

14:

**APPEALS, REVISIONS AND
CASES STATED**

1 Appeals

The Magistrates' Courts Act Cap 14 provides that appeal may lie from the Magistrate's Court to the High Court in both civil and criminal cases.

Part X of the *Criminal Procedure Code Cap 21* sets out the appeal options that lie from the Magistrate's Court.

1.1 Appeals by Petition

Any party to a criminal matter who is dissatisfied with any judgment sentence or order of a Magistrate's Court may appeal to the High Court: *s308 CPC*.

The appeal may be on a matter of fact as well as a matter of law and sentencing is considered a matter of law. However, there are two specific limitations:

- no appeal shall lie against an order of acquittal except with the sanction in writing of the Director of Public Prosecutions: *s308(1) CPC*; and
- no appeal shall be allowed in the case of a defendant who has pleaded guilty and been convicted by the Magistrate's Court, except as to the extent of appropriateness or legality of the sentence: *s309(1) CPC*.

1.2 Procedure for Appeal by Petition

Petition

Every appeal shall be made in the form of a petition in writing signed by the appellant or his or her counsel. The petition shall:

- be presented to the Magistrate's Court within 28 days from the date of the decision being appealed against: *s310(1) CPC*; and
- contain in a concise form the grounds upon which it is alleged that the Magistrate has erred: *s311(1) CPC*.

Where the appellant is *not* legally represented, the petition may be prepared under the direction of the Magistrate's Court: *s311(2) CPC*.

Where the appellant is in custody, the petition may be prepared by the officer in charge of the prison: *s311(3) CPC*.

Upon receiving the petition, forward the petition together with the record of proceedings to the Chief Registrar of the High Court: *s312 CPC*.

Enlargement of time

The Magistrate's Court or the High Court may at any time for "good cause" enlarge the 28 day limitation period for appeal. Good cause includes:

- where the appellant who had previously appeared in person is legally represented and his or her counsel requires further time to prepare the petition: *s310(2)(a) CPC*;
- where there is a question of law of unusual difficulty involved: *s310(2)(b) CPC*;
- where there is an order for an acquittal: *s310(2)(c) CPC*; and
- where the appellant or his or her counsel are unable to get a copy of the record within a reasonable time: *s310(2)(d) CPC*.

Powers of the High Court

When the High Court has received the petition and the record of proceedings, it may:

- summarily dismiss the appeal: *s313 CPC*; or
- accept the appeal and schedule a hearing date: *s314 CPC*.

Upon hearing the appeal, the High Court may:

- confirm, reverse or vary the decision of the Magistrate's Court;
- remit the matter back to the Magistrate's Court after giving their opinion;
- order a new trial;
- order a trial by a Court of competent jurisdiction;
- make such order as it may deem just; or
- exercise any power which the Magistrate's Court might have exercised: *s319(1) CPC*.

The High Court also has power to:

- take additional evidence or direct the Magistrate's Court to do so. If additional evidence is taken by a Magistrate's Court, the Court shall certify it to the High Court, who will proceed to dispose of the appeal: *s320 CPC*; and
- make an order as to costs: *s317 CPC*.

After the High Court has decided an appeal, it shall:

- certify its judgment; or
- order the Court by which the judgment, sentence or order appealed against was recorded or passed to make such orders to conform with the High Court judgment.

Supplementing the record

In cases where there is a dispute as to the content of the Court record and there are filed sworn affidavits by either party in a criminal proceeding, you may be required to file an affidavit in response justifying the contents of the record. These are very rare situations but they do occur from time to time.

2 Revision

After the hearing and determination by of any criminal proceeding by the Magistrate's Court, the High Court may call for and examine the Magistrate's Court record to determine the following:

- the correctness of the decision taken;
- the legality or propriety of any finding, sentence or order recorded or passed; and/or
- the regularity of the proceedings undertaken: *s323 CPC*.

The Magistrate's Court may also call for records of inferior Courts and report the same to the High Court for exercise of the Court's powers on revision: *s324 CPC*.

