



# Papua New Guinea National Gazette

**PUBLISHED BY AUTHORITY**

(Registered at the General Post Office, Port Moresby, for transmission by Post as a Qualified Publication.)

No. G51]

PORT MORESBY, FRIDAY, 17th JUNE

[1977

THE INDEPENDENT STATE OF PAPUA NEW GUINEA.

STATUTORY INSTRUMENT.

No. 22 of 1977.

Supreme Court Rules 1977.

ARRANGEMENT OF SECTIONS.

PART I. - PRELIMINARY.

1. Commencement and interpretation -

"the Act".  
"authority".  
"court".  
"the principal legal adviser".  
"reference".  
"registry".  
"special reference".

PART II. - ORIGINAL JURISDICTION.

*Division 1. - Commencement and Continuance of Proceedings.*

2. Commencement, etc., of proceedings.

*Division 2. - References under the Constitution.*

Subdivision A. - References under Section 18  
of the Constitution.

3. Application of Section 4.
4. Procedure on making reference.
5. Certain rules to apply.
6. Section 2 to apply where reference is pending.

Subdivision B. - Special references under  
Section 19 of the  
Constitution.

7. Application of certain sections.
8. Form of special reference.
9. Application for directions.
10. Special reference may be amended.
11. Special reference may be withdrawn.
12. Court may decline to give opinion.

PART III. - APPEALS.

13. Application.
14. The appellant.
15. Sittings.
16. Adjournment of appeal.
17. Judge may give directions in respect of cases reserved under

ARRANGEMENT OF SECTIONS. - *continued.*

Section 5 of the Act.

18. Notice of Appeal
19. Filing, etc., Notices of Appeal.
20. Application for leave to appeal.
21. Filing, etc., of notice of application for leave to appeal.
22. Notice of appearance to be filed, etc.
23. Objection to competency of appeal.
24. Cross appeal.
25. Setting down appeal.
26. Preparation, etc., of appeal books.
27. Method of bringing evidence taken in lower court.
28. List of legislation, etc., for court.
29. Interlocutory order shall not operate so as to preclude relief.
30. Service of notices, etc.

PART IV. - ADDITIONAL RULES FOR APPLICATIONS UNDER  
DIVISION III.3 OF THE ACT.

31. Reservation of points of law.
32. Notice of Appeal.
33. Procedure on Notice of Appeal, etc.

PART V. - REFERENCE OF POINTS OF LAW.

34. Interpretation -  
"reference".
35. Requirements for reference.
36. Notice of reference to be served.
37. Withdrawal, etc., of reference by principal legal adviser.
38. Service.
39. Directions of the court.

PART VI. - GENERAL.

40. Amendment, etc., of proceedings.
41. Appeal to court from direction of Judge.
42. Orders may be made.
43. Forms, etc., in criminal proceedings.
44. Application for directions.
45. Number of Judges.
46. Repeal.
47. Transitional.

SCHEDULE. - *Forms.*



THE INDEPENDENT STATE OF PAPUA NEW GUINEA.

STATUTORY INSTRUMENT.

No. 22 of 1977.

Supreme Court Rules 1977,

Being Rules of court for regulating and prescribing the practice and procedure of the Supreme Court of Justice in relation to -

- (a) appeals; and
- (b) the original interpretative jurisdiction of the Supreme Court pursuant to Sections 18 and 19 of the Constitution; and
- (c) the reservation of a case or point of law; and
- (d) references to the Supreme Court of a point of law, following an acquittal on an indictment, pursuant to Section 41 of the *Supreme Court Act 1975*,

MADE by the Judges of the Supreme Court under Section 184 of the Constitution.

PART I. - PRELIMINARY.

1. - COMMENCEMENT AND INTERPRETATION.

(1) These Rules shall come into force on the date of publication of this instrument in the National Gazette.

