LEGAL UPDATE

FB ATTORNEYS

11 June 2019

Court of Appeal Rules Amended

- **The amendments came into force on 26 April 2019**
- **Electronic filing formally introduced at the Court**
- **Statutorily prescribed forms relating to stay of execution and certificate of delay introduced**
- **Oxygen principle expressly reflected in the Rules, and it demands the Court to avoid technicalities in dispensation of justice**
- **Circumstances for parties to obtain adjournment tightened**
- **Incompetency of the record of appeal no longer a ground for striking out an appeal**
- **The obligation of a party to follow up collection of proceedings after making an application now crystalized**
- **Respondent can file submissions opposing the appeal even where the Appellant fails to file his**

In a bid to move away from procedural technicalities, the Chief Justice Prof. Ibrahim Juma has issued amendments to the Tanzania Court of Appeal Rules 2009 (Rules). The Tanzania Court of Appeal (Amendments) Rules 2019 (Amendments) came into force on 26 April 2019 vide GN No 344.

The amendments have brought in overriding objectives which are famously known as the "oxygen principle" as provided under the Appellate Jurisdiction Act Cap. 141 R.E 2002. This principle requires the Court to avoid technicalities in dispensation of justice. Its aim is to facilitate just, expeditious, proportionate and affordable justice.

The amended Rules provide for new statutory forms, specifically for filing an exparte or interparte stay of execution (Form J), and certificate of delay (Form K). Both forms are provided for in the first schedule of the Rules.

The amendments recognize electronic filing of documents in the Court. The Rules provide that, "the documents may be filed electronically and the Judicature and Application of Laws (Electronic Filing) Rules, shall apply mutatis mutandis."

In respect of adjournments, the amendments make it harder for an Advocate to adjourn a matter at the Court of Appeal. Cases will now only be adjourned where circumstances are beyond control of the parties. The fact that an Advocate is in another Court shall not be a ground of adjournments unless that Court is a superior Court and the Advocate informs the Registrar one week before the hearing. Further, 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. The amendment also requires the Justices to record the grounds of adjournment and strive to fix hearing date within the shortest time possible. This will fast track timely disposal of cases.

For further information on legal updates please contact:

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About FB Attorneys
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We cover all aspects of the law and specialise in all corporate and commercial matters including Mining, Oil & Gas, Tax, Litigation, Competition, Banking & Intellectual Property law.

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Furthermore, in order to facilitate the prompt disposal of applications, the amended Rules permit the Court to make orders without detailed reasoned ruling especially in cases where the Court's decision is not potentially precedent-setting or does not require the interpretation of a rule, statute or common law.

Moreover, non citation of the law or citation of wrong provisions in an application is now a curable defect. The amendments empowers the Court, where the jurisdiction to grant a certain order exists, to ignore irregularities and omissions or to order the insertion of the correct law.

Not only that but also, the new amendments oblige the Appellant to take necessary steps in collection of copies of proceedings (in preparations for lodging an appeal) from the Registrar of High Court or Tribunal within 14 days after the expiry of 90 days.

As opposed to the old Rules, incompetent records of appeal is no longer fatal. In case of an omission in the record of appeal, the new Rules give an Appellant 14 additional days after lodging the record of appeal to lodge an additional record of appeal without any prior permission. Rule 96 further provides that, "where the case is called on for hearing, the Court is of the 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." However, it should be noted that, where leave to file a supplementary record under rule 96(7) has been granted, the Court shall not entertain any similar application on the same matter.

The Rules amend rule 106 by deleting the same and replacing it with the new provisions which set the following new requirements:

- **Where the Appellant fails to file written submissions within prescribed time, the Respondent is allowed to file written submissions on opposition to the appeal or application within fifteen days thereafter.**
- **Parties or their advocates shall not 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.**
- **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 the above rule.**
- **A party who has lodged written submissions under the provision of rule 106 shall be deemed to have appeared.**

Lastly, rule 115 provide that no judgment, decree or order of the High Court will be revised or substantially varied on appeal, nor a new trial ordered by the Court, because of any error, defect or irregularity, whether in the decision or otherwise, not affecting the merits, or the jurisdiction of the High Court; and in case of a second or third appeal, rule 115 will be construed as applying to the trial Court, the first and second appellate Courts, as the case may be.

To read the amendments kindly click here.

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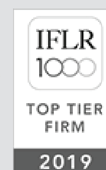

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