2.1 Powers of the High Court on Revision

Upon revising the Magistrate's Court record, the High Court may impose, confirm, reduce, enhance or alter the nature of any sentence, provided that:

- no order shall be made which prejudices a person unless that person has had an opportunity of being heard, either personally or by counsel in defence: *s325(2) CPC*; and
- no sentence shall be imposed which the Magistrate's Court could not have passed: *s325(3) CPC*.

2.2 Limits to Revision

The powers of revision of the High Court do not allow the Judge to convert an acquittal into a conviction: *s325(4) CPC*.

Where an appeal is the appropriate means to access the High Court jurisdiction and no appeal is brought, no proceeding by way of revision shall be entertained: *s325(5) CPC*.

No party has any right of appearance before the High Court when exercising such powers of revision: *s326 CPC*.

3 Cases Stated

After a Magistrate's Court has heard and determined any summons, charge or complaint, any party to the proceedings who is dissatisfied with the determination may apply to the Magistrate's Court to state and sign a special case for the opinion of the High Court.

The party must be dissatisfied with the determination because:

- they believe it to be erroneous on a point of law; or
- they believe it in excess of the Magistrate's jurisdiction: *s329(1) CPC*.

In order to have a case stated, the party must apply in writing within *one month* from the date of the Magistrate's determination: *s329(1) CPC*.

Upon receiving an application, draw up the special case and forward it to the Chief Registrar of the High Court, along with:

- a certified copy of the conviction, order or judgment appealed from; and
- all documents alluded to in the special case: *s329(2) CPC*.

A case stated by a Magistrate should set out:

- the charge, summons, information or complaint;
- the facts found by the Magistrate's Court to be admitted or proved;
- any submission of law made by or on behalf of the complainant during the trial or inquiry;
- any submission of law made by or on behalf of the defendant during the trial or inquiry;
- the finding, or sentence of the Magistrate's Court; and
- any question or questions of law which the Magistrate or any of the parties, or the Director of Public Prosecution, want submitted to the High Court for their opinion: *s338 CPC*.

Once the Registrar of the High Court receives the stated case, they will set down the case for hearing and give notice to the parties about when and where the hearing will take place: *s331 CPC*.

The High Court may, if it thinks fit:

- increase the time limit for the appellant to apply to the Magistrate's Court for a case stated; or
- increase the time for the appellant to apply to the High Court for a rule after a Magistrate has refused to state a case: *s340 CPC*.

The High Court shall hear and determine the question or questions of law arising on the case stated. They have the power to:

- cause the case to be sent back to the Magistrate's Court for amendment or restatement: *s335(a) CPC*;
- remit the case to the Magistrate's Court for rehearing and determination with such directions as it thinks necessary: *s335(b) CPC*;
- reverse, affirm or amend the determination in regards to which the case has been stated: *s334(1) CPC*;
- remit the matter to the Magistrate's Court after giving their opinion in relation to the matter: *s334(1) CPC*;
- make an order as to costs. Magistrates who state a case, or refuse to state a case, shall not be liable to any costs with respect to an appeal by case stated: *s334(1) CPC*.

The orders of the High Court shall be final and binding on the parties: *s334(1) CPC*.

Refusal to state a case

You may refuse to state a case only if you are of the opinion that the application is frivolous. If you refuse to state a case, you must sign and deliver a certificate of refusal on the request of the appellant: *s332 CPC*.

You must **not** refuse to state a case when the application is made to you by, or under the direction of, the Director of Public Prosecutions, even if the case to be stated is reference to a proceeding where the Director of Public was not a party: *s332 CPC*.

If you have refused to state a case because you determine the application is frivolous, the appellant may apply to the High Court for a rule calling upon you and the respondent to show why the case should not be stated. The appellant must:

- apply within one month of such a refusal; and
- apply on an affidavit of facts.

The High Court may make such a rule or they may discharge it.

If you are served with such a rule, you must state the case accordingly: *s333 CPC*.