(2) In these Rules, unless the context otherwise requires or some other meaning is clearly intended -

"the Act" means the *Supreme Court Act 1975*;

"authority", in relation to any special reference, means the authority by whom the application is made under Section 19 of the Constitution;

"court" means the Supreme Court;

"the principal legal adviser" means the principal legal adviser within the meaning of the *Principal Legal Adviser Act 1975*;

"reference", in Part II, means a reference to the court of a question relating to the interpretation or application of any provisions of a Constitutional law under Section 18 of the Constitution;

"registry" means the Principal Registry of the court;

"special reference" means an application to the court for its opinion upon any question relating to the interpretation or application of any provision of a Constitutional law under Section 19 of the Constitution.

(3) A reference to a form by number shall be a reference to a form so numbered in the Schedule.

## PART II. - ORIGINAL JURISDICTION.

*Division 1. - Commencement and Continuance of Proceedings.*

## 2. - COMMENCEMENT, ETC., OF PROCEEDINGS.

(1) Subject to these Rules, proceedings which relate to a matter or question within the original jurisdiction of the court shall be entitled "In the Supreme Court of Justice" and shall be commenced and continued, with all necessary modifications, in accordance with the Rules of the National Court.

(2) Where any proceedings under Subsection (1) are pending before the court -

- (a) a direction not involving a final decision upon the proceedings; and
- (b) an interim order to prevent prejudice to the claims of the parties; and
- (c) an order for security for costs; and
- (d) an order in the nature of orders such as are referred to in Section 9(1)(a), (b) and (d) of the Act,

may be made by a Judge.

(3) Upon the direction of the court, either on the application of a party to the proceedings or of its own motion, a single Judge may take evidence upon any issue of fact necessary for the determination of the proceedings and state those facts as found by him, and the court may act upon such statement of facts as far as it thinks fit to adopt it.

*Division 2. - References under the Constitution.*

## Subdivision A. - References under Section 18 of the Constitution.

## 3. - APPLICATION OF SECTION 4.

Where a court or tribunal making a reference consists not of a Judge of the National Court but of a magistrate or some other officer, Section 4 applies, unless a contrary intention appears, as if the description of his office were substituted where the words "Judge of the National Court" are used.

## 4. - PROCEDURE ON MAKING REFERENCE.

(1) Where a Judge of the National Court proposes to make a reference under Section 18 of the Constitution, he may give such directions as he considers proper for the drafting of the reference and for the preparation of the documents for the court, including copies for use at the hearing by the court and the parties.

(2) A reference shall set forth the question to be referred and such facts as are admitted or found by the Judge of the National Court and are necessary for the proper consideration of the question.

1977

Supreme Court

No. 22

(3) The court may act upon a statement of the facts referred to in Subsection (2) insofar as it thinks fit to adopt it.

(4) Where a question turns on the form of the pleadings before the court or tribunal from which it is to be referred, then so much of the pleadings shall be set out in the reference as raise the question.

(5) The original reference shall be signed by the Judge of the National Court by whom the reference is to be made or in his absence another Judge of the National Court, and shall be transmitted to the Registrar who shall set it down for hearing, unless the court or a Judge of the court otherwise orders, at the first sittings of the court to be held after 28 days immediately after the date of its receipt by the Registrar.

(6) An application to the court preliminary to and relating to a proposed reference shall be dealt with at such time as the Chief Justice, or if he is not available, the next most senior Judge available, shall direct.

(7) A reference shall be entitled "Reference under Section 18 of the Constitution", together with the year and number of the reference.

(8) The Registrar shall, at least seven days before the date of hearing, cause a copy of the reference to be made available to each of the Judges constituting the court to consider the case, and to the parties to the reference or their solicitors.

(9) The Judge by whom the reference is made or, in his absence, another Judge of the National Court may, upon the application of a party or of his own motion, upon notice to the parties, amend the reference at any time before argument.

#### 5. - CERTAIN RULES TO APPLY.

The provisions of Sections 28, 40, 41, 42 and 44(1), with all necessary modifications, shall apply as if the reference were an appeal to the court.

#### 6. - SECTION 2 TO APPLY WHERE REFERENCE IS PENDING.

Where a reference is pending before the court, the provisions of Section 2(2) apply as if such reference constituted proceedings within the original jurisdiction of the court.

