered to the Registrar within the period prescribed in Rule 8, and shall at the same time serve a copy thereof on the respondent.

(3) The Registrar shall, subject to these rules, accept and date such notice on receipt thereof.

(4) The notice of appeal shall set forth concisely and under distinct consecutively numbered heads the grounds of appeal and the points of law upon which the Appellant relies.

Appellant confined to the grounds of appeal.

7. The appellant shall not, without the leave of the Industrial Court of Appeal, urge or be heard in support of any ground of appeal not stated in his notice of appeal, but the Industrial Court of Appeal in deciding the appeal shall not be confined to the grounds so stated.

Time for filing notice of appeal.

8. (1) The notice of appeal shall be filled **within seven days** of the date of the judgement appealed against:

Provided that if there is a written judgement such period shall run from the date of delivery of such written judgement.

(2) The Registrar shall not accept any notice of appeal for filing which is presented after the expiry of the period referred to in subrule (1) unless leave to appeal out of time has on application to the Industrial Court of Appeal previously been obtained.

Application for leave to appeal (Form 3)

9. (1) An application for leave to appeal out of time shall be filed **within six weeks** of the date of the judgement which it is sought to appeal against and shall be made on notice of motion to the Industrial Court of Appeal stating shortly the reasons upon which the application is based, and where facts are alleged they shall be verified by affidavit.

(2) The appellant shall deliver such notice of motion and its supporting documents to the Registrar, and serve a copy on the respondent forthwith.

(3) Such notice of motion accompanied by supporting documents shall be delivered to the

(4) The respondent may file an affidavit in reply to the notice or motion **within seven days** from the date of service or within such longer period as the Registrar may allow.

Petition or motion for leave to appeal to constitute notice of appeal.

10. If the Industrial Court of Appeal on a petition or motion for leave has given an appellant leave to appeal it shall not be necessary for him to file or serve a notice of appeal, the petition or motion constituting sufficient notice.

Declarations and arguments may be filed if appellant not to be present at hearing appeal.

11. Any party to an appeal may, **not less than ten days** before the date on which the appeal has been set down for hearing, file with the Registrar a declaration in writing that he does not wish to be present in person or by counsel on the hearing of the appeal, and shall at the same time submit to the Registrar four copies of such argument as he desires to submit to the Industrial Court of Appeal and serve a copy of such declaration and a copy of his argument on the other parties to the appeal.

Amendment of notice of appeal.

12. The Industrial Court of Appeal may allow an amendment of the notice of appeal and arguments, and allow parties or their counsel to appear, notwithstanding any declaration made under Rule 11 upon such terms as to service of notice of such amendment, costs and otherwise as it may think fit.

Abandonment of appeal (Form 4).

13. (1) An appellant may at any time abandon his appeal by giving notice of abandonment thereof to the Registrar and upon such notice being given the appeal shall be deemed to have been dismissed by the Industrial Court of Appeal.

(2) The respondent shall be entitled to costs incurred up to the date on which he receives notice of such abandonment.

(3) The Registrar shall forthwith give notice of such dismissal to the respondent and the Registrar of the Industrial Court.

(4) A respondent who has given notice under Rule 25 shall be entitled to proceed with his application under such Rule notwithstanding the abandonment of the appeal by the appellant.

Notice of hearing.

14. (1) The Registrar shall, after obtaining directions from the Judge President of the Industrial Court of Appeal cause notice of the date of hearing to be served upon the appellant and respondent.

(2) The Industrial Court of Appeal may hear and determine on appeal without giving notice of the date of hearing to any person who has declared under Rule 11 that he does not wish to attend the hearing.

Adjournment of hearing.

15. If for any reason it appears right to adjourn an appeal or application, the Industrial Court of Appeal may do so upon such terms and for such time as it may deem fit.

Extension of time (Form 5).

16. (1) The Judge President or any judge of the Industrial Court of Appeal designated by him may, on application, extend any time prescribed by these Rules.

(2) An application for extension shall be supported by an affidavit setting forth good and substantial reasons for the application and where the application is for leave to appeal the affidavit shall contain grounds of appeal which *prima facie* show cause for leave to be granted.

Condonation.

17. The Industrial Court of Appeal or any Judge thereof may, on application and for sufficient cause shown, excuse any party from compliance with any of these Rules and may give such directions in matters of practice and procedure as it considers just and expedient.

Taking of additional evidence (Form 6).

