

## **Order 6**

### **Filing of Briefs in Civil and Criminal Proceedings**

1. (1) An application for leave to appeal or for enlargement of time within which to appeal or seek leave to appeal shall be supported by a Brief and shall include the following –
  - (a) The motion paper for the application;
  - (b) The relevant affidavit in support thereof;
  - (c) The relevant documents referred to in, and exhibited with, the said affidavit which must include true copies of the judgments with which the application is concerned that is, both of the court below and the court of first instance verified by affidavit;
  - (d) The proposed grounds of appeal from the said judgments;
  - (e) A statement of questions which the applicant would like the Court to consider, expressed in the terms and circumstances of the case but without unnecessary details, which statement will be deemed to include every subsidiary question comprised therein. Only the questions set forth in the application or comprised therein will be considered by the Court;
  - (f) The Constitutional provisions, enactments, or subsidiary legislation, if any, which are relevant to the application;
  - (g) A concise statement of the case containing the facts material to the consideration of the questions presented; and
  - (h) A direct and concise argument amplifying the reasons relied upon.
- (2) All arguments in support of the application shall be set out of the application as provided for in paragraph (h) of sub-rule (1) of this Rule.
- (3) Failure on the part of an application for leave to present with accuracy, brevity, and precision whatever is essential to the clear and adequate understanding of the questions which require consideration shall be a sufficient reason for refusing the application.

- (4) The respondent may, if he so desires, file in reply a counter affidavit not later than two days before the hearing date.
  - (5) On being served with the applicant's brief of arguments the respondent may file a reply brief within seven days, if the application for leave to appeal is in respect of an interlocutory appeal; and within twenty-one days in the case of an application for leave to appeal against a final judgment.
3. (1) Without prejudice to the powers of the Court to hear oral argument, an application under rule 2 of this order may be considered and determined by the Court in chambers, only on the written argument and documents, as required by the rule, submitted by the application in support without hearing oral argument either in open court or in chambers. The Court may, under this Rule, refuse such application, only if in its opinion the application is completely devoid of merit.
    - (2) Where the appellant has filed to file a Brief within the period prescribed by this Order and there is no application for extension of time within which to file the Brief, the Court may, subject to the provision to Rule 9 of this Order, proceed to dismiss the appeal in chambers without hearing argument.
    - (3) Where the appellant has filed a notice of withdrawal of his appeal, the Court may proceed to dismiss the appeal in chambers without hearing argument notwithstanding that Briefs have been filed in the appeal.
  4. Where leave has been granted, the appellant shall file his notice of appeal and the record shall be compiled in accordance with the provisions of Order 7.
  5. (1) (a) The appellant shall within ten weeks of the receipt of the Record of Appeal referred to in Order 7 file in the Court and serve on the respondent a written brief being a succinct statement of his argument in the appeal.
    - (b) The Brief which may be settled by counsel shall contain what are, in the appellant's view, the issues arising in the appeal. If the appellant is abandoning any point taken in the Court below, this shall be so stated in the Brief. Equally, if the appellant intends to apply in the course of the hearing for leave to introduce a new point not taken in the court below, this shall be indicated in the Brief.

- (c) If leave to file and argue additional grounds of appeal is to be sought at the hearing of the appeal it may be so indicated in the Brief and the proposed additional grounds shall be stated and argued in the Brief under the appropriate issue or issues arising in the appeal. Provided that any fees payable under Order 2 Rule 13 shall be paid to the Registrar of this Court at the time of filing the Brief.
- (2) The respondent shall file in the Court and serve on the appellant his own Brief within eight weeks after service on him of the Brief of the appellant.
- (3) The appellant may also file in the Court and serve on the respondent a Reply Brief within four weeks after service of the Brief of the respondent on him but, except for good and sufficient cause shown, a Reply Briefs shall be filed and served at least three days before the date set down for the hearing of the appeal.
- (4) If the parties intend to invite the Court to depart from one of its own decisions, this shall be clearly stated in a separate paragraph of the Brief, to which special attention shall be drawn, and the intention shall also be restated as one of the reasons.
- (5) Deleted
- (6) (a) Ten copies of each Brief must be filed in the Court.
- (b) All Briefs shall be concluded with a numbered summary of the reasons upon which the argument is founded.
- (c) Wherever possible or necessary, the reasons should also be supported by particulars of the titles, dates, and pages of cases reported in the Law Reports or elsewhere including the summary of the decisions in such cases, which the parties propose to rely upon. If necessary, reference should also be made to relevant statutory provisions, including the provisions of statutory instruments.
- (d) Thee parties shall assume that Briefs will be read and considered in conjunction with the documents admitted in evidence as exhibits during the proceedings in the court below, and wherever necessary, reference should also be made to all relevant documents or exhibits on which they propose to rely in the argument.
- (7) Notwithstanding the provisions of Rule 9 here of any party who failed to file its brief within the time prescribed herein before shall be liable to pay penalty for non-compliance as provided in the Second Schedule to these Rules.

