



# COURT OF APPEAL ACT

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## **COURT OF APPEAL ACT**

An Act to establish the Court of Appeal as an intermediate Court between the High Court and other subordinate Courts and the Supreme Court and matters ancillary thereto.

[NOTE: (*Court of Appeal Amendment Act, 1993 – changed number of justices from forty one to fifty while the Court of Appeal Amendment Act, 2005 further increased it to seventy*)]

[Commencement

1<sup>st</sup> day of October 1976]

## **Part I: General**

**1.** The number of the Justices of the Court of Appeal, including the President of that Court, shall be seventy.

**2.** (1) There shall be paid to the President of the Court of Appeal the same salary as is payable to a Justice of the Supreme Court.

(2) There shall be paid to each Justice of the Court of Appeal the same salary as is payable to the Chief Judge of a State.

(3) There shall also be paid to each Justice on account of expenses incurred in connection with his office or otherwise, such allowances as are considered reasonable by the Federal Government and comparable with similar appointments.

(4) The amounts payable under this section shall be charged on and paid out of the Consolidated Revenue Fund.

- 3. (1)** The President shall take precedence of all other Justices of the Court of Appeal, and the other Justices shall take precedence after the President in accordance with such directions as may be given by the President of the Federal Republic of Nigeria.
- (2) The President shall rank equal to a Justice of the Supreme Court and the other Justices of the Court of Appeal shall rank next to the Justices of the Supreme Court and equal to the Chief Judge of the Federal High Court.
- 4.** Subject to section 255 of the Constitution of the Federal Republic of Nigeria, a person holding the office of President or Justice of the Court of Appeal shall vacate his office when he attains the age of sixty-five years.
- 5. (1)** There shall be appointed for the Court of Appeal, a Chief Registrar and such number of Registrars and other officers in the Registrar grades as may be deemed necessary.

(2) The Chief Registrar and other officers appointed under this section shall exercise such powers and perform such duties as may be conferred or imposed upon them by this Act or rules of court, and subject thereto, by any direction of the President.
- 6. (1)** The Court of Appeal shall have and use, as occasion may require, a seal having a device or impression approved by the President and bearing the inscription "The Court of Appeal".

(2) The seal of the Court of Appeal shall be kept by the President who may entrust it or a duplicate thereof to such officers of the Court of Appeal as he may think fit.
- 7. (1)** The process of the Court of Appeal shall run throughout the Federation.

(2) Any judgment of the Court of Appeal shall have full force and effect throughout the Federation and shall be enforceable by all courts and authorities in any part of the Federation in like manner as if it were a judgment of the High Court of that part of Nigeria.

**8. (1)** The practice and procedure of the Court of Appeal shall be in accordance with this Act and, subject to this Act, in accordance with rules of court.

(2) The President may make rules regulating the practice and procedure of the Court of Appeal.

**9.** The Court of Appeal shall be duly constituted for the purpose of hearing and determining any appeal if it consists of at least three Justices:

Provided that nothing in this section shall preclude a Justice who does not concur in the opinion of the other Justices from delivering a dissenting opinion.

**10.** A single Justice of the Court of Appeal may exercise any power vested in the Court of Appeal other than the power of final determination of any cause or matter:

Provided that-

(a) in appeals in criminal causes or matters, if any Justice refuses an application for the exercise of any such power, the person making the application shall be entitled to have his application determined by the Court of Appeal; and

(b) in appeals in civil causes or matters, any order, direction or decision made or given in pursuance of the power conferred on a single Justice by this section may be varied, discharged or reversed by the Court of Appeal.

- 11.** When, after an appeal in any cause or matter has been fully heard before the Court of Appeal, judgment is reserved for delivery on another day, then, on the day appointed for delivery of the judgment, it shall not be necessary for all those Justices before whom the appeal in the cause or matter was heard to be present together in court, and it shall be lawful for the opinion of any of them to be reduced into writing and to be read by any other Justice; and in any such case the judgment of the Court of Appeal shall have the same force and effect as if the Justice whose opinion is so read had been present in Court of Appeal and had declared his opinion in person.
  
- 12.** The Court of Appeal shall have power to award costs in all civil proceedings in the Court of Appeal and subject to the provisions of any other law and to rules of court, it shall be in the discretion of the Court of Appeal to determine by whom and to what extent the costs shall be paid.
  