18. The Industrial Court of Appeal may if it considers the same necessary for a proper decision of the case remit the matter back to the Industrial Court for the hearing of further evidence on such aspects of the case as the Industrial Court of Appeal may direct.

Judgements.

19. The Registrar shall draw up and sign all judgements of the Industrial Court of Appeal and shall transmit them together with a certified copy thereof to the Registrar of the Industrial Court.

Service.

20. Service, where required in these Rules, shall be effected in the same manner as is prescribed for service of process of the Industrial Court.

Provided that any notice or other document which is required or authorized by the Rules to be given or sent shall be deemed to be duly given or sent if forwarded by registered post addressed to the person to whom such notice or other document is so required or authorized to be given or sent.

The record.

21. (1) The appellant shall prepare the record on appeal in accordance with sub-rules (5) and (6) hereof and shall, **within one month** of the date of noting of the appeal, lodge a copy thereof with the Registrar of the Industrial Court for certification as correct.

(2) If the Registrar of the Industrial Court declines so to certify the record he shall return it to the appellant for revision and amendment and the appellant shall relodge it for certification **within fourteen days** after receipt thereof.

(3) The record may not thereafter be relodged for certification without the leave of the Judge who presided at the hearing in the court *a quo*.

(4) Subject to Rule 16 (1), if an appellant fails to note an appeal or to submit or resubmit the record for certification within the time provided by this Rule, the appeal shall be deemed to have been abandoned.

- (5) (a) The appellant in preparing the record shall, in consultation with the opposite party, endeavour to exclude therefrom documents not relevant to the subject matter of the appeal and to reduce the bulk of the record so far as practicable;
- (b) Documents which are purely formal shall be omitted and no document shall be set forth more than once;
- (c) The record shall include a list of documents omitted; and
- (d) Where a document is included notwithstanding an objection to its inclusion by any party, the objection shall be noted in the index of the record.
- (6) (a) All copies of the record shall be clearly typed on one side of the paper only on stout foolscap paper, double spaced, in black ink, and every tenth line of each page of the record shall be numbered, and at the top of each page there shall be typed the name of the witness whose evidence is recorded thereon;
- (b) Photostats of original documents are permissible only if they be clearly legible;
- (c) The pages of the record must be consecutively numbered;
- (d) The record must be properly indexed and securely bound in suitable covers; and
- (e) Bulky records must be divided into separate conveniently sized volumes.
- (7) The Registrar of the Industrial Court shall satisfy himself that the provisions of subrule (6) hereof have been complied with before furnishing the certificate required by subrule (1) hereof.
- (8) (a) When the Registrar of the Industrial Court has certified the record, the appellant shall forthwith lodge with the Registrar five copies thereof and deliver to the respondent or respondents such number of copies as may reasonably be required by them; and
- (b) One of the copies of the record, lodged with the Registrar shall be certified as correct by the Registrar of the Industrial Court.
- (9) (a) Upon receipt of the record the Registrar shall transmit one copy thereof to the Judge President who will thereupon assign a date for the hearing of the appeal and notify the Registrar thereof;
- (b) Upon receipt of such notification the Registrar shall immediately inform the parties to the appeal of such date.

Heads of argument to be filed.

22. (1) In every appeal the appellant shall, **not later than fourteen days** before the hearing of the appeal, file with the Registrar copies of the heads of argument to be presented on appeal, together with a list of the authorities to be quoted in support of each head.

(2) A copy of such heads of argument and list shall be served within the same period on the respondent.

(3) The respondent shall, **not later than four days** before the hearing of the appeal similarly file with the Registrar six copies of the heads of his argument and supporting authorities to be presented on appeal and shall serve a copy thereof upon the appellant.

Respondent applying to vary order appealed against (Form 7).

23. (1) It shall not be necessary for a respondent to give formal notice in terms of Rule 6 of a cross appeal but every respondent who intends to apply to the Industrial Court of Appeal for a variation of the order appealed against shall, **not less than four days** before the hearing, give notice of such intention to any parties who may be affected by such variation.

(2) The respondent shall deliver such notice together with four copies thereof of the Registrar of the Industrial Court and shall serve a copy thereof on the appellant.

(3) On receipt of such notice the Registrar of the Industrial Court shall forward it together with three copies thereof to the Registrar.

(4) The respondent shall state fully in such notice the particulars in respect of which he seeks a variation of the order and the grounds therefore.

(5) The omission to give such notice shall not diminish the power of the Industrial Court of Appeal to vary such order but it may, in the discretion of the Court, be a ground for an adjournment of the appeal, or for a special order as to costs.

