

15 Appeals/revisions/cases stated

15.1 Introduction

Part [10](#) of the Supreme Court Act 2018 provides for appeals from the District Court in criminal causes and matters.

15.2 Appeals to the Supreme Court from the District Court

s [38](#) SCA

The Supreme Court Act provides for appeals from the District Court to the Supreme Court in criminal cases against conviction or sentence or both: s [38](#) SCA.

The Director of Public Prosecutions may appeal any decisions or orders of the District Court to acquit an accused person; against the sentence or any order to pay costs or compensation: s [38](#) SCA.

An appeal to the Supreme Court may be on a question of law, facts, or of mixed law and facts. For an appeal, the extent of a sentence is deemed to be a matter of law and the Director of Public Prosecutions (DPP) is deemed to be a party to any criminal matter carried on by a public prosecutor.

15.3 Appeal to be by way of notice of appeal

ss [41](#) and [42](#) SCA

A person who seeks to appeal a judgment, decision or order of the District Court shall file a notice of appeal in the Supreme Court or a summons for leave to appeal if they are seeking leave to appeal: [41](#) SCA.

Subject to section 55, an appellant may not allege or give evidence on, any ground of appeal not included in the notice of appeal or in the additional grounds at the appeal hearing without the prior leave of the Supreme Court.

A notice of appeal must contain concise:

- grounds upon which it is alleged that the District Court has erred; and
- relief sought from the Supreme Court: s [43\(1\)](#) SCA.

If two or more persons have been jointly tried and convicted and their interests do not conflict, a notice of appeal may be presented on their behalf and the Supreme Court may hear the appeals separately or together as it deems just: s [43\(2\)](#) SCA.

If leave to appeal is required, the grant of leave to appeal must be endorsed on the notice of appeal: s [43\(3\)](#) SCA.

15.4 Respondent's notice

ss [43](#) and [44](#) SCA

If the Director of Public Prosecutions (the respondent) wishes to appeal the judgment, decision or order of the District Court, they must give notice to that effect if they did not otherwise appeal themselves and file it within 14 days of the service of the notice of appeal to the respondent.

The respondent's notice must specify:

- the grounds of that contention and the precise form of the order which they are claiming,
- if the grounds are not those relied upon by the Supreme Court, they must give notice to that effect specifying the grounds of that contention: s [43](#) SCA.

If they fail to specify those grounds in the notice, then the respondent will not be able to raise those grounds or any other relief claimed.

Also the provisions relating to the notice of appeal apply to the respondent's notice: s [44](#) SCA.

15.5 Amendment to the notice of appeal and respondent's notice

s [45](#) SCA

A notice of appeal or respondent's notice by way of supplementary notice of appeal or respondent's notice may be amended and served:

- without the leave of the Supreme Court at any time before 14 days of the date fixed for the hearing of the appeal; or
- with the leave of the Supreme Court at any time less than 14 days of the date fixed for the hearing of the appeal.

15.6 Who may prepare the notice of appeal

s [46](#) SCA

If the appellant is not legally represented the notice of appeal may be prepared:

- by the Office of the Public Legal Defender,
- if in custody, under the supervision of the Chief Correctional Officer and filed in the Supreme Court.

In preparing the appeal, they may review the original record of the proceedings at such time as the Registrar or the Resident Magistrate may allow.

15.7 Extension of time

s [47](#) SCA

The Supreme Court may extend the time for filing a notice of appeal beyond the 21 days if:

- if the intended appellant is able to show good cause for such an order to be granted;
- where the legal representative engaged by the appellant was not present at the District Court hearing and requires further time to prepare the notice of appeal; or
- where there is an error of law.

15.8 Bail and suspension of sentence pending appeal

s [48](#) SCA

On notice of an appeal the Supreme Court under the relevant provisions of the Bail Act 2018:

- grants the appellant bail pending the appeal with or without sureties (which is not included in the time to be served for any custodial sentence); or
- refuses bail but the appellant may, at their own request, be treated as if they were a prisoner awaiting trial.

See the chapter on [Bail](#) to find out more about bail considerations.

15.9 Suspension of order for restoration or payment of compensation and expenses

s [49](#) SCA

Any order of the District Court for compensation, restoring property to any person, or re-vesting of any property to the original owner of any stolen property will be stayed until the expiry of 21 days from the date of the conviction or where a notice of appeal or leave to appeal is given within 14 days after the date of the conviction until the determination of the appeal.

