

ISSN 0856 - 034X

THE UNITED REPUBLIC OF TANZANIA

Supplement No. 17

26th April, 2019

SUBSIDIARY LEGISLATION

to the Gazette of the United Republic of Tanzania No.17. Vol.100 dated 26th April, 2019
Printed by the Government Printer, Dodoma by Order of Government

GOVERNMENT NOTICE No. 344 published on 26/4/2019

THE APPELLATE JURISDICTION ACT
(CAP.141)

—————
RULE
—————

(Made under section 12)
—————

THE TANZANIA COURT OF APPEAL (AMENDMENT) RULES, 2019

ARRANGEMENT OF RULES

1. Citation.
2. Amendment of rule 2.
3. Amendment of rule 3.
4. Amendment of rule 11.
5. Amendment of rule 12.
6. Amendment of rule 30.
7. Addition of rule 38A.
8. Amendment of rule 39.
9. Amendment of rule 48.
10. Amendment of rule 57.
11. Amendment of rule 58.
12. Amendment of rule 59.
13. Amendment of rule 68.
14. Amendment of rule 77.
15. Amendment of rule 78.

Tanzania Court of Appeal (Amendment)

GN. No. 344 (contd.)

16. Amendment of rule 82.
17. Amendment of rule 83.
18. Amendment of rule 89.
19. Amendment of rule 90.
20. Amendment of rule 96.
21. Amendment of rule 105.
22. Amendment of rule 106.
23. Amendment of rule 112.
24. Amendment of rule 115.
25. Amendment of the First Schedule.

THE APPELLATE JURISDICTION ACT
(CAP.141)

RULES

(Made under section 12)

THE TANZANIA COURT OF APPEAL (AMENDMENT) RULES, 2019

Citation
G.N.No.
368 of
2009

1. These Rules may be cited as the Tanzania Court of Appeal (Amendment) Rules, 2019 and shall be read as one with the Tanzania Court of Appeal Rules, 2009 hereinafter referred to as the “principal Rules.”

Amend-
ment of
rule 2

2. The principal Rules are amended in rule 2 by deleting it and substituting for it the following-

"Administ 2. In administering these Rules, the
ration of Court shall seek to give effect to the
the Rules overriding objective as provided for under
sections 3A and 3B of the Act.
Cap.141

Amend-
ment of
rule 3
Cap 141

3. The principal Rules are amended in rule (3) by deleting the interpretation of the term “High Court” and substituting for it the following-

“High Court” has the meaning ascribed to it under section 3 of the Act and for the purposes of appeals to the Court, includes a subordinate court with extended jurisdiction from which an appeal may lie to the Court; and the expression “trial judge” includes a magistrate exercising extended jurisdiction;”.

Amend-
ment of
rule 11

4. The principal Rules are amended in rule 11 by-

(a) adding immediately after subrule (4) the following new subrule-
“(4A) An application under subrule (4) shall be substantially in the Form J as specified in the First Schedule to these Rules.”

Tanzania Court of Appeal (Amendment)

GN. No. 344 (contd.)

- (b) deleting paragraph (b) of subrule (5) and designating paragraph (c) as paragraph (b);
- (c) deleting subrule (6) and substituting for it the following subrule-
 - “(6) Notwithstanding anything contained under subrule (5) of this rule and rule 60 (2) (b), a single Justice of the Court may, for good cause, make an *ex parte* order for stay of execution pending hearing and determination of the application.”; and
- (d) by deleting subrule (7) and substituting for it the following new subrule-
 - “(7) An application for stay of execution shall be accompanied by copies of the following-
 - (a) notice of appeal;
 - (b) decree or order appealed from;
 - (c) judgment or ruling appealed from; and
 - (d) notice of the intended execution if any.”

Amend-
ment of
rule 12

5. The principal Rules are amended in rule 12 by-

- (a) designating rule 12 as subrule (1); and
- (b) by adding immediately after subrule (1) as designated the following new subrule-

G.N.No.
148 of
2018

“(2) Where these Rules requires the filing of a document in the Court, that document may be filed electronically and the Judicature and Application of Laws (Electronic Filing) Rules, shall apply *mutatis mutandis*”.