- 13.** Subject to the provisions of any other enactment, in all proceedings before the Court of Appeal, the parties may appear in person or be represented by legal practitioners.

**Part II:** Appeals in Civil Cases

- 14.** This Part of this Act shall apply to the exercise of the jurisdiction of the Court of Appeal to hear appeals in civil causes or matters.
  
- 15.** (1) Where in the exercise by the High Court of a State or, as the case may be, by the Federal High Court of its original jurisdiction an interlocutory order or decision is made in the course of any suit or matter, an appeal shall, by leave of that court or of the Court of Appeal, lie to the Court of Appeal; but no appeal shall lie from any order made *ex parte*, or by consent of the parties, or relating only to costs.  
  
(2) Nothing in subsection (1) of this section, shall be construed so as to authorise an application to the Court of Appeal in the first instance for leave to appeal from an interlocutory order or decision made in the

course of any suit or matter brought in the High Court of a State or the Federal High Court.

- 16.** The Court of Appeal may, from time to time, make any order necessary for determining the real question in controversy in the appeal, and may amend any defect or error in the record of appeal, and may direct the court below to inquire into and certify its findings on any question which the Court of Appeal thinks fit to determine before final judgment in the appeal and may make an interim order or grant any injunction which the court below is authorised to make or grant and may direct any necessary inquiries or accounts to be made or taken and generally shall have full jurisdiction over the whole proceedings as if the proceedings had been instituted in the Court of Appeal as court of first instance and may re-hear the case in whole or in part or may remit it to the court below for the purpose of such re-hearing or may give such other directions as to the manner in which the court below shall deal with the case in accordance with the powers of that court, or, in the case of an appeal from the court below in that court's appellate jurisdiction, order the case to be re-heard by a court of competent jurisdiction.
  
- 17.** The Court of Appeal shall not grant a new trial or reverse any judgment by reason of the ruling of any court that the stamp upon any document is sufficient or that the document does not require a stamp.
  
- 18.** An appeal under this Part of this Act shall not operate as a stay of execution, but the Court of Appeal may order a stay of execution either unconditionally or upon the performance of such conditions as may be imposed in accordance with rules of court.

**Part III:** Appeals in Criminal cases from a Court sitting as a Court of First instance

- 19.** This Part of this Act shall apply to the exercise of the jurisdiction of the Court of Appeal to hear appeals in criminal causes or matters from decisions of the court below sitting at first instance.

**20.** (1) The Court of Appeal on any appeal under this Part of this Act against conviction or against an order of acquittal, discharge or dismissal, shall allow the appeal if it thinks that the verdict should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence, or that the judgment of the court below should be set aside on the ground of a wrong decision on any question of law or that on any ground there was a miscarriage of justice and in any other case, the Court of Appeal shall, subject to the provisions of subsection (3) of this section and section 21 of this Act, dismiss the appeal:

Provided that the Court of Appeal may, notwithstanding that it is of 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.

- (2) Subject to the provisions of this Act, the Court of Appeal shall, if it allows an appeal against conviction, quash the conviction and direct a judgment and verdict of acquittal to be entered or order the appellant to be re-tried by a court of competent jurisdiction.
- (3) On an appeal against sentence or, subject to the provisions of this Act, on an appeal against conviction, 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 if not of that opinion shall, in the appeal against sentence, dismiss the appeal.
- (4) Subject to the provisions of this Act, the Appeal shall, if it allows an appeal against acquittal or dismissal, direct a judgment and verdict of conviction entered and pass such sentence as the court below passed, or order the appellant to be re-tried by competent jurisdiction.

**21.** (1) If it appears to the Court of Appeal that an appellant, though not properly convicted on some count or part of the information or charge, has been properly convicted on some other count or part of the information or charge, the Court of Appeal may either affirm the sentence passed appellant at the trial, or pass such sentence in substitution therefor as it thinks proper, and as may be warranted in law by the verdict on the count or part of the information or charge

on which the Court of Appeal considers that the appellant has been properly convicted.