If on appeal, the judgment, decision or order of the District Court is affirmed by the Supreme Court, they will take immediate effect.

If on appeal the judgment, decision or order of the District Court is reversed or varied, the Supreme Court shall make appropriate orders for:

- the payment of compensation
- the restoration of any property to any person; or
- the re-vesting of any property to the original owner of any stolen property by operation of any written law.

15.10 Notice of hearing

s [50](#) SCA

The Registrar must:

- enter the appeal for hearing within 42 days of the notice of appeal being filed and record of the proceedings provided by the District Court; and
- serve on the parties a notice setting out the date and time of the hearing of the appeal.

15.11 Costs

s [51](#) SCA

No costs shall be awarded by the Supreme Court for any criminal cause or matter on appeal.

15.12 Discontinuance of appeal

s [52](#) SCA

An appellant may discontinue their appeal at any time before the date of the hearing by giving written notice to the Registrar who will send the respondent a copy of the notice of discontinuance. The District Court may proceed to enforce the decision appealed from.

15.13 Powers of the Supreme Court on appeal in ordinary cases

ss [53](#) and [58](#) SCA

At the hearing of an appeal the Supreme Court shall hear the appellant or their legal representative and the respondent or their legal representative.

An appellant, who is in custody, is entitled to be present at the hearing of the appeal if they wish: s [58](#) SCA.

For an appeal against a conviction, the Supreme Court shall allow the appeal and set aside the conviction if:

- the conviction in all the circumstances of the case is inconsistent with the finding of facts;
- the judgment, decision or order was a consequence of an error of law; or
- a substantial miscarriage of justice has occurred: s [53\(2\)](#) SCA.

If the appeal is successful, the Supreme Court must quash the conviction and either:

- direct a judgment and verdict of acquittal to be entered; or
- where the interest of justice requires, remit the cause or matter to the District Court for retrial s [53\(3\)](#) SCA.

For an appeal against sentence, if the Supreme Court determines that a different sentence ought to have been passed, the Supreme Court shall:

- quash the sentence passed at the trial; and
- pass such other sentence in substitution: s [53\(4\)](#) SCA.

The Supreme Court on an appeal against acquittal shall allow the appeal if it deems that the verdict should be set aside on the ground that:

- a) the proven facts from the District Court trial establish the offence charged or any other offence of which the accused person could have been convicted on the trial of that charge;
- b) on the evidence before it the District Court could not properly have decided that on those facts that any such offence had not been proved;
- c) the District Court wrongly excluded prosecution evidence which, if admitted and believed by the Court, would have been likely to result in the Court finding facts proved as is referred to in paragraph (a);
- d) the District Court wrongly decided at the close of the case for the prosecution that a case had not been made against the respondent sufficiently to require them to make a defence in respect of the charge or any count of the charge; or
- e) the District Court wrongly decided that the charge was defective and did not record its findings of the facts.

In any other case it shall dismiss the appeal: s [53\(5\)](#) SCA.

The Supreme Court must where the appeal is allowed under:

- subsection (5)(a) or (b), enter a conviction on the charge that has been proved (that also was available in the District Court), unless it is proper for the charge to be dismissed or the accused person to be discharged under any written law: s [53\(6\)](#) SCA
- subsection (5) (c), order that a new trial be held before the District Court: s [53\(7\)](#) SCA
- subsection (5) (d) or (e), order if the trial was not commenced, that the charge be tried or if the trial was commenced, that the trial be continued and completed in the District Court. If for any reason the Resident Magistrate or any of the magistrates who presided at the trial are not available for the continued trial, order a new trial in the District Court: s [53\(8\)](#) SCA.

Where under subsection (5) the Supreme Court has set aside a verdict of acquittal and entered a conviction, it must sentence on the person and such sentence is deemed to have been passed by the District Court, with no further right of appeal: s [53\(9\)](#) SCA.

15.14 Powers of the Supreme Court on appeal in special cases

s [54](#) SCA

The Supreme Court may where they determine in an appeal that a person:

- should not have been properly convicted on some counts or part of the charge but has been convicted properly on other counts or parts, for the former counts or parts of the charge, either affirm the sentence passed by the District Court or substitute another sentence: s [54\(1\)](#) SCA,
- is convicted of an offence but based on the findings of the District Court the Supreme Court is satisfied that the facts prove them guilty of another offence, substitute a conviction for that other offence and pass sentence accordingly: s [54\(2\)](#) SCA.

