

Malawi

## Supreme Court of Appeal Act Chapter 3:01

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# Malawi

## Supreme Court of Appeal Act

### Chapter 3:01

Commenced on 1 January 1964

*[This is the version of this document at 31 December 2014.]*

*[Note: This version of the Act was revised and consolidated in the Fifth Revised Edition of the Laws of Malawi (L.R.O. 1/2018), by the Solicitor General and Secretary for Justice under the authority of the Revision of the Laws Act.]*

*[40 of 1963; 17 of 1964(N); 13 of 1965; 24 of 1968; 5 of 1971; 19 of 1973; 1 of 2004; G.N.219/1964(N); G.N.137/1966; G.N.263/1969]*

**An Act to make provision for the constitution of the Supreme Court of Appeal, the jurisdiction thereof, the procedure therein and matters connected therewith and incidental thereto**

#### Part I – Preliminary

##### 1. Short title

This Act may be cited as the Supreme Court of Appeal Act.

##### 2. Interpretation

In this Act, unless the context otherwise requires—

“**Chief Justice**” means the Chief Justice of Malawi appointed under section 63 of the Constitution;

“**judge**” includes the Chief Justice;

“**judgment**” includes decree, order, sentence and decision;

“**lower court**” means a subordinate court;

*[5 of 1971]*

“**member**” means a member of the Supreme Court of Appeal specified in section 67 (2) of the Constitution;

“**rules of court**” mean rules of court made under this Act.

#### Part II – Constitution and general powers of Supreme Court of Appeal

##### 3. Constitution of the Supreme Court of Appeal

- (1) This Act shall apply to the Supreme Court of Appeal for Malawi, hereinafter referred to as “the Court”, established under section 67 of the Constitution.
- (2) In the absence of the Chief Justice, the senior member of Court shall preside.
- (3) Subject to the provisions of this Act—
  - (a) for the purpose of the hearing and determination of appeals, the Court shall be constituted of the Chief Justice or other member presiding, and two other members;
  - (b) for the purpose of the hearing and determination of an appeal, if the question before the Court expressly or substantially relates to or concerns the interpretation or application of the

Constitution, the Court shall be constituted of the Chief Justice or other member presiding, and four other members;

- (c) the determination of any question before the Court shall be according to the opinion of the majority of the members of the Court hearing the appeal.

*[1 of 2004]*

#### **4. Judge not to sit on an appeal from his own decision**

A judge shall not sit as a member on the hearing of an appeal from any judgment given by himself or given by any court on which he was sitting.

#### **5. Officers of the Court**

The Registrar of the High Court shall be the Registrar of the Court and every deputy Registrar of the High Court shall be a deputy Registrar of the Court.

#### **6. Seal**

The Court shall have a seal, having a device or impression approved by the Minister, with the inscription –“Supreme Court of Appeal”.

#### **7. Powers of a single member**

A single member of the Court may exercise any power vested in the Court not involving the hearing or determination of an appeal:

Provided that—

- (a) in criminal matters, if a single member refuses an application for the exercise of any such power, the applicant shall be entitled to have his application determined by the Court;
- (b) in civil matters, any order, direction or decision made or given in pursuance of the powers conferred by this section may be varied, discharged or reversed by the Court.

#### **8. Procedure and practice**

The practice and procedure of the Court shall be in accordance with this Act and any rules of court made thereunder:

Provided that if this Act or any rules of court made thereunder does not make provision for any particular point of practice and procedure then the practice and procedure of the Court shall be—

- (a) in relation to criminal matters, as nearly as may be in accordance with the law and practice for the time being observed in the Court of Criminal Appeal in England;
- (b) in relation to civil matters, as nearly as may be in accordance with the law and practice for the time being observed by the Court of Appeal in England.

#### **9. Effect of judgment of Court**

Every judgment of the Court shall have full force and effect and shall be enforceable in like manner as if it were a judgment of the High Court.

#### **10. Right of audience**

Subject to [section 19](#), in all proceedings before the Court the parties may appear in person or be represented and appear by a legal practitioner.