Amend-
ment of
rule 30

6. The principal Rules are amended in rule 30 by adding immediately after subrule (5) the following subrule (6)-

“(6). An advocate who intends to withdraw from representing his client, shall, within 14 days before the hearing date, lodge a notice of withdrawal and furnish the Registrar with the address of service of his client.”

Addition
of rule
38A

7. The principal Rules are amended by adding immediately after rule 38 the following rule-

"Adjourn 38A. (1) The Court may, upon good cause shown, adjourn the hearing of an appeal or application upon such terms and conditions as to costs as it may deem fit.

(2) No adjournment shall be granted at the request of a party or parties except where the circumstances are beyond the control of the party or parties as the case may be.

(3) The fact that an advocate of a party is engaged in another court shall not be a ground for adjournment unless that advocate is appearing before a superior panel and informs the Registrar in advance at least one week before the date of hearing.

(4) Where illness of an advocate or his inability to conduct the case for any reason other than his being engaged in another court is put forward as a ground for adjournment, the Court shall not grant adjournment unless it is satisfied that the party applying for adjournment could not have engaged another advocate in time.

(5) In the event of an adjournment at the instance of the Court, the reason for the adjournment shall be recorded and the Court shall strive to fix the hearing date within the shortest period possible.”

Amend-
ment of
rule 39

8. The principal Rules are amended in rule 39, by-

- (a) deleting subrule (9) and substituting for it the following-
 - “(9)A judgment or ruling shall be signed and dated as of the date it is finally composed and shall take effect from the date it is delivered and certified by the Registrar in the following words-
 - “The Judgment/Ruling delivered this ...day of.... ..20... in the presence of the and is hereby certified as a true copy of the original.”
- (b) adding immediately after subrule (9) the following new subrules-
 - “(10) In order to facilitate the prompt disposal of applications and notwithstanding the preceding provisions of this rule, the Court may make orders without detailed reasoned ruling, especially in cases where the Court’s decision-
 - (a) is not potentially precedent-setting; or

Tanzania Court of Appeal (Amendment)

GN. No. 344 (contd.)

(b) does not require the interpretation of a rule, statute or common law.

(11) Where one of the members of the Court dies, ceases to hold office or is unable to perform the functions of his office by reason of infirmity of the mind or body, the remaining members, if-

(a) after considering the facts of the appeal or matter before them have concurring opinion, shall deliver the judgment; and

(b) they do not concur, the matter shall be referred to the Chief Justice for constituting another panel to conduct a fresh hearing.”

Amendment of rule 48

9. The principal Rules are amended in rule 48 by adding immediately after subrule (1) the following proviso-

“Provided that where an application omits to cite any specific provision of the law or cites a wrong provision, but the jurisdiction to grant the order sought exists, the irregularity or omission can be ignored and the court may order that the correct law be inserted.”

Amendment of rule 57

10. The principal Rules are amended in rule 57 by adding immediately after subrule (3) the following subrules-

“(4). Where no application is made by the legal representative under subrule (2) or interested party under subrule (3) within twelve (12) months, the application shall abate.

(5) Any person claiming to be the legal representative of a deceased party or any other interested person, may apply to revive the application; and, if it is proved that he was prevented by good cause from continuing the application, the Court shall revive the application upon such terms as to costs or otherwise as it deems fit.”

Amendment of rule 58

11. The principal Rules are amended in rule 58 by adding immediately after subrule (3) the following subrule-

“(4) Notwithstanding the preceding provisions of this rule, an applicant may at any time after instituting his application and before the same is called on for hearing, lodge in the appropriate registry a written notice that, he does not intend to further prosecute it and upon receiving such notice, the Registrar shall mark the application withdrawn.”

Tanzania Court of Appeal (Amendment)

GN. No. 344 (contd.)