Security for costs (Form 8).

24. (1) The appellant shall, within such time as the Registrar of the Industrial Court shall fix, and subject to Rule 2, deposit with him such sum as may be determined by such Registrar, or give security therefor by bond with one or more sureties to his satisfaction for the due prosecution of the appeal and for the payment of any costs which may be ordered to be paid by the appellant:

(2) This Rule shall not apply to the Government.

Non-compliance with Rule 24.

25. If the appellant fails to comply with rule 24, the Registrar of the Industrial Court shall so inform the Registrar and the Industrial Court of Appeal may thereupon order that the appeal be dismissed with or without costs.

Costs.

26. (1) Where costs are allowed they shall be taxable according to the rules for the taxation of costs for the time being in force in the High Court according to the scale there applicable.

Provided that costs allowed in respect of proceedings prior to the institution of the appeal shall be taxable according to the rules for the taxation of costs for the time being in force in the Industrial Court.

(2) The Registrar shall be the taxing officer.

(3) Any person aggrieved by any order, decision or ruling of the taxing officer may apply in chambers to a Judge of the Industrial Court of Appeal to set aside such order, decision or ruling and to make such further order as he may think fit.

Stay of proceedings on appeal.

27. The noting of an appeal to the Industrial Court of Appeal shall have the effect of suspending the judgement against which the appeal is noted, unless the Industrial Court or the Industrial Court of Appeal on application after the filing of a notice of appeal orders otherwise.

Applications to a single Judge.

28. Every application to a Judge of the Industrial Court of Appeal shall be by Notice of Motion supported where necessary by affidavits attached thereto.

Forms.

29. The forms for use in appeals set out in the Schedule shall be used in all cases to which such forms are applicable.

S.W. SAPIRE
Judge President of the Industrial Court of Appeal

6th February, 1997
Mbabane

SCHEDULE

(Under Section 32)

FORM NO. 1

THE INDUSTRIAL COURT OF APPEAL RULES
(RULE 6)

NOTICE OF APPEAL FROM FINAL DECISION OF THE INDUSTRIAL COURT
IN ITS ORIGINAL JURISDICTION

Between Appellant
and

..... Respondent.

TAKE NOTICE that the appellant, who was the plaintiff/defendant in the Industrial Court being dissatisfied with the judgement of the said Court contained in the order dated the day of 19....., doth hereby appeal to the Industrial Court of Appeal on the following grounds:

Dated this.....day of.....19.....

.....
Appellant.

To the Registrar of the Industrial Court of Appeal

And to.....(Respondent).
.....

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FORM NO. 2

**THE INDUSTRIAL COURT OF APPEAL RULES
(RULE 6)**

JUDGE'S CERTIFICATE

In the Industrial Court of Swaziland

BetweenAppellant
and
.....Respondent

WHEREAS the appeal of the said
was dismissed by me in the Industrial Court
sitting at.....on the.....day of.....19.....

I DO HEREBY CERTIFY that the case is a fit one for appeal on the following grounds:

Dated at.....the.....day of
.....19.....

JUDGE

FORM NO. 3

THE INDUSTRIAL COURT OF APPEAL RULES
(RULE 9)

NOTICE OF MOTION FOR LEAVE TO APPEAL

Between.....Appellant
and
.....Respondent.

TAKE NOTICE that the Industrial Court of Appeal will be removed at.....
on theday of.....
.....19.....at.....o'clock in the forenoon or as
soon as possible thereafter by the appellant (who was the plaintiff/defendant or appellant/respondent
in the Industrial Court) or his counsel on the hearing of an application for leave to appeal
against the judgement of the said Industrial Court given on theday of.....
19.....

And further take notice that the grounds of this application are as follows:

Dated this.....day of19.....

(Signed).....

Appellant or his Counsel

To the Registrar Industrial Court of Appeal.

And to(Respondent).

At.....

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FORM NO. 4

INDUSTRIAL COURT OF APPEAL RULES
(RULE 13)

NOTICE OF ABANDONMENT OF APPEAL

Between.....Appellant
and
.....Respondent

TAKE NOTICE that the appellant doth hereby wholly withdraw his appeal against the respondent.

Dated this.....day of.....19.....

(Signed)

Before me
Registrar of the Industrial Court of Appeal

Appellant

.....
To the Registrar of the Court of Appeal

FORM NO. 5

INDUSTRIAL COURT OF APPEAL RULES
(RULE 16)

NOTICE OF MOTION FOR EXTENSION OF TIME WITHIN WHICH TO APPEAL

Between.....Appellant
and
.....Respondent.