## Part III – Criminal appeals

### 11. Appeal in criminal cases

- (1) Subject to the other provisions of this section, any person aggrieved by a final judgment of the High Court in its original jurisdiction may appeal to the Court.
- (2) Any person aggrieved by a decision of the High Court in its criminal appellate jurisdiction or in exercise of the powers of review conferred upon the High Court by Part XIII of the Criminal Procedure and Evidence Code may appeal to the Court on a matter of law but such decision shall be final as to matters of fact and as to severity of sentence:

Provided that no appeal shall be made under this subsection against a decision of the High Court dismissing an appeal summarily under section 351 of the Criminal Procedure and Evidence Code or against any decision made in exercise of such powers of review or against refusal to entertain an appeal out of time without the leave of the Court or of the High Court.

*[Cap. 8:01]*

- (3) The Director of Public Prosecutions may appeal to the Court against any judgment, including a finding of acquittal, of the High Court, if, and only if, he is dissatisfied with such judgment upon a point of law. Subject as aforesaid, no appeal shall lie against a finding of acquittal made by the High Court.
- (4) Upon receiving an appeal under subsection (1) or subsection (2) the Court may, if it considers the appeal to—
  - (a) be frivolous or vexatious;
  - (b) raise no sufficient ground which would enable the appeal to succeed; or
  - (c) be brought for purposes of delay,dismiss the appeal summarily.

*[24 of 1968]*

*[19 of 1973]*

### 12. Determination of appeals in ordinary cases

- (1) The Court shall allow an appeal under [section 11](#) if it thinks that the judgment appealed against should be set aside—
  - (a) on the ground that it cannot be supported having regard to the evidence;
  - (b) on the ground of a wrong decision of any question of law; or
  - (c) on any ground that there was a miscarriage of justice,and in any other case shall dismiss the appeal:

Provided that the Court may, notwithstanding the fact 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 [section 13](#) the Court 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 retried by a court of competent jurisdiction.
- (3) In an appeal against sentence the Court shall, if it thinks that a different sentence should have been passed, quash the sentence passed at the trial and pass such other sentence or make such other

order warranted in law (whether more or less severe) in substitution therefor as it thinks ought to have been passed or made, and in any other case shall dismiss the appeal.

- (4) On an appeal under [section 11](#) (3) the Court shall hear and determine the question or questions of law arising on such appeal and may remit the case to the High Court with the opinion of the Court thereon with such directions as it may deem necessary, or may make such other order in relation to the appeal as to the Court may seem fit, or may dismiss the appeal.

*[24 of 1968]*

### **13. Powers of Court in special cases**

- (1) If it appears to the Court that an appellant, though not properly convicted on some count of the information, summons or charge, has been properly convicted on some other count of the information, summons or charge, the Court may either confirm the sentence passed on the appellant at the trial or pass such sentence in substitution therefor as it thinks proper and as may be warranted in law on the count of the information, summons or charge on which the Court considers that the appellant has been properly convicted.
- (2) Where an appellant has been convicted of an offence and the trial court could on the information, summons or charge have found him guilty of some other offence, and on the finding of the trial court it appears to the Court that the trial court must have been satisfied of facts which proved him guilty of that other offence, the Court may, instead of allowing or dismissing the appeal, substitute for the judgment of the trial court a judgment of guilty of that other 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 that, although the appellant did the act or made the omission charged against him, he was insane so as not to be responsible, according to law, for his actions at the time when the act was done or omission made, the Court may set aside the conviction and make an order that a special finding to the effect that the appellant is not guilty by reason of insanity be substituted for such conviction. Thereafter the appellant shall be dealt with in accordance with section 135 of the Criminal Procedure and Evidence Code as if such special finding had been made at the trial.

*[Cap. 8:01]*

*[24 of 1968]*

### **14. Powers of Court in relation to an order ancillary to conviction**

Where the operation of any award or order of restitution or reversion of property and of any other award or order which is an award or order ancillary to conviction is suspended pending the determination of an appeal to the Court, the Court may, on an appeal under [section 11](#) by order annul or vary any such award or order although the conviction is not quashed; and the award or order, if annulled, shall not take effect, and if varied, shall take effect as so varied. If the conviction is quashed on the appeal, the award or order shall not take effect.

### **15. Detention as unconvicted prisoner**

The time during which an appellant in custody is treated, pending the determination of his appeal, as an unconvicted prisoner shall not, unless the Court otherwise directs, count as part of any term of imprisonment under his sentence.

