



BRITISH INDIAN OCEAN TERRITORY

**REVISED REGULATIONS OF THE
BRITISH INDIAN OCEAN TERRITORY**

**THE COURTS (CIVIL APPEALS FROM
THE MAGISTRATE'S COURT) RULES
1985**

CHAPTER B.4

Revised Edition

Showing the law as at 1 September 2020

Published by Authority

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This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Law Revision Ordinance 2015 and contains a consolidation of the following laws:

The Courts (Civil Appeals from the Magistrate’s Court) Rules 1985 – SI No.3 of 1985

As amended by:

The Courts (Civil Appeals from the Magistrate’s Court) (Amendment) Rules 1994 – SI No.2 of 1994

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ARRANGEMENT OF RULES

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In exercise of the powers conferred on him by section 48 of the Courts Ordinance 1983, the Chief Justice has made the following rules of court –

Citation.

1. These rules of court may be cited as the Courts (Civil Appeals from the Magistrate's Court) Rules 1985, RRBIOT c.B.4.

Application.

2. These rules shall apply only to applications for leave to appeal, and to appeals, from the Magistrate's Court to the Supreme Court in civil matters.

Definitions.

3. In these rules, unless the context otherwise requires –

appellant includes an intending appellant;

clerk means the clerk of the Magistrate's Court;

Registrar means the Registrar of the Supreme Court;

signed means signed by the applicant or applicants or appellant or appellants or respondent or respondents, as the case may be, or his or their counsel or solicitor.

Applications for leave to appeal.

4. (1) An application for leave to appeal from an interlocutory judgment of the Magistrate's Court shall be in writing and shall be signed and delivered to the clerk within fourteen days of the judgment or such longer period as the Magistrate may for sufficient reason allow.

(2) Where there are two or more applicants, they may sign a joint application with one address for service or each may sign a separate application.

(3) An application shall be accompanied by as many copies as there are respondents.

Service of applications.

5. The clerk shall, as soon as is practicable, serve a copy of the application on the respondent, or on each respondent, where there are more than one.

Opposition.

6. (1) A respondent who wishes to oppose an application for leave to appeal shall, within twenty-eight days of the service on him of a copy of the application, or such longer period as the Magistrate may for sufficient reason allow, deliver to the clerk a signed statement of his reasons for opposing the application.

(2) A respondent who fails to comply with subrule (1) shall not be entitled to be heard on the application.

Transmission to Registrar.

7. On receipt of a statement from the respondent or statements from all respondents, as the case may be, or at the expiration of twenty-eight days from service under rule 5 of a copy of the application, or the latest date of service where there are more respondents than one, whichever is the sooner, the clerk shall send the application and any statement or statements in opposition to the Registrar.

Institution of appeals

Notice of appeal.

8. (1) An appeal from a judgment of the Magistrate's Court shall be instituted by notice in writing, signed and delivered to the clerk within twenty-eight days of the judgment.

(2) Where an appeal lies only with leave, notice of appeal shall not be given before the application for leave has been delivered to the clerk but may be given before the decision on the application.

(3) Where there are two or more appellants, they may sign a joint notice of appeal with one address for service or each may sign a separate notice.

(4) A notice of appeal shall be accompanied by as many copies as there are respondents.

Service of notices.

9. The clerk shall as soon as is practicable serve a copy of the notice of appeal on the respondent, or on each respondent where there are more than one.

Preparation of record of appeal.

10. (1) As soon as is practicable after receiving a notice of appeal, the clerk shall prepare the record of appeal, which shall include copies of –

- (a) the plaint;
- (b) the statement of defence;
- (c) the notes of evidence;
- (d) copies of any documentary evidence, so far as it is relevant to the appeal and is not of excessive length;
- (e) the judgment; and
- (f) where leave to appeal was required, a copy of the order giving leave.

(2) As soon as the record of appeal has been prepared, the clerk shall serve a copy of it on the appellant, or on each appellant where there are more than one.

Memorandum of appeal.

11. (1) The appellant shall, within twenty-eight days of the service on him of the record of appeal or such longer period as the Magistrate may for sufficient reason allow, deliver to the clerk a signed memorandum of appeal.

(2) The memorandum of appeal shall contain a concise statement in numbered paragraphs of the point or points on which the judgment is alleged to be erroneous, without any argument or narrative, and the nature of the order for which it is proposed to ask.

(3) Where there are two or more appellants, they may sign a joint memorandum of appeal or may each sign a separate memorandum.

(4) The memorandum shall be accompanied by as many copies as there are respondents.

(5) An appellant who fails to deliver a memorandum of appeal within the prescribed time shall be deemed to have abandoned his appeal.

Service, etc., of memorandum of appeal.

12. On receipt of the memorandum of appeal, the clerk shall –

- (a) serve copies of the record of appeal and of the memorandum of appeal on the respondent, or on each respondent where there are more than one;

(b) send copies of the notice of appeal, the record of appeal and the memorandum of appeal to the Registrar.

Written arguments

Written arguments.

13. Any party to an application for leave to appeal or to an appeal may deliver to the clerk a signed statement that he does not intend to appear personally or by counsel at the hearing, and may embody in such statement his arguments in support of or against the application or the appeal, as the case may be.

Dispensing with hearings

When hearing unnecessary.