TAKE NOTICE that the Industrial Court of Appeal will be moved at.....
on the.....day of.....
19.....at.....o'clock in the forenoon or as soon as possible thereafter by the appellant (who was the plaintiff/defendant in the Industrial Court) or his counsel on the hearing of an application for an order that notwithstanding that the time limited by the Rules of the Industrial Court of Appeal for so doing has expired, the appellant may be at liberty to appeal/ apply for leave to appeal from the judgement of the Industrial Court dated the..... day of.....19....., on the grounds set forth in the attached affidavit of the appellant.

(Signed).....

Appellant or his Counsel.

Dated this.....day of.....19.....

NOTE:- The affidavit should set out reasons for extending the time and also the grounds of appeal. To the Registrar of the Industrial Court of Appeal.

And to.....(Respondent).

At.....

FORM NO. 6

THE INDUSTRIAL COURT OF APPEAL RULES
(RULE 18)

NOTICE OF INTENTION TO APPLY FOR LEAVE TO PRODUCE FRESH
EVIDENCE AT HEARING OF APPEAL

Between.....Appellant
and
..... Respondent.

TAKE NOTICE that the above-named appellant/respondent intends as the hearing of the appeal herein to apply to the Industrial Court of Appeal for leave to produce, in addition to the evidence produced at the trial of the action, the following evidence:
(Here state shortly the fresh evidence desired to be produced.)

Dated this.....day of.....19.....

(Signed).....
Appellant/Respondent or his Counsel.

To the Registrar of the Industrial Court of Appeal.
and to.....(Respondent/Appellant).

And.....

FORM NO. 7

THE INDUSTRIAL COURT OF APPEAL RULES
(RULE 23)

NOTICE OF INTENTION TO CONTEND THAT THE JUDGEMENT OF THE
INDUSTRIAL COURT SHOULD BE VARIED.

Between.....Appellant
and
..... Respondent

TAKE NOTICE that the above-named respondent intends upon the hearing of the appeal to vary the judgement of the Industrial Court dated the day of.....19....., in the following respect:
(Here specify variation required.)

Dated this.....day of.....19.....
(Signed)

Respondent or his Counsel

To the Registrar of the Industrial Court of Appeal.
And to.....Appellant
At.....

FORM NO. 8

THE INDUSTRIAL COURT OF APPEAL RULES
(RULE 24)

BOND FOR COSTS OF APPEAL

Know all men, by these presents, that we.....
.....of.....(Appellant) and.....
.....of.....and.....
.....of.....(Sureties) and jointly and severally
bound to.....
.....of.....(Respondent) in the sum of
.....E.....of lawful money to be paid to the said respondent, his executors,
administrators or assigns, for which payment well and truly to be made, we bind ourselves and
each of us for himself, in the whole our and every of our heirs, executors and administrators,
firmly by these presents.

Sealed with our seals.

Dated the.....day of.....19.....

Whereas a judgement was given in the Industrial Court at
.....on the.....day of.....19.....
for the said respondent and the said appellant has appealed to the Industrial Court of Appeal
from the said judgement:

And whereas it is by law provided that the party appealing shall give security to the satisfaction
of the Registrar of the Industrial Court of Appeal 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 above-named.....(Appellant)
and.....(Sureties) at the request of the said appellant
have agreed to enter into his obligation for the purposes:

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

(Signed)Appellant.
.....Surety.
.....Surety.

Signed, sealed and delivered in the presence of

.....
Registrar of the Industrial Court of Appeal

FORM NO. 9

THE INDUSTRIAL COURT OF APPEAL RULES
(RULE 27)

NOTICE OF MOTION TO STAY PROCEEDINGS PENDING APPEAL

Between.....Appellant
and
.....Respondent.

TAKE NOTICE that the Industrial Court of Appeal will be moved at.....
On the.....day of.....19.....at.....
o'clock in the forenoon or as soon therefore as possible by the appellant that (execution and) all
further proceedings on the judgement of the Industrial Court dated.....day of.....
19....., may be stayed pending the hearing of the appeal therefrom, of which the appellant
has given notice dated the.....day of.....19....., (or such
other order may be made as the Industrial Court of Appeal may think fit) and that the costs of
this application be.....
.....
.....

Dated this.....day of.....19.....

(Signed)

Appellant or his Attorney.

The Registrar of the Industrial Court of Appeal.

And to.....(Appellant).

At.....