## 16. Supplementary powers of Court

For the purposes of this Part, the Court may, if it thinks it necessary or expedient in the interests 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 witness who would have been a compellable witness at the trial to attend and be examined before the Court, whether he was or was not called at the trial, or order the examination of any such witness to be conducted in manner provided by rules of court before any judge of the Court or before any officer of the Court or other person appointed by the Court for the purpose, and allow the admission of any deposition so taken as evidence before the Court;
- (c) receive the evidence, if tendered, of any witness (including the appellant) who is a competent but not compellable witness, and, if the appellant makes application for the purpose, of the husband or wife of the appellant;
- (d) remit the case to the High Court for further hearing, with such instructions as regards the taking of further evidence or otherwise as appear to it necessary;
- (e) where any question arising at the appeal involves prolonged examination of documents or accounts or any scientific or local investigation, which cannot, in the opinion of the Court, conveniently be conducted before the Court, order the reference of the question in manner provided by rules of court for inquiry and report to a special commissioner appointed by the Court, and act upon the report of any such commissioner so far as it thinks fit to adopt it;
- (f) appoint any person with special expert knowledge to act as an assessor in an advisory capacity in any case where it appears to the Court that such knowledge is required for the proper determination of the case; and
- (g) issue any warrant necessary for enforcing any order or sentence of the Court:

Provided that whenever the Court receives further evidence or gives instructions for the taking of further evidence, it shall make such order as will secure an opportunity to the parties to the proceedings to examine every witness whose evidence is taken.

## 17. Time for appealing

- (1) If a person desires to appeal under this Part from the High Court to the Court, he shall, within thirty days of the judgment against which he desires to appeal and in such manner as may be prescribed by rules of court, give notice to the Registrar of the High Court of his intention to appeal.
- (2) If the appellant is in prison, such notice may, within the time aforesaid, be given to the officer in charge of the prison, who shall forward the notice to such Registrar.
- (3) The Court may extend the time for giving notice of intention to appeal, notwithstanding that the time for giving such notice has already expired.

*[24 of 1968]*

## 18. Stay of execution of sentence of death or corporal punishment

- (1) In the case of a sentence of death or of corporal punishment—
  - (a) the sentence shall not be executed until after the expiration of the time within which notice of intention to appeal may be given;
  - (b) if notice of intention to appeal is so given, the sentence shall not be executed until the appeal has been determined or abandoned.

- (2) Notwithstanding subsection (1), a sentence of corporal punishment imposed or confirmed on appeal or review by the High Court may be executed before the expiration of the time within which the notice of intention to appeal may be given, if the person sentenced to such corporal punishment has given written notice to the Registrar or to the Registrar of the High Court that he wishes the sentence to be carried out without further delay and that he—

- (a) does not intend to appeal; or  
(b) has abandoned his appeal.

*[24 of 1968]*

## 19. Right of appellant to be present

- (1) An appellant shall be entitled to be present, if he so desires, on the hearing of his appeal.
- (2) An appellant may, either personally or through his legal practitioner, present his case and argument orally or in writing.
- (3) The power of the Court to pass any sentence under this Act may be exercised notwithstanding that the appellant is for any reason not present.
- (4) Nothing in subsection (1) or subsection (2) shall apply to any appeal which the Court may dismiss under [section 11](#) or [section 12](#).

*[24 of 1968]*

## 20. Statement of case on question of law arising on appeal

In the case of an appeal which involves a question of law alone, the Court may, if it thinks fit, request the High Court to state the question, together with all the circumstances under which the said question has arisen in such manner as may be prescribed by rules of court.

