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Court of Appeal Act, 1954

Act 74 of 1954

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Court of Appeal Act, 1954

Act 74 of 1954

Commenced on 15 April 1955

[This is the version of this document at 1 December 1998.]

An Act to prescribe the jurisdiction, powers and authorities of the Court of Appeal.

Part I – Preliminary

1. Short title

This Act may be cited as the Court of Appeal Act, 1954.

2. Interpretation

In this Act, unless the context otherwise requires—

"**judgment**" includes decree, order, conviction, sentence and decision.

3. Applications before single judge of Appeal

An application which may be brought before a single judge of the Court of Appeal may be dealt with by him in open court or in chambers, at his discretion.

Part II – Criminal appeals

4. Right of appeal in criminal cases

- (1) A person convicted on a trial held by the High Court may appeal to the Court of Appeal against his conviction or against the sentence passed on conviction unless such sentence is one fixed by law.
- (2) A person aggrieved by a judgment of the High Court given or made in its criminal appellate jurisdiction may appeal to the Court of Appeal—
 - (a) on a ground of appeal which involves a question of law alone, or,
 - (b) with the leave of the Court of Appeal or upon the certificate of the judge who heard the appeal—
 - (i) on a ground of appeal which involves a question of fact alone or a question of mixed law and fact, or
 - (ii) on any ground (including the severity of sentence) which appears to the Court of Appeal or judge, as the case may be, to be a sufficient ground of appeal.

[Amended A.5/1967]

5. Appeals in ordinary cases

- (1) On an appeal against conviction the Court of Appeal may allow the appeal if it thinks that the conviction should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence or on the ground of a wrong decision of a question of law or that on any other ground there was a miscarriage of justice and in any other case shall dismiss the appeal:

Provided that the Court of Appeal may, notwithstanding the fact that it is of the opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred; but where the Court of Appeal is of the opinion that the proceedings in the trial court were a nullity through want of jurisdiction or otherwise, it may order the appellant to be tried by a court of competent jurisdiction.

- (2) Subject to the special provisions of this Act, the Court of Appeal shall, if it allows an appeal against conviction, quash the conviction and direct a judgment of acquittal to be entered.
- (3) On an appeal against sentence the Court of Appeal shall, if it thinks that a different sentence should have been passed, quash the sentence passed at the trial and pass such other sentence warranted in law (whether more or less severe) in substitution therefor as it thinks ought to have been passed, and in any other case shall dismiss the appeal.

6. Appeals by the prosecution

- (1) The Attorney-General or, in the case of a private prosecution, the prosecutor, may appeal to the Court of Appeal, against any judgment of the High Court or made in its criminal original or appellate jurisdiction, with leave of the Court of Appeal or upon a certificate of the Judge who gave the judgment appealed against, on any ground of appeal which involves a question of law but not a question of fact, nor against severity of sentence.
- (2) For the purposes of this Section, the question as to whether there was any evidence upon which the court could have come to the conclusion to which it did come shall be deemed to be a question of fact and not one of law.

[Amended A.5/1967]

7. Determination of appeals by prosecution

- (1) On an appeal brought by the Attorney-General or other prosecutor, the Court of Appeal may, if it decides the matter in issue in favour of the appellant—
 - (a) give such decision or take such action as the High Court ought, in the opinion of the Court of Appeal, to have given or taken; or
 - (b) give such directions as the Court of Appeal may think just.
- (2) If an appeal brought by the Attorney-General or other prosecutor is disallowed, the Court of Appeal may order that the appellant pay to the respondent costs, if any, to which the respondent was put in opposing the appeal and such costs may be taxed according to the scale of civil appeals to the Court of Appeal.
- (3) If the Attorney-General is the appellant, the costs which he is so ordered to pay shall be paid by the Government.

[Added A.5/1967]

8. Powers of Court in special cases

- (1) If it appears to the Court of Appeal that an appellant, though not properly convicted on some count of the indictment or charge, has been properly convicted on some other count of the indictment or charge the Court of Appeal may either affirm the sentence passed on the appellant at the trial, or pass such sentence in substitution therefor as it thinks proper and as may be warranted in law, on the count of the indictment or charge on which the Court of Appeal considers that the appellant has been properly convicted.
- (2) Where an appellant has been convicted of an offence and the trial court could on the indictment or charge have found him guilty of some other offence and on the finding of the trial court it appears to the Court of Appeal that the trial court must have been satisfied of facts which proved him

guilty of that other offence, the Court of Appeal may, instead of allowing or dismissing the appeal, substitute for the judgment of the trial court a judgment of guilty of that other offence and pass sentence in substitution for the sentence passed at the trial as may be warranted in law for that other offence, not being a sentence of greater severity.

- (3) If on appeal it appears to the Court of Appeal that, although the appellant was guilty of the act or omission charged against him, he was insane at the time the act was done or the omission made so as not to be responsible according to law for his actions, the Court of Appeal may quash the sentence passed at the trial and substitute therefor a finding to the effect that the appellant was guilty of the act or omission charged against him, but was insane at the time when he did the act or made the omission, and shall thereupon order the appellant to be kept in custody in some prison pending the signification of His Majesty's pleasure.