Subdivision E. - Special references under Section 19 of the Constitution.

#### 7. - APPLICATION OF CERTAIN SECTIONS.

The provisions of this Subdivision apply to special references.

No. 22

Supreme Court

1977

**8. - FORM OF SPECIAL REFERENCE.**

(1) A special reference shall be in writing and shall -

- (a) state the question the subject of the reference, to which, if appropriate, a copy of the law or proposed law, the validity of which is in question, shall be annexed; and
- (b) specify the relevant provisions of the Constitutional law; and
- (c) be in accordance with Form 1; and
- (d) be signed by the authority making the application, or by the proper officer on behalf of the authority, as required by law; and
- (e) be filed in the registry.

(2) A special reference shall be entitled "Special reference under Section 19 of the Constitution", together with the year and number of the special reference.

**9. - APPLICATION FOR DIRECTIONS.**

(1) Within seven days of the special reference being filed, the authority shall apply to a Judge for directions in relation to -

- (a) the form and contents of the question to be decided by the court; and
- (b) the provision of counsel adequate to enable full argument of the question before the court; and
- (c) the submission of legal argument in writing; and
- (d) the setting down of the question for hearing by the court, and the date of that hearing; and
- (e) the contents of the reference book; and
- (f) such other matters as the Judge considers proper.

(2) The application shall be made in accordance with Form 2.

**10. - SPECIAL REFERENCE MAY BE AMENDED.**

The authority may, at any time by leave of the court or a Judge, amend the special reference upon notice to such persons as the court or Judge may direct.

**11. - SPECIAL REFERENCE MAY BE WITHDRAWN.**

The authority may withdraw the special reference -

- (a) at any time before the court has begun the hearing; or
- (b) after the hearing has begun but before the court has given its opinion, by leave of the court and upon such conditions as the court thinks fit,

and notice of such withdrawal shall be given on behalf of the



1977

Supreme Court

No. 22

authority to such persons as the court or a Judge may direct.

#### 12. - COURT MAY DECLINE TO GIVE OPINION.

The court may decline to give an opinion on the question the subject of the special reference if, in its opinion, the question is trivial, vexatious, hypothetical, or unlikely to have any immediate relevance to the circumstances of Papua New Guinea.

### PART III. - APPEALS.

#### 13. - APPLICATION.

This Part applies to all appeals brought by virtue of the Act.

#### 14. - THE APPELLANT.

Where the court or a Judge directs that a party shall have the carriage of proceedings, this Part applies as if that party were included in the description "the appellant".

#### 15. - SITTINGS.

The court shall sit on the fourth Monday of each of the months of March, May, July, September and November in each year and such other days as may be specially appointed from time to time by the Chief Justice, the Deputy Chief Justice or next most senior Judge who is available, as the case may be.

#### 16. - ADJOURNMENT OF APPEAL.

If for any reason an appeal is not heard or disposed of at the sittings of the court for which it was set down, it shall, subject to any direction which may be given by the court or by a Judge, stand adjourned to the next sittings of the court.

#### 17. - JUDGE MAY GIVE DIRECTIONS IN RESPECT OF CASES

##### RESERVED UNDER SECTION 5 OF THE ACT.

(1) Where a Judge of the National Court reserves a case or any point in a case or any question of law for consideration of the court under Section 5 of the Act, he or in his absence another Judge, may give such directions as he or that other Judge considers proper for the preparation of documents for the use of the court.

(2) Subject to any directions under Subsection (1) the provisions of these Rules relating to setting down for hearing and preparation and distribution of documents shall, with all necessary modifications, apply as if proceedings under Section 5 of the Act were an appeal by the party whom the Judge directs shall have the carriage of the proceedings.

#### 18. - NOTICE OF APPEAL.

(1) An appeal shall be instituted by the filing of a Notice of Appeal.