- Amendment of rule 59 12. The principal Rules are amended by deleting rule 59 and substituting for it the following rule-
- “Adjourn 59. Subject to rule 38A of these Rules
ment of the Court may, upon good cause shown,
applicati adjourn the hearing of an application.”
on
- Amendment of rule 68 13. The principal Rules are amended in rule 68 by adding immediately after subrule (7) the following subrule-
- “(8). Notwithstanding the preceding provisions of this rule, where the notice of appeal deviates from the prescribed form, the Court may, on application by appellant or on its own motion, order its amendment.”
- Amendment of rule 77 14. The principal Rules are amended in rule 77 by adding immediately after subrule (3) the following subrule-
- “(4) An appellant may, at any time in the course of hearing, informally apply to the Court for leave to withdraw the appeal and the Court may grant that application”.
- Amendment of rule 78 15. The principal Rules are amended in rule 78 by adding immediately after subrule (2) the following subrules-
- “(3). Where an application under subrule (2) is not made within twelve months, the appeal shall, if the deceased person is the appellant, abate and if the deceased person is the respondent, proceed in the absence of the respondent.
(4) Any person claiming to be the legal representative of a deceased party or any other interested person, may apply to revive the appeal; and, if it is proved that he was prevented by good cause from continuing the appeal, the Court shall revive the appeal upon such terms as to costs or otherwise as it deems fit.”
- Amendment of rule 82 16. The principal Rules are amended by deleting rule 82 and substituting for it the following rule-
- "Applic 82. This Part shall apply to appeals from
ation of the High Court or a tribunal acting in original,
Part V revisional or appellate jurisdiction in civil cases
and to matters relating to them save for the

Tanzania Court of Appeal (Amendment)

GN. No. 344 (contd.)

provisions of: -

- (a) rules 106 and 107 of these Rules which shall also apply to civil applications; and
- (b) rule 115 of these Rules which shall also apply to criminal appeals.

Amend-
ment of
rule 83

17. The principal Rules are amended in rule 83 by adding immediately after subrule (6) the following subrule-

“(7). Notwithstanding the preceding provisions of this rule, where the notice of appeal deviates from the prescribed form, the Court may, on application by appellant or on its own motion, order its amendment under rule 111 of these Rules.”

Amend-
ment of
rule 89

18. The principal Rules are amended in rule 89 by deleting subrule (2) and substituting for it the following-

“(2) Subject to the provisions of subrule (1), any other person on whom a notice of appeal was served or ought to have been served may at any time, either before or after the institution of the appeal, apply to the Court to strike out the notice of appeal or the appeal, as the case may be, on the ground that no appeal lies or that some essential step in the proceedings has not been taken or has not been taken within the prescribed time.

(3) Where the Court strikes out a notice of appeal under sub rule (2) after an appeal has been lodged, the appeal shall be deemed to have been struck out and the Registrar shall mark it accordingly.

Amendm
ent of
rule 90

19. The principal Rules are amended in rule 90, by-

- (a) adding immediately after subrule (1) the following subrule (2)-

“(2) The certificate of delay under rules 45, 45A and 90(1) shall be substantially in the Form K as specified in the First Schedule to these Rules and shall applied *mutatis mutandis*”.

- (b) renumbering subrule (2), (3) and (4) and as subrule (3), (4) and (5); and

- (c) deleting subrule (5) as renumbered and substituting for it the following-

“(5) Subject to the provisions of subrule (1), the Registrar shall ensure a copy of the proceedings is ready for delivery

Tanzania Court of Appeal (Amendment)

GN. No. 344 (contd.)

within ninety (90) days from the date the appellant requested for such copy and the appellant shall take steps to collect a copy upon being informed by the Registrar to do so, or within fourteen (14) days after the expiry of the ninety (90) days”.

Amend-
ment of
rule 96

20. The principal Rules are amended in rule 96 by-

- (a) deleting subrule (6) and substituting for it with the following sub rule-

“(6). Where a document referred to in rule 96(1) and (2) is omitted from the record of appeal the appellant may within fourteen days of lodging the record of appeal, without prior permission and thereafter, informally, with the permission of the registrar, include the document in the record of appeal by lodging an additional record of appeal.”; and

- (b) adding the following sub rules-

“(7) Where the case is called on for hearing, the Court is of opinion that document referred to in rule 96(1) and (2) is omitted from the record of appeal, it may on its own motion or upon an informal application grant leave to the appellant to lodge a supplementary record of appeal.