9. Suspension of order ancillary to conviction

- (1) Where the operation of any award or order of restitution or revesting of property and of any other award or order which is an award or order ancillary to conviction by any court subordinate to the High Court shall have been suspended pending the determination of an appeal to the High Court, the operation of any such award or order may and, if the suspension by such subordinate court of such award or order pending the determination of such appeal is made obligatory by law, shall (unless the High Court shall direct to the contrary in any case in which in the opinion of the High Court the title to property, which is the subject of such order, is not in dispute) be suspended by the High Court as here after provided.
- (2) In the like manner the operation of any award or order of restitution or revesting of property made on conviction by the High Court shall (unless the High Court shall direct to the contrary in any case in which, in the opinion of the High Court, the title to property, which is the subject of such order, is not in dispute) be suspended and the operation of any other award or order ancillary to conviction made on the conviction by the High Court may be suspended, unless by law the suspension of the operation of the award or order is compulsory in which case the operation shall be suspended.

10. Period of suspension of orders

- (1) Where an award or order is suspended as provided by the preceding section such award or order shall be suspended—
 - (a) until the expiration of two months after the date of conviction by the High Court or the dismissal of an appeal by the High Court as the case may be; and
 - (b) in cases where notice of appeal or leave to appeal is given in accordance with this Act, until the appeal has been heard and determined:

Provided that in cases where the operation of such order is suspended until the determination of the appeal, the award or order shall not take effect if the conviction is quashed on appeal.

- (2) The Court of Appeal may by order annul or vary any such award or order made at the trial as aforesaid, although the conviction is not quashed; and the award or order, if annulled, shall not take effect, and, if varied, shall take effect as so varied.

11. Supplementary powers of Court

In the exercise of its jurisdiction, the Court of Appeal may, if it thinks it necessary or expedient in the interests of justice—

- (a) order the production of any document, exhibit, or other thing connected with the proceedings, the production of which appears to it necessary for the determination of the case;
- (b) order any witness who would have been a compellable witness at the trial to attend and be examined before the Court of Appeal, whether he was or was not called at the trial, or order the

examination of any such witness before any judge of the Court of Appeal or High Court or any officer of the Court of Appeal or High Court or other person appointed by the Court of Appeal for the purpose, and allow the admission of a deposition so taken as evidence before the Court of Appeal;

- (c) receive the evidence, if tendered, of any witness (including the appellant) who is a competent but not compellable witness; and, if the appellant makes an application for the purpose, may receive evidence of the husband or wife of the appellant, in cases where the evidence of the husband or wife could not have been given at the trial except on such application:

Provided that in no case shall a sentence be increased by reason of or in consideration of evidence that was not given at the trial.

12. Stay of execution of certain sentences

In the case of a sentence of death or of corporal punishment—

- (a) the sentence shall not be executed until after the expiry of the time within which a notice of appeal or an application for leave to appeal may be given;
- (b) if a notice of appeal is filed the sentence shall not be executed until the appeal has been determined or abandoned;
- (c) if an application for leave to appeal is filed, the application shall be heard and determined as soon as practicable and the sentence shall not be executed until leave to appeal has been refused or the appeal has been determined or abandoned.

13. Power to admit to bail and postpone fine

- (1) The Court of Appeal or the High Court may, on the application of an appellant and pending the determination of his appeal—
 - (a) admit the appellant to bail; and
 - (b) postpone the payment of any fine imposed upon him.
- (2) The time during which an appellant, pending the determination of his appeal, is admitted to bail shall not count as part of any term of imprisonment under his sentence.
- (3) Any imprisonment under the sentence of the appellant, whether it is the sentence passed by the court of trial or the sentence passed by the Court of Appeal, shall, subject to any directions which the Court of Appeal may give to the contrary, be deemed to be resumed or to begin to run, as the case requires—
 - (a) if the appellant is in custody, as from the day on which the appeal is determined;
 - (b) if the appellant is not in custody as from the day on which he is received into gaol under the sentence.
- (4) At any time an appellant has been released on bail the court which released him may, if satisfied that it is in the interests of justice so to do, revoke the order admitting to bail and issue a warrant for his apprehension, and order him to be committed to prison.

Part III – Civil appeals

14. Right of appeal in civil cases

- (1) An appeal shall lie to the Court of Appeal—
 - (a) from all final judgments of the High Court; and

- (b) by leave of the Court of Appeal from an interlocutory order, an order made *ex parte* or an order as to costs only.
- (2) The rights of appeal given by sub-section (1) shall apply only to judgments given in the exercise of the original jurisdiction of the High Court.

15. Right of appeal from the High Court's civil appellate jurisdiction

A person aggrieved by a judgment of the High Court in its civil appellate jurisdiction may appeal to the Court of Appeal with the leave of the Court of Appeal or upon the certificate of the judge who heard the appeal, on any ground of appeal which involves a question of law but not on a question of fact.

16. Appeal in special cases

An appeal shall lie to the Court of Appeal where provision is expressly made in an Act for such appeal.

17. Power to reserve questions of law for opinion of Court of Appeal

In addition and without prejudice to the right of appeal given by this or any other Act, a judge of the High Court may reserve for consideration by the Court of Appeal, on a case to be stated by him, any question of law which may arise on the trial of a suit or matter and may give any judgment subject to the opinion of the Court of Appeal, and the Court of Appeal shall have powers to hear and determine every such question.