- (2) Where an appellant has been convicted of and the court which tried him could on the information 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 that court must have been satisfied of facts which proved him guilty of that other offence, the Court of A instead of allowing or dismissing the appeal, substitute for the verdict found by such court, a verdict of guilty of that offence and pass such 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 any 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 omission made so as not to be responsible according to law for his action, the Court of Appeal may quash the sentence passed at the trial and order the appellant to be kept in custody as a person of unsound mind in such place and in such manner as the Court of Appeal may direct pleasure of the President of the Federal Republic, be known, and the President of the Federal Republic of Nigeria may thereupon and from time to time, give such order for the safe custody of the appellant during pleasure in such place and in such manner as the President of the Federal Republic of Nigeria may see fit.
- 22.** (1) Where any law in force in the State from which an appeal is brought has suspended the operation of any order made on conviction by the court before which the appellant was convicted, for the payment of compensation or of any of the expenses of the prosecution, or for the imprisonment or other punishment imposed on the person convicted or for the restoration of any property to any person, and the re-vesting in case of any such conviction in the original owner or his personal representative of the property in stolen goods, such order shall continue to be suspended until the determination of the appeal if notice of appeal, or notice of application for leave to appeal is given within thirty days of the date of the conviction.
- (2) In cases where the operation of an order is suspended until the determination of the appeal, the order shall not take effect if the conviction is quashed on appeal.

- (3) The Court of Appeal may by order annul or vary any order made by the court before which the appellant was convicted for the payment of compensation or of any other expenses of the prosecution or for the imprisonment or other punishment imposed on the person convicted or for the restoration of any property to any person although the conviction is not quashed, and the order, if annulled, shall not take effect, and, if varied, shall take effect as so varied.

**Part IV:** Appeals in Criminal cases from a Court sitting in its appellate jurisdiction

- 23.** This Part of this Act shall apply to the exercise of the jurisdiction of the Court of Appeal to hear appeals from decisions of the court below in criminal causes or matters in which an appeal has been brought to the court below from some other court.
- 24.** On the hearing of an appeal under this Part of this Act, the Court of Appeal may exercise any power that could have been exercised by the court below or may order the case to be re-tried by a court of competent jurisdiction.

**Part V:** Procedure

- 25.** (1) Where a person desires to appeal to the Court of Appeal, he shall give notice of appeal or notice of his application for leave to appeal in such manner as may be directed by rules of court within the period prescribed by the provision of subsection (2) of this section that is applicable to the case.
  - (2) The periods for the giving of notice of appeal or notice of application for leave to appeal are-
    - (a) in an appeal in a civil cause or matter, fourteen days where the appeal is against an interlocutory decision and three months where the appeal is against a final decision;
    - (b) in an appeal in a criminal cause or matter, ninety days from the date of the decision appealed against.

- (3) Where an application for leave to appeal is made in the first instance to the court below, a person making such application shall, in addition to the period prescribed by subsection (2) of this section, be allowed a further period of fifteen days, from the date of the determination of the application by the court below, to make another application to the Court of Appeal.
  - (4) The Court of Appeal may extend the periods prescribed in subsections (2) and (3) of this section.
- 26.** The Court of Appeal may, at any time assign counsel to an appellant in any appeal or proceedings preliminary or incidental to an appeal in which, in the opinion of the Court of Appeal, it appears desirable in the interest of justice that the appellant should have legal assistance, and that he has not sufficient means to enable him to obtain that assistance.
- 27.** In the exercise of its jurisdiction, the Court of Appeal may, if it thinks it necessary or expedient in the interest 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 witnesses who would have been compellable witnesses at the trial to attend and be examined before the Court of Appeal, whether they were or were not called at the trial, or order the examination of any such witnesses to be conducted in manner provided by rules of court, or, in the absence of rules of court making provision in that behalf, as it may direct, before any Justice of the Court of Appeal or before any officer of the Court of Appeal or other person appointed by the Court of Appeal for the purpose, and allow the admission of any depositions so taken as evidence before the Court of Appeal;
  - (c) receive the evidence, if tendered, of any witness (including the appellant) who is competent but not compellable witness, and, if the appellant makes an application for the purpose, 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 an application; and