(8). Where leave to file a supplementary record under subrule (7), has been granted, the Court shall not entertain any similar application on the same matter.”

Amend-
ment of
rule 105

21. The principal Rules are amended in rule 105, by-

- (a) designating rule 105 as subrule (1); and
(b) adding immediately after the designated subrule (1) the following subrules-

“(2). Where an application under subrule (2) is not made within twelve (12) months, the appeal shall, if the deceased person is the appellant, abate and if the deceased person is the respondent, proceed in the absence of the respondent.

(3) Any person claiming to be the legal representative of a deceased party or any other interested person, may apply to revive the appeal; and, if it is proved that he was prevented by good cause from continuing the appeal, the Court shall revive the appeal upon such terms as to costs or otherwise as it deems fit.”

Tanzania Court of Appeal (Amendment)

GN. No. 344 (contd.)

Amend-
ment of
rule 106

22. The principal Rules are amended by deleting rule 106 and substituting for it the following rule-

"Present- 106.-(1) An appellant or applicant shall, within sixty (60) days after lodging the record of appeal or filing the notice of motion, file in the appropriate registry written submissions in support of the appeal or application as the case may be.

(2) Where the appellant or applicant fails to file the written submissions within the time prescribed in subrule (1), the respondent may, without prejudice to sub rule (7), file written submissions in opposition to the appeal or application within fifteen (15) days thereafter.

(3) The written submissions shall contain -

- (a) a concise statement of the case containing the facts material to the appeal, cross appeal or application;
- (b) a statement of what are, in the appellant's or applicant's view, the issues arising in the appeal, cross appeal or application-
 - (i) if the appellant or applicant, is abandoning any point taken in the memorandum of appeal or notice of motion, this shall be so stated in the submission; and
 - (ii) if the appellant or applicant, intends to apply for leave to introduce an additional ground not taken in the memorandum of appeal or notice of motion, this shall be indicated in the submissions;
- (c) a statement of the issues or questions which the appellant or applicant, would like the Court to consider, expressed in the terms and circumstances of the case but without unnecessary details, which statement shall be deemed to include every subsidiary question comprised therein, the questions which only set forth in the submissions or comprised therein shall be considered by the Court; and a direct and concise

argument amplifying the reasons relied upon;

- (d) the enactments or subsidiary legislation, if any which are relevant to the appeal, cross appeal or application.

(4) Where the parties intend to invite the Court to depart from one of its own decisions, this shall be clearly stated in a separate paragraph of the submissions, to which special attention shall be drawn, and the intention shall also be restated as one of the reasons.

(5) An appellant or applicant who has lodged written submissions under subrule (1) may, if served with notice of a cross-appeal, lodge supplementary submissions of his arguments in opposition to it within fourteen (14) days of service.

(6) A copy of the written submissions shall be served upon the opposite party within fourteen (14) days from the date of filing.

(7) A respondent shall file a copy of a reply to the submissions of the appellant or applicant not later than thirty (30) days from the date of service by the appellant or applicant upon him.

(8) A copy of the respondent's written submissions shall be served upon the appellant or applicant within fourteen (14) days from the date of filing.

(9) Upon expiry of the time for filing written submissions, the Registrar shall fix a date of hearing and notify the parties or their advocates.

(10) At the hearing, the parties or their advocates shall appear and, where-

- (a) written submissions have been filed, present oral arguments to clarify their written submissions; or
- (b) no written submissions have been filed, present oral arguments in support of or in opposition to the appeal, cross appeal or application as the case may be.

(11) For purposes of subrule (10) no party shall be allowed to present oral arguments for

more than half an hour unless the Court, on its own motion or upon application by either party, directs otherwise:

Provided that, failure to file written submissions or a reply shall not be a ground for applying for additional time for oral submissions under the provisions of this rule.

(12) Where an appeal or application is called on for hearing and written submissions have been duly filed and-

- (a) neither party nor their advocates appear to present oral arguments; or
- (b) either party or his advocate appears to present an oral arguments,

the appeal shall be treated as having been argued and shall be considered as such:

Provided that a party or his advocate who appears, shall be afforded an opportunity to present oral argument.