(2) A Notice of Appeal shall show -

(a) that an appeal lies without leave or that leave has been granted or the appropriate

- certificate given; and
- (b) whether the whole or part only, and what part, of the judgment is appealed from; and
- (c) brief but specific particulars of the grounds relied upon in support of the appeal; and
- (d) what judgment the appellant seeks in place of that appealed from; and
- (e) an address for service of the appellant.

(3) Without derogating from the requirements of Subsection (2), where an appellant alleges that a judgment or order is against the evidence or the weight of the evidence, or that it is wrong in law, the Notice of Appeal shall specify the particulars relied upon to demonstrate that it is against the evidence or the weight of the evidence, or the specific reasons why it is alleged to be wrong in law, as the case may be.

#### 19. - FILING, ETC., NOTICES OF APPEAL.

(1) The Notice of Appeal shall be filed in the registry.

(2) On filing the notice under Subsection (1) the appellant shall, for the purposes of Sections 16 and 27 of the Act, be deemed to have given Notice of Appeal in the prescribed manner.

(3) Where the appeal is from a Judge of the National Court sitting on an appeal, a copy of the Notice of Appeal shall be left with the court or tribunal from the judgment of which appeal was brought to the Judge of the National Court.

(4) A copy of the Notice of Appeal shall be served promptly by or on behalf of the appellant upon each party affected by the relief sought by the Notice of Appeal or interested in maintaining so much of the judgment as is appealed from.

(5) The court or a Judge may direct -

- (a) that Notice of Appeal be served on any other person; and
- (b) that service on a particular party or person be dispensed with; and
- (c) that service be effected in a particular manner.

#### 20. - APPLICATION FOR LEAVE TO APPEAL.

(1) An application for leave to appeal shall be made by notice in writing -

- (a) showing that an appeal lies with leave; and
- (b) stating the nature of the case, the questions involved and the reasons why leave should be given; and
- (c) containing an address for service of the party giving the notice.

**21. - FILING, ETC., OF NOTICE OF APPLICATION FOR LEAVE TO APPEAL.**

(1) The notice of application for leave to appeal shall be filed in the registry.

(2) On filing the notice under Subsection (1), the applicant shall, for the purposes of Sections 16 and 17 of the Act, be deemed to have given notice of application for leave to appeal, in the prescribed manner.

(3) The provisions of Sections 19(3), (4) and (5) and 25 shall apply, with all necessary modifications, to an application for leave to appeal and the notice of that application.

(4) When leave to appeal has been granted, the court may treat the notice of application for leave as Notice of Appeal but otherwise Notice of Appeal shall be filed within 21 days immediately after the date on which leave is granted or within such extended period as the court or a Judge may at any time allow.

**22. - NOTICE OF APPEARANCE TO BE FILED, ETC.**

A person served with a Notice of Appeal, or an application for leave to appeal, who desires to be heard at any stage of the proceedings shall, within 14 days immediately after service on him of the notice or application, as the case may be, file a notice of appearance containing an address for service and shall serve a copy of that notice of appearance on each of the other parties.

**23. - OBJECTION TO COMPETENCY OF APPEAL.**

(1) A respondent who objects to the competency of an appeal, or of an application for leave to appeal, shall, within 14 days immediately after service upon him of the Notice of Appeal or notice of application for leave to appeal, as the case may be, file in the registry a notice stating briefly but specifically the grounds of his objection and serve on the appellant a copy of that notice of objection.

(2) Any party may file affidavits.

(3) An objection of which notice has been given shall be determined by the court at or before the hearing of the appeal, or of the application for leave to appeal, as the case may be, as the court thinks proper.

(4) If notice of objection is not given and the appeal or the notice of application for leave to appeal is dismissed as incompetent, the respondent shall not receive any costs of the appeal unless the court, upon special grounds, orders otherwise.

**24. - CROSS APPEAL.**

(1) A respondent who desires to appeal from any part of the judgment from which the appellant has appealed, or to seek a variation of a part of the judgment, need not institute a substantive appeal, but in addition to complying with

Section 22 he shall within the period or extended period provided for by Section 16 of the Act, file in the registry a notice of cross appeal and promptly serve a copy of the notice on the appellant and any other person affected by the relief that he claims.