- (d) where any question arising on the appeal involves prolonged examination of documents or accounts, or any scientific or local investigation, which cannot in the opinion of the Court of Appeal conveniently be conducted before the Court of Appeal, order the reference of the question in matter provided by rules of court, or in the absence of rules of court making provision in that behalf, as it may direct, for enquiry and report, to a special commissioner appointed by the Court of Appeal, and act upon the report of any such commissioner so far as it thinks fit to adopt it; and exercise in relation to the proceedings of the Court of Appeal, any other powers which may for the time being be prescribed by rules of court, and issue any warrants necessary for enforcing the orders or sentences of the Court of Appeal:

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

- 28.** (1) On the hearing of an appeal in a criminal cause or matter, an appellant, notwithstanding that he is in custody, shall be entitled to be present, if he so desires, except where the appeal is on some ground involving a question of law alone, but in that case, and on an application for leave to appeal and on any proceedings preliminary or incidental to an appeal, he shall not be entitled to be present, unless where rules of court provide that he shall have the right to be present or where the Court of Appeal gives him leave to be present.
- (2) The power of the Court of Appeal to pass any sentence under this Act may be exercised notwithstanding that the appellant is for any reason not present.
- (3) The right of an appellant who is in custody to be present at the hearing of his appeal shall be subject to his paying all expenses of and incidental to his transfer to and from the place where the Court of Appeal sits for the determination of his appeal:

Provided that the Court of Appeal may direct that he be brought before the Court of Appeal in any case where, in the opinion of the Court of Appeal, his presence is advisable for the due determination of the appeal, in which event such expenses as aforesaid shall be defrayed out of general revenue.

- (4) An appellant who does not appear at the hearing of his appeal or application for leave to appeal by counsel, may present his appeal or

argument in writing and any appeal or argument so presented shall be considered by the Court of Appeal.

- 29.** (1) The Court of Appeal may, if it thinks fit, on the application of an appellant, admit the appellant to bail pending the determination of his appeal.
- (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 and, any imprisonment under the sentence of an appellant, whether it is the sentence passed by the trial court or the sentence passed by the court below on appeal or the sentence of the Court of Appeal, shall, subject to any direction which may be given by the Court of Appeal, be deemed to be resumed or to begin to run, as the case requires, from the day on which he is received into prison under the sentence.
- (3) In any case in which the appellant has received special treatment pending the hearing of his appeal in accordance with the provisions of any law relating to prisons, the Court of Appeal shall fix the day from which the sentence shall be deemed to begin to run.
- 30.** If it appears to the Registrar that any notice of appeal against a conviction purporting to be on a ground of appeal which involves a question of law alone does not show any substantial ground of appeal, the Registrar may refer the appeal to any Justice of the Court of Appeal and such Justice may, if he is of the same opinion, direct the Registrar to refer the appeal to the Court of Appeal for summary determination, and, when the case is so referred, the Court of Appeal may if it considers that the appeal is frivolous or vexatious, and can be determined without adjourning the same for a full hearing, dismiss the appeal summarily without calling on any persons to attend the hearing or to appear for the State thereon.

**Part VI:** Supplemental

**31.** In this Act, unless the context otherwise requires-

"appeal" includes an application for leave to appeal;

"appellant" means any person who desires to appeal or appeals from a decision of the court below or who applies for leave to so appeal, and includes a legal practitioner representing such a person in that behalf;

"cause" includes any action, suit or other original proceeding between a plaintiff and a defendant or an applicant and a respondent, and any criminal proceeding;

"Court of Appeal" means the Court of Appeal established by section 217 of the Constitution of the Federal Republic of Nigeria;

"court below" means the court from which an appeal is brought;

"Justice" means a Justice of the Court of Appeal and includes the President of that Court;

"judgment" includes decision or order;

"matter" includes any proceeding in a court not in a cause;

"the President" means the President of the Court of Appeal;

"Registrar" means the Chief Registrar of the Court of Appeal, any Senior Registrar or Registrar of the Court of Appeal or any other officer of the Court of Appeal by whatever title called exercising functions analogous to those of a Registrar of the Court of Appeal;

"rules of court" means rules of court made or deemed to have been made under this Act;

"sentence" includes a recommendation;

"suit" includes action;

"verdict" includes the decision of a judge or court as to whether or not the accused person is guilty in cases where such decision rests with the judge or court.

**32.** This Act may be cited as the Court of Appeal Act.