### **Practice Direction**

In giving effect to the provisions of Order 6 Rule 5 of the Supreme Court Rules, 1985, the period of the vacation which is declared between July and September each year shall not be taken into account for the computation of the period of filing briefs by either the appellant or the respondent in an appeal before the Court.

6. (1) Parties whose interests in the appeal are passive (for example stakeholders, trustees, executors, etc.) are not required to file a separate Brief if they are satisfied that their position is explained in one of the Briefs filed.
  - (2) Argument in respect of a cross-appeal or in respect of a respondent's notice may be included by any party in his Brief for the original appeal without special application. Such an inclusive Brief shall clearly state that it is filed in respect of both the original appeal and cross-appeal or respondent's notice.
  - (3) Where there are more than one appellant and they file more than one Brief, it shall not be necessary for the respondent to file more than one Brief in respect of his own case and time does not begin to run against him for the purpose of filing his Brief until the service of all the Briefs filed by the appellants unless the time within which the appellants may file their briefs has expired.
7. (1) As early as possible before the date set down for the hearing of the appeal, and in any event, not later than one week before such date, the party who has filed a Brief or the legal practitioner representing him shall forward to the Registrar in charge of Litigation a list of the law reports, text books and other authorities which counsel intend to cite at the hearing of the appeal.
  - (2) The provisions of sub-rule (1) of this rule shall not apply to a party who has included in his brief the list mentioned in the sub-rule, but such a party may, if he so desires, submit a supplementary list within the prescribed time.
8. (1) Subject to the provisions of rule 3 of these Rules, oral argument will be allowed at the hearing of the appeal to emphasize and clarify the written arguments appearing in the Briefs already filed in Court.

- (2) The appellant shall be entitled to open and conclude the argument. But when there is a cross-appeal or a respondent's notice, the appeal and such cross-appeal of respondent's notice shall be argued together with the appeal as one case and within the time allotted for one case, and the Court may, having regard to the nature of the appeal, inform the parties which one is to open and close the argument.
  - (3) Unless otherwise directed, one hour on each side will be allowed for argument. Any request for additional time shall be made to the Court in writing not later than one month after service of the appellant's Brief on the respondent. The request, a copy of which shall be served on the respondent, shall state clearly and in precise terms the reasons why the argument cannot be presented within the time limit.
  - (4) Unless additional time has been granted, only one legal practitioner will be heard for each side. By the special permission of the Court, more than one legal practitioner may be heard for each side when there are several parties on the same side. The Court will look on divided argument with favour.
  - (5) Save with leave of the Court, no oral argument will be heard in support of any argument not raised in the Brief or on behalf of any party for whom no Brief has been filed.
  - (6) When an appeal is called and no party for any legal practitioner appearing for him appears to present oral argument, but Briefs have been filed by all the parties concerned in the appeal, the appeal will be treated as having been argued and will be considered as such.
  - (7) When an appeal is called, and it is discovered that a Brief has been filed for only one of the parties and neither of the parties concerned nor their legal practitioners appear to present oral argument, the appeal shall be regarded as having been argued on that Brief.
9. If an appellant fails to file and serve his Brief within the time provided for in rule 5 of these Rules, or within the time as extended by the Court, the respondent may apply to the Court for the appeal to be struck out for want of prosecution. If the respondent fails to file his Brief, he will not be heard in oral argument except by leave of the Court.

(2) Deleted

10. The Court may, where it considers the circumstances of an appeal to be exceptional, or that the hearing of an appeal must be accelerated in the interest of justice, waive compliance with the provisions of this Order in so far as they relate to the preparation and filing of Briefs of Argument, either wholly or in part, or reduce the time limits specified in the Order, to such extent as the Court may deem reasonable in the circumstances of the case.