(2) The notice of cross appeal shall state what part of the judgment the respondent cross appeals from or contends should be varied, and shall, in the manner required by Section 18(3), state briefly but specifically the grounds of the cross appeal and the relief which he seeks in place of the judgment cross appealed from, or the variation of that judgment that he seeks.

(3) It is not necessary to give notice of cross appeal if a respondent proposes to contend that some matter of fact or law has been erroneously decided against him but does not seek a discharge or variation of a part of the judgment actually pronounced.

#### 25. - SETTING DOWN APPEAL.

(1) Subject to Subsection (2), unless the court or a Judge otherwise orders, an appeal shall be set down by the appellant for hearing at the first sittings of the court to be held after 28 days immediately after the institution of the appeal.

(2) An appeal referred to the court under Section 12 of the Act by the Registrar, and all applications to the court preliminary to an appeal, shall be dealt with at such time as the Chief Justice, or if he is not available, the next most senior Judge available in chambers, shall direct.

(2) If the appellant does not set down the appeal for hearing as prescribed by this section or by any order made under this section any respondent may set down his cross appeal for hearing and may also apply to the court by motion on notice for an order dismissing the appeal for want of prosecution.

(3) Where an appeal is set down for hearing, notice of the setting down shall promptly be served on the respondent, except where the appeal is one referred to the court under Section 12 of the Act by the Registrar.

#### 26. - PREPARATION, ETC., OF APPEAL BOOKS.

(1) As soon as practicable after a Notice of Appeal has been filed and served, the solicitor acting for the appellant shall -

- (a) make out a draft index of the documents which are to constitute the appeal book before the court; and
- (b) file the draft index in the registry; and
- (c) make an appointment to settle the draft index before the Registrar.

(2) The Registrar may vary the draft index as he thinks proper and may, if he thinks it necessary, obtain the direction of the Judge of the National Court from whose judgment the appeal is being brought.

(3) The appeal book for use on the hearing of an appeal shall, unless the court or a Judge otherwise orders, be prepared in bound volumes on paper of such size as may be approved by the Registrar, and otherwise in accordance with the provisions of Order XCIII of the Rules of the pre-Independence Supreme Court of Papua New Guinea as adopted by the *National Court Act 1975* and every tenth line in each page shall be numbered.

(4) The thickness of any one volume of the appeal book shall not exceed 38 mm.

(5) The title page shall give the full and correct title of the proceedings, and the names of the solicitors for each party and their addresses for service.

(6) After the title page there shall follow the index, consisting of a complete list of documents contained in the appeal book as settled by the Registrar, indicating the page at which each document appears and, where a document is a copy, indicating that it is a copy.

(7) The index shall show -

- (a) the date of each document; and
- (b) in the case of exhibits - the exhibit mark on the document; and
- (c) in the case of documents marked for identification - the letters "m.f.i." following the exhibit mark.

(8) In the index, the exhibits shall be arranged in the order in which they have been lettered or numbered.

(9) The documents shall be arranged in the appeal book in the following order:-

- (a) process and pleadings; and
- (b) evidence (oral or affidavit); and
- (c) testimony taken on commission or before an examiner and put in or used as evidence; and
- (d) exhibits, which -

- (i) shall be arranged in chronological order according to the date borne by the documents, or in the case of manifestly or admittedly misdated documents, their known dates; and
- (ii) being documents that are undated, shall be placed in the sequence contended for by the appellant, but the appellant shall inform the respondent of the position or order proposed for the document, and the

- respondent may require that a note "Date and order disputed" be inserted in the appeal book at the head of the document; and
- (iii) where they include correspondence between or among two or more persons, or a group of documents which should be read consecutively and not interspaced among other documents, those letters forming the correspondence or the group of documents shall be arranged in order of their dates and in a position together at a convenient place in relation to the other exhibits; and
- (e) the reasons for judgment of the primary Judge or court; and
- (f) the formal judgment or order of the primary Judge or court; and
- (g) if the judgment appealed from is that of a Judge of the National Court sitting on an appeal, the Notice of Appeal, the reasons for judgment and the formal order in that proceeding; and
- (h) the Notice of Appeal to the court; and
- (i) the certificate referred to in Subsection (13).