(13) Notwithstanding the provisions of this rule, the Court may, where it considers the circumstances of an appeal, cross appeal or application to be exceptional, or that the hearing of an appeal must be accelerated in the interest of justice, waive compliance with the provisions of this rule in so far as they relate to the preparation and filing of written submissions, either wholly or in part, or reduce the time limits specified in this rule, to such extent as the Court may deem reasonable in the circumstances of the case.

Amend-
ment of
rule 112

23. The principal Rules are amendment in rule 112 by deleting subrule 4 and substituting for it the following subrule-

“(4) For the purposes of this rule, a party who has lodged written submissions under the provisions of rule 106 shall be deemed to have appeared.”

Amend-
ment of
rule 115

24. The principal Rules are amendment by deleting rule 115 and substituting for it the following new rule-

"Immature 115. No judgment, decree or order of
rial the High Court shall be revised or substantially

Tanzania Court of Appeal (Amendment)

GN. No. 344 (contd.)

errors in varied on appeal, nor a new trial ordered by the
civil Court, on account of any error, defect or
matters irregularity, whether in the decision or
otherwise, not affecting the merits, or the
jurisdiction of the High Court; and in the case of
a second or third appeal, this Rule shall be
construed as applying to the trial court, the first
and second appellate courts, as the case may
be.”

Amend-
ment of
the First
Schedule

25. The principal Rules are amended in the First Schedule by adding the following Forms J and K-

Tanzania Court of Appeal (Amendment)

GN. No. 344 (contd.)

FIRST SCHEDULE

FORM J

(Made under Rule 11 (4A))

In the Court of Appeal of Tanzania at Civil Application No...20.....
In the Matter of an Intended Appeal/Civil Appeal No..... of
between
..... applicant and respondent
(Application for stay of execution of the decree/order of the High Court,, in..... Case
No. of dated, (Hon., J.))

NOTICE OF MOTION

*(Made under Rules 11(7a) of the Tanzania Court of Appeal Rules,
(G.N.No. 368 of 2009)*

TAKE NOTICE that on theday ofat 09:00 O'clock in the forenoon or soon thereafter as he can be heard, the applicant/ advocate for the above named Applicant will move the Court to grant-

- (a) An *ex parte* order for stay of execution of the decree/order in Civil Case/Appeal/Application etc., No. of pending hearing and determination of the application *inter partes*;

On the ground(s) that-

1.
2.

- (b) An order staying the execution of the decree/order of the High Court,..... Registry/Division pending final determination of the intended appeal/Civil Appeal No. of

On the grounds that-

1.
2.
3.
4.

And for an order that costs of and incidental to this application abide the result of the said appeal.

The application will be supported by the affidavits ofand..... sworn at on the day of20.....

The address for service of the applicant is in the care of:

.....
.....
.....
.....

Tanzania Court of Appeal (Amendment)

GN. No. 344 (contd.)

Dated at this day of 20

.....
APPLICANT/ADVOCATE FOR THE APPLICANT

Lodged in the Registry at on the.....day of20.....

.....
REGISTRAR

To be Served Upon:

.....
.....
.....

FORM K

.....
(Made under Rule 90 (2))
.....

In the High Court of the United Republic of Tanzania At Registry/Division
In the matter of an intended appeal to the Court of Appeal of Tanzania
..... Plaintiff/Petitioner/Appellant(s) and
..... Defendant/Respondent(s) Appeal from the High Court Civil Case/
Commercial/Land/Civil Appeal No ofbefore Justice/
Judge.....delivered on

CERTIFICATE OF DELAY

.....
(Made under rules 4, 5,45A and 90(1))
.....

This is to certify that the period from.....when the appellant requested for copies of proceedings, judgment, ruling, and decree or order in this matter up towhen the appellant was notified that the documents were ready for collection, a total number of days should be excluded in computing the time for instituting the appeal in the Court of Appeal.

GIVEN under my hand and the seal of the court this.....day of..... 20.....

.....
REGISTRAR

Dar es Salaam,
11th April, 2019

IBRAHIM HAMIS JUMA
Chief Justice