## Part IV – Civil appeals

### 21. Civil appeals

An appeal shall lie to the Court from any judgment of the High Court or any judge thereof in any civil cause or matter:

Provided that no appeal shall lie where the judgment (not being a judgment to which section 68 (1) of the Constitution applies) is—

- (a) an order allowing an extension of time for appealing from a judgment;
- (b) an order giving unconditional leave to defend an action;
- (c) a judgment which is stated by any written law to be final;
- (d) an order absolute for the dissolution or nullity of marriage in favour of any party who having had time and opportunity to appeal from the decree nisi on which the order was founded has not appealed from that decree:

And provided further that no appeal shall lie without the leave of a member of the Court or of the High Court or of the judge who made or gave the judgment in question where the judgment (not being a judgment to which section 68 (1) of the Constitution applies) is—

- (a) a judgment given by the High Court in exercise of its appellate jurisdiction or on review;
- (b) an order of the High Court or any judge thereof made with the consent of the parties or an order as to costs only which by law is left to the discretion of the High Court;



- (c) an order made in chambers by a judge of the High Court;
- (d) an interlocutory order or an interlocutory judgment made or given by a judge of the High Court, except in the following cases—
  - (i) where the liberty of the subject or the custody of infants is concerned;
  - (ii) where an injunction or the appointment of a receiver is granted or refused;
  - (iii) in the case of a decision determining the claim of any creditor or the liability of any contributor or the liability of any director, or other officer, under the Companies Act in respect of misfeasance or otherwise;
  - (iv) in the case of a decree *nisi* in a matrimonial cause;
  - (v) in the case of an order on a special case stated under any law relating to arbitration;
- (e) an order refusing unconditional leave to defend or granting such leave conditionally.

[24 of 1968]

## 22. Powers of the Court on an appeal in civil matters

- (1) On the hearing of an appeal from any judgment of the High Court in a civil matter, the Court—
  - (a) shall have power to confirm, vary, amend, or set aside the judgment or give such judgment as the case may require;
  - (b) may, if it thinks it necessary or expedient in the interests of justice—
    - (i) 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;
    - (ii) order any witness who would have been a compellable witness at the trial to attend and be examined before the Court, whether he was or was not called at the trial, or order the examination of any such witness to be conducted in manner provided by rules of court before any member of the Court or before any officer of the Court or other person appointed by the Court for the purpose, and allow the admission of any deposition so taken as evidence before the Court;
    - (iii) receive the evidence, if tendered, of any witness (including any party) who is a competent but not compellable witness, and, if a party makes application for the purpose, of the husband or wife of that party;
    - (iv) remit the case to the High Court for further hearing, with such instructions as regards the taking of further evidence or otherwise as appear to it necessary;
  - (c) shall, if it appears to the Court that a new trial should be held, have power to set aside the judgment appealed against and order that a new trial be held;
  - (d) may make such other order as the interests of justice may require.
- (2) Whenever the Court gives instructions for the taking of further evidence, it shall make such order as will secure an opportunity to the parties to the proceedings to examine every witness whose evidence is taken.

**23. Time for appealing**

- (1) If a person desires to appeal under this Part from the High Court to the Court, he shall, in such manner as may be prescribed by rules of court, give notice to the Registrar of the High Court of his intention to appeal—
  - (a) within 14 days of the judgment from which he wishes to appeal if such judgment is an interlocutory order;
  - (b) within six weeks of the judgment from which he wishes to appeal in any other case.
- (2) The Court may extend the time for giving notice of intention to appeal under this Part, notwithstanding that the time for giving such notice has expired.

*[24 of 1968]*

**Part V – Miscellaneous****24. Admission, of appellant to bail and custody when attending court**

- (1) The Court may, if it deems fit, on the application of an appellant, admit the appellant to bail pending the determination of his appeal.
- (2) The time during which the 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, in the case of an appeal under this Act, any imprisonment, under the sentence, of the appellant, whether it is the sentence passed by the High Court or by a lower court or the sentence passed by the Court, shall, subject to any directions which may be given by the Court, be deemed to be resumed or to begin to run, as the case requires, as from the day on which he is received or is received again into prison under the sentence.

**25. Administration of oaths**

- (1) The Court may require and administer any necessary oath.
- (2) The form of an oath shall be that which is used in the High Court.

**26. Warrant for production of appellant before Court**

When the presence of an appellant who is in custody is necessary or desirable at the hearing of his appeal or he exercises the right to be present at the hearing of his appeal conferred upon him by [section 19](#), the Court may issue a warrant for the production of the appellant on the hearing of the appeal.

**27. Rules of Court**

The Chief Justice, with the approval of the Minister, may make rules of court for the purposes of this Act to make provision with respect to any matter for which provision is to be made under this Act by rules of court, and may regulate generally the practice and procedure under this Act.