(10) The date and a short description of each document shall precede it, but formal headings shall not be printed or copied, and jurats, formal identification of exhibits and similar formal information shall be omitted.

(11) Interrogatories and answers, and affidavits of documents, shall not be copied except so far as they were put in evidence.

(12) A copy of the appeal book shall be examined with the original documents, and all copies shall be corrected.

(13) The examined copy of the appeal book shall be filed in the registry with a certificate by the parties or their solicitors that it has been examined and is correct.

(14) The appeal book shall be prepared and produced in a manner satisfactory to the Registrar.

(15) Unless the court or a Judge otherwise orders, the appellant shall, not less than seven days before the commencement of the sittings at which the appeal is set down for hearing, lodge with the Registrar four copies of the appeal book or, if the Registrar shall expressly request, six copies of the appeal book, for the use of the Judges upon the hearing, and shall serve on each of the respondents separately represented two copies of the appeal book.

(16) Subject to Section 29 of the Act and to Subsection

1977

Supreme Court

No. 22

(19), the costs of the appeal book shall be costs in the cause, unless the court otherwise orders.

(17) When the evidence of witnesses is transcribed, there shall appear at the bottom of each page of such evidence the name of the witness, and whether he is examined, cross-examined, re-examined, or re-called.

(18) Only those documents that are relevant or necessary for the appeal shall be included in the appeal book.

(19) The costs of copies of unnecessary documents or of documents copied at unnecessary length will not be allowed.

#### 27. - METHOD OF BRINGING EVIDENCE TAKEN IN LOWER COURT.

When any question of fact is involved in an appeal, the oral evidence taken in a lower court shall, subject to any special order, be brought before the court by the production of a copy of the Judge's notes certified by his associate, or a person authorized for the purpose if the evidence has been taken in the National Court, and, in any other case, by such other means as the Judge whose judgment is appealed from shall direct, or as the court may deem expedient.

#### 28. - LIST OF LEGISLATION, ETC., FOR COURT.

The solicitor for each party to proceedings under the Act before the court shall, if it is practicable so to do, at least 48 hours before the day on which the proceedings are listed for hearing or, if it is not practicable so to do, then as soon as practicable thereafter, supply to the associate to the presiding Judge of the court a list of all legislation and authorities to which that party may refer at the hearing.

#### 29. - INTERLOCUTORY ORDER SHALL NOT OPERATE SO AS TO PRECLUDE RELIEF.

An interlocutory order or rule from which there has been no appeal shall not operate so as to bar or prejudice the court from giving such decision upon an appeal as may be just.

#### 30. - SERVICE OF NOTICES, ETC.

Subject to Section 19(5) service on any person of any notice or other document may be effected in the manner provided by law for the service of documents, or by leaving a copy at the address for service contained in the notice of that person or, if no proper notice has been given, at the address for service, if any, of that person in the proceeding from which the appeal is brought.

#### PART IV. - ADDITIONAL RULES FOR APPLICATIONS UNDER DIVISION III.3 OF THE ACT.

#### 31. - RESERVATION OF POINTS OF LAW.

(1) Where a Judge of the National Court proposes to reserve a question of law under Section 20 of the Act, whether on the application of the accused or not, he may give such directions as he considers proper for the drafting of the case stating the question of law reserved and for the preparation of documents for the use of the court.

(2) A case stating a question of law reserved under Section 20 of the Act upon the trial of a person indicted for an indictable offence shall set forth such facts only as are relevant to raise the question of law reserved.

(3) Where any question turns upon the form of the pleadings, then so much of the pleadings shall be set out as raises the question.

(4) A case under Section 20 of the Act shall state whether judgment on the conviction was pronounced or respited or was postponed and whether the convicted person was committed to prison or admitted to bail on recognizance to render himself in execution or receive judgment.