14. A hearing shall not be necessary, unless the Chief Justice otherwise directs –

(a) on an application for leave to appeal, where the respondent has failed to comply with rule 6 or, where there are more respondents than one, none of the respondents has complied with that rule and the applicant has stated in writing that he does not wish to be heard;

(b) on an application for leave to appeal or on an appeal, where both or all the parties, as the case may be, have delivered statements under rule 13.

Revoked.

15. *Revoked.*

Hearings

Setting down.

16. (1) Subject to the provisions of rule 14 the Registrar shall –

(a) on receipt of an application for leave to appeal sent to him under rule 7; or

(b) on receipt of a notice of appeal, record of appeal and memorandum of appeal sent to him under rule 12,

set the application or the appeal, as the case may be, down for hearing –

(i) where the Chief Justice has directed that the hearing is to be in the United Kingdom, at the earliest convenient date; or

(ii) where the hearing is to be in Diego Garcia, at the next sessions of the Supreme Court.

(2) The Registrar shall, as soon as is practicable, notify the parties of the date and time when and the place where the application or appeal will be heard.

Addition of parties.

17. At any stage of an appeal, the Chief Justice may direct that a copy of the proceedings be served upon any person, whether a party to the original proceedings or not, whom it appears proper to make a respondent.

Death of party.

18. An application for leave to appeal or an appeal shall not abate on the death of a party but the Chief Justice shall, on the application of any interested person, cause the personal representative to be made a party in place of the deceased.

Evidence.

19. No evidence shall be admitted at the hearing of an application or appeal except with the leave of the Chief Justice.

Order of addresses.

20. (1) When an application or appeal is called for hearing, the applicant or appellant or his counsel, if present, shall be heard in support of the application or appeal, the respondent or his counsel if present, shall be heard if necessary and in that event the applicant or appellant or his counsel may reply.

(2) The same consideration shall be given to any written arguments contained in a statement delivered under rule 13(1) as is given to the arguments delivered orally at the hearing.

Failure of parties to appear.

21. (1) If at the time fixed for hearing an application or appeal –

(a) the applicant or appellant, not having delivered a statement under rule 13, is not present and is not represented by counsel, the Chief Justice may dismiss the application or appeal;

(b) the applicant or appellant appears or is represented by counsel or has delivered a statement under rule 13 and the respondent, not having delivered a statement under rule 13, does not appear and

is not represented, the application or appeal shall proceed despite the absence of the respondent;

(c) neither the applicant or appellant nor the respondent is present or represented and neither has delivered a statement under rule 13, the Chief Justice may dismiss the application or appeal,

unless in any case the Chief Justice shall think fit to adjourn the proceedings.

(2) Where under subrule (1) an application or appeal has been heard and allowed in the absence of the respondent or dismissed in the absence of the applicant or appellant, the respondent or the applicant or appellant, as the case may be, may within seven days apply to the Chief Justice to set aside the determination and restore the application or appeal for hearing on the ground that he was prevented by any sufficient cause from appearing or being represented and the Chief Justice may restore the application or appeal on such terms as he may think just.

Miscellaneous

Service.

22. Where any document is required to be served on any person it may be handed to him personally or sent to him by registered post.

Costs.

23. The Chief Justice may make such order as to the whole or any part of the costs of an application or appeal as may be just and may assess the same or direct taxation thereof.

Execution.

24. The Registrar shall send a copy of the judgment or order on the application or appeal to the clerk and thereupon the Magistrate's Court shall give effect to the same and may enforce an order of the Supreme Court as if it were an order of the Magistrate's Court.

Forms.

25. The forms contained in Schedule 1 shall be used, with such modifications as may be necessary, for applications for leave to appeal, notices of appeal and memoranda of appeal respectively.

Fees.

26. The fees payable under these rules shall be those set out in Schedule 2.

SCHEDULE 1

FORMS

Form CA1

(Rules 4 and 25)

APPLICATION FOR LEAVE TO APPEAL

(Heading as in the proceedings in the Magistrate's Court)

I/We

hereby apply to the Supreme Court for leave to appeal against the interlocutory judgment given on the day of 20 by the

Senior Magistrate/Magistrate in the above proceedings, on the ground that

My/Our address for service is

Dated this day of 20

Applicant(s)

Form CA2

(Rules 8 and 25)

NOTICE OF APPEAL

(Heading as in the proceedings in the Magistrate's Court)

TAKE NOTICE that

being dissatisfied with the judgment of the Senior Magistrate/Magistrate given on the day of 20 , intends to appeal to the Supreme Court against the whole of the said judgment/such part of the said judgment as decides that

My/Our address for service is

Dated this day of 20

Appellant(s)

Form CA3

(Rules 11 and 25)

MEMORANDUM OF APPEAL

IN THE SUPREME COURT OF THE BRITISH INDIAN OCEAN
TERRITORY

Civil Appeal No. of 20

Between

Appellants(s)

and

Respondent(s)

Appeal from the judgment of the Senior Magistrate/Magistrate in Civil Case No.

I/WE, the above-named appellant(s), appeal to the Supreme Court against the whole/part of the above decision on the following grounds, namely –

- 1.
- 2.

It is proposed to ask the Court for an order that

Appellant(s)

To the Honourable the Chief Justice

SCHEDULE 2

FEES

(Rule 26)

1. On delivering to the clerk and application for leave to appeal.	£2.00
2. On delivering to the clerk a notice of appeal, to include the cost of preparing the record of appeal and all necessary copies.	£5.00
3. For a copy of any document	
if xerographic copying is available, for each xerographic sheet	£0.10
if typewritten, for each page or part of a page as typewritten	£0.50