15.15 Powers of the Supreme Court to adduce fresh evidence

s [55](#) SCA

The Supreme Court in the interests of justice may order:

- production of any document, exhibit or any necessary matters connected to the proceedings
- any witnesses who have been compellable witnesses at the trial:
 - to attend and be examined whether they were called at the trial; or
 - to be examined according to the rules of the Court or if none, the Supreme Court may direct the Resident Magistrate to take depositions of that evidence
- receive the evidence of any witness who is a competent but not compellable witness, including their spouse if the appellant applies, in cases where the evidence of the spouse could not have been given at the trial except on such application
- the referral of any question requiring thorough examination of documents, accounts or any scientific or local investigation, to a special commissioner appointed by the Supreme Court and to act upon the report of any such commissioner as far as they think fit to adopt it
- any person with special expert knowledge to act as an assessor to the Supreme Court where it appears to the Supreme Court that special knowledge is required.

The Supreme Court shall not increase any sentence by reason of or in consideration of any evidence adduced before it under this section but was not adduced at the trial.

15.16 No appeal on point of form or matter of variance unless raised in the District Court

s [56](#) SCA

No District Court finding, sentence or order shall be reversed or altered on appeal or revision, (except if the appellant was not legally represented at the District Court hearing) because of:

- any objection to any Information, complaint, charge, summons or warrant for any alleged defect in the cause or matter or substance or form; or
- any variance between such Information, complaint, charge, summons or warrant and the evidence adduced, unless such objection was raised before the District Court and the appellant had been deceived or misled by such variance as the District Court refused to adjourn the hearing.

15.17 Supreme Court order on appeal to be certified to the District Court

s [57](#) SCA

The Registrar must certify the Supreme Court's judgment, decision or order to the District Court who then makes and if necessary, enforces the same judgment, decision or order.

15.18 Revisionary power of the Supreme Court

ss [59-64](#) SCA

The Supreme Court may call for and examine the record of any District Court criminal matter to review the correctness, legality or propriety of any finding, sentence or order recorded or passed and as to the regularity of any proceedings of the District Court: s [59](#) SCA.

The Resident Magistrate may do the same for any criminal matter of the District Court constituted by three lay magistrates for the same purposes. If the Resident Magistrate thinks that any finding, sentence or order is illegal or improper or the proceedings are irregular, they must forward the record, with their remarks to the Supreme Court: s [60](#) SCA.

No party may apply for proceedings by way of revision nor be heard personally or by a legal representative before the Supreme Court during this process of revision s: s [61\(1\)](#) & [\(5\)](#) SCA. But the Supreme Court may require any party personally or by a legal representative to be heard: s [62\(2\)](#) SCA.

All such proceedings before the Supreme Court for its revisional jurisdiction may be heard and any judgment, decision or order may be made or passed by a Judge sitting in chambers: s [63\(1\)](#) SCA.

For section [62\(2\)](#), the Supreme Court may sit in an open court: s [63\(2\)](#) SCA.

The Supreme Court may:

- in the case of a conviction, exercise any of the powers conferred on it as an appellate court and may increase the sentence; and

- in the case of any other order, other than an order of acquittal, alter or reverse such order: s [61\(1\)](#) SCA.

Subject to section 62, no order shall be made to the prejudice of an accused unless they have had an opportunity of being heard either personally or by a legal representative in their defence: s [61\(2\)](#) SCA.

Where the Supreme Court quashes the sentence passed by the District Court and passes sentence, such sentence shall, for the purposes of this Act, be deemed to be a sentence passed by the District Court, save that no further appeal shall lie thereon to the Supreme Court: s [61\(3\)](#) SCA. However, section 61 does not authorise the Supreme Court to convert a finding of acquittal into one of conviction: s [61\(4\)](#) SCA.

Where the record of any criminal cause or matter has been called for under section 59, or sent to the Supreme Court under section 60, the Resident Magistrate, a Judge or the Registrar may, in the interests of justice:

- suspend any sentence imposed or order made in that cause or matter upon such terms and for any period they think fit;
- where a sentence of imprisonment is suspended, order any person be admitted to bail, with or without sureties; and
- in any such case the time during which that person is at large after being so released shall be excluded in computing the term of the sentence: s [61\(6\)](#) SCA.

When Supreme Court makes a revision, the Registrar shall certify its judgment, decision or order to the District Court to make such orders to comply with and take any necessary steps to enforce the Supreme Court's judgment, decision or order: s [64\(1\)](#) and [\(2\)](#) SCA.