(5) The original case shall be transmitted by the Judge of the National Court by whom it is signed to the Registrar who shall set the case down for hearing in accordance with Section 25 of the Act and shall, at least seven days before the date of hearing, cause a copy of the case to be made available to each of the Judges constituting the court to consider the case and shall deliver a copy to the Public Prosecutor and a copy to the accused or his solicitor.

(6) The Judge by whom the case is stated may amend the statement of the case at any time before argument.

### 32. - NOTICE OF APPEAL.

A Notice of Appeal by the Public Prosecutor under Section 23 of the Act shall be filed in the registry within 40 days immediately after the pronouncement of the sentence or the quashing appealed from or within such further time as shall be allowed by the court or a Judge upon application made within 40 days immediately after the decision or judgment appeal from.

### 33. - PROCEDURE ON NOTICE OF APPEAL, ETC.

Where -

- (a) a Notice of Appeal or of application for leave to appeal has been filed under the provisions of Section 21 or 23; or
- (b) a case or point in a case has been reserved for the consideration of the court under Section 5; or
- (c) a question of law has been reserved under Section 20,

of the Act -

- (d) the trial Judge may report to the court giving his opinion upon the case generally or upon any point arising in the case of the appellant; and
- (e) the court may request the trial Judge whenever it appears to be necessary for the proper determination of any appeal or application to furnish it with a report in writing giving his



- opinion upon the case generally or upon any point arising in the case of the appellant, and the court may direct the Registrar to furnish that Judge with any document or information which it shall consider material; and
- (f) the Registrar shall, after the transmission of a report of the trial Judge to the members of the court, furnish promptly a copy of that report to each party to the appeal or application.

#### PART V. - REFERENCE OF POINTS OF LAW.

##### 34. - INTERPRETATION.

In this Part unless the context otherwise requires or some other meaning is clearly intended -

"reference" means a reference of a point of law to the court under Section 41 of the Act.

##### 35. - REQUIREMENTS FOR REFERENCE.

(1) Every reference shall be in writing and shall -

- (a) specify the point of law referred and, where appropriate, such facts of the case as are necessary for the proper consideration of the point of law; and
- (b) summarize the arguments intended to be put to the court; and
- (c) specify the authorities intended to be cited; and
- (d) be filed in the registry.

(2) A reference shall be entitled "Reference under Section 41 of the *Supreme Court Act 1975*" together with the year and number of the reference.

##### 36. - NOTICE OF REFERENCE TO BE SERVED.

(1) The Registrar shall cause to be served on the person acquitted in whose case the point of law arose, notice of the reference, which shall -

- (a) state that the reference will not affect the trial in relation to which it is made or any acquittal in that trial; and
- (b) invite the person acquitted, within such period as may be specified in the notice (being not less than 28 days immediately after the date of service of the notice), to inform the Registrar if he wishes to present any argument to the court and, if so, whether he wishes to present such argument in person or by counsel on his behalf.

(2) The court shall not hear argument by or on behalf of the principal legal adviser until the period specified in the notice has expired, unless the person acquitted agrees or has indicated that he does not wish to present any argument to the court.

(3) The Registrar shall cause to be sent by post, notice of the reference to the Public Prosecutor and the Public Solicitor.

### 37. - WITHDRAWAL, ETC., OF REFERENCE BY PRINCIPAL LEGAL ADVISER.

The principal legal adviser may withdraw or amend the reference at any time before the court has begun the hearing, or, after that, and until the court has given its opinion, may withdraw or amend the reference by leave of the court, any notice of such withdrawal or amendment shall be served on the person acquitted, on behalf of the principal legal adviser.

### 38. - SERVICE.

(1) For the purpose of this Part, service of a document on the person acquitted may be effected -

- (a) subject to paragraph (c), in the case of a document to be served on a body corporate - by leaving it at or by sending it by post to the registered office of that body; and
- (b) subject to paragraph (c), in the case of a document to be served on any other person - by -
  - (i) post as provided by law; or
  - (ii) delivering it to the person to whom it is directed; or
  - (iii) leaving it for him with some person at his last known or usual place of abode; or
- (c) by sending it by post addressed to the solicitor who acted for the person acquitted at the trial.

(2) For the purpose of this Part, service of a document on the Registrar may be effected by -

- (a) post; or
- (b) addressing it to him and leaving it at the registry; or
- (c) delivering it to the Registrar.

### 39. - DIRECTIONS OF THE COURT.

Where a reference has been made to the court, the court may give such directions as may be required concerning the terms of the reference and the matters to be included in it.

## PART VI. - GENERAL.

### 40. - AMENDMENT, ETC., OF PROCEEDINGS.

The court or a Judge may order that any person be added as a party to an appeal or that the proceedings be amended, and may impose such conditions as appear just, and give all consequential directions.

1977

Supreme Court

No. 22

**41. - APPEAL TO COURT FROM DIRECTION OF JUDGE.**

A party dissatisfied with a direction given by a Judge under these Rules may, upon notice to the other parties to or concerned in the appeal, apply to the court which may make such order as appears just.

**42. - ORDERS MAY BE MADE.**

Where proceedings under the Act are pending, the court or a Judge may, subject to the Act, make such orders as are considered necessary for -

- (a) the custody or release on bail or otherwise of a person in custody; and
- (b) the custody, preservation and production of exhibits or other property; and
- (c) the suspension of payment of any fine; and
- (d) the suspension or variation of any order relating to restitution of property.

**43. - FORMS, ETC., IN CRIMINAL PROCEEDINGS.**

The Registrar, after consultation with the Chief Justice, shall prepare and issue forms and instructions in relation to criminal proceedings under the Act for use in accordance with Section 30 of the Act.

**44. - APPLICATION FOR DIRECTIONS.**

(1) Where a person desires to take any step in proceedings under the Act and the manner or form of the procedure is not prescribed, that person may apply to a Judge for directions and any step taken in accordance with directions so obtained shall be deemed regular.

(2) Where compliance with the provisions of these Rules relating to the preparation of documents or appeal books for the court may cause unnecessary hardship, expense or delay, the Registrar, after consultation with the Chief Justice, or if he is not available the senior Judge available in chambers, may waive compliance to such extent as in his opinion is reasonable.

**45. - NUMBER OF JUDGES.**

On the hearing of a reference or a special reference under Part II or a reference under Section 41 of the Act the court shall consist of an uneven number of Judges and the opinion of the majority shall prevail.

**46. - REPEAL.**

The Supreme Court (Full Court Appeals) Rules are repealed.

**47. - TRANSITIONAL.**

Where, immediately before the commencement of these Rules, an appeal was pending or proceeding before the court, that appeal shall proceed as if these Rules had not been made.



1977

Supreme Court

No. 22

SCHEDULE. - *continued.*

Rules Sec. 9(2).

Form 2.

THE INDEPENDENT STATE OF PAPUA NEW GUINEA.

*Supreme Court Act 1975.*

APPLICATION FOR DIRECTIONS.

In the Supreme Court  
of Justice

*(Here put the year and number)*

In the matter of a special reference under Section 19 of the  
Constitution.

Take notice that application will be made to this Honourable  
Court at the Supreme Court House, Waigani, at \_\_\_\_\_ a.m.  
on the \_\_\_\_\_ day of \_\_\_\_\_, 19  
next, for directions as to the conduct of this special  
reference.

*(State any particular matter on which directions are  
desired)*

DATED the \_\_\_\_\_ day of \_\_\_\_\_, 19 .

This notice is given by:-

*(State the name of the  
authority or his  
solicitor)*

DATED the \_\_\_\_\_ day of \_\_\_\_\_, 1977.

FROST, C.J.

PRENTICE, DEPUTY C.J.

WILLIAMS, J.

KEARNEY, J.

PRITCHARD, J.

RICHARD TEO.  
Registrar.



---

Printed and Published by E. C. Awo—Papua New Guinea Government Printer,  
Port Moresby.—687.