



SUPREME

COURT

FAQS



PETITIONS/APPEALS FROM COURT OF APPEAL OR A TRIBUNAL



Who can file an appeal?

Anyone can file an appeal once his/her case has been determined by the Court of Appeal or a tribunal. Appeals from the Court of Appeal are brought to the Supreme Court under Article 163(4)(a) or Article 163(4)(b).

Appeals under Article 163(4)(a) are as of right in any case involving the interpretation and application of the Constitution.

Appeals under Article 163(4)(b) are cases in which the Supreme Court or the Court of Appeal certifies that a matter of general public importance is involved.

Appeals from a tribunal are filed under Article 163(3) of the Constitution.

What is the procedure of filing an appeal?

1. *Filing of notice of appeal.*

Rule 36(1) of the Supreme Court Rules 2020, provides that a person who intends to make an appeal to the Court has to file a notice of appeal within fourteen (14) days from the date of judgment or ruling which is the subject of appeal.

2. *Filing of the appeal*

An appeal to the Court under Article 163(4)(a) must be filed within thirty (30) days of the date of filing the notice of appeal as provided for by Rule 38(1)(a) of the Supreme Court Rules 2020.

An appeal under Article 163(4)(b), must be filed within 30 days after grant of certification as provided for by Rule 38(1)(b) of the Supreme Court Rules 2020.

Appeals in the Supreme Court are filed in both print (8 hardcopies) and on the e-filing portal (efiling@court.go.ke).

3. *Requirements of an appeal*

Rule 40(1) of the Supreme Court Rules 2020 provides that for the purpose of instituting an appeal from the Court of Appeal, the record of appeal should contain the following;

- a. A certificate, if any, certifying the matter as of general public importance;
- b. A Judgment or the ruling of Court of Appeal being appealed from;
- c. A Judgment or the ruling of the High Court or a Court of equal status; and
- d. The Relevant pleadings required to determine the appeal;

Rule 41(1) of the Supreme Court Rules 2020 provides that for purpose of instituting an appeal from other courts or tribunals exercising original jurisdiction, the record of appeal shall contain the following;

- a. An Index of the documents in the record, with a numbering of the pages which they appear;
- b. The Notice of appeal;
- c. The certificate, if any, certifying the matter to be of general public importance;
- d. A Statement showing the address, telephone numbers and email address for service of the appellant;
- e. Address of service furnished by the respondent, if none is furnished, the address and proof of service upon the respondent in the notice of appeal;
- f. Pleadings;
- g. The record of proceedings;
- h. The trial judge's notes at the hearing;
- i. The transcript of any shorthand notes taken at the trial;
- j. The affidavits read, and all documents of evidence at the hearing, or, if such documents are not in English language, certified translations thereof;
- k. The judgment or ruling;
- l. The Certified decree or order; and
- m. Any other documents, if any, as may be necessary for the proper determination of the appeal.

4. Court fees.

Court fees in connection with appeal

- a. Kshs. 6,000 security for costs;
- b. Kshs. 3,000 lodging of the appeal;
- c. Kshs. 20 per annexure if any.
- d. Kshs. 200 filing written submissions;
- e. Kshs.3000 lodging a notice of cross appeal;
- f. Kshs. 200 lodging a notice of grounds for affirming a decision;
- g. Kshs. 200 lodging a notice withdrawing an appeal;
- h. Kshs. 500 lodging a notice of preliminary objection.
- i. Kshs. 500 lodging grounds of objection.

What is the next step after filing an appeal?

Upon completion of filing the appeal, the matter is place before the Registrar or Deputy Registrar of the Court for lodging and issuance of directions and a mention date.

Mentions are conducted to ensure compliance of filing of the necessary pleadings.

Once compliance is confirmed, the appeal is placed before the Court for hearing by a Bench appointed by the Honourable Chief Justice and President of the Court.

Upon hearing of the appeal, the Court delivers its judgment or ruling.



REFERENCE

Who can file a reference?

References are filed under Article 163(6) of the Constitution.

Rule 50 (1) of the Supreme Court Rules 2020 provides that, a reference can only be filed by the national government, state organ or a county government.

References in the Supreme Court are filed in both print (8 hardcopies) and on the e-filing portal (efiling@court.go.ke).

What do I need to file a reference?

Rule 50 (2) of the Supreme Court Rules 2020 provides that a reference shall contain;

1. Reference signed by a duly authorised officer;
2. Specific questions or issues for determination by Court;
3. Concise and brief question upon which advice is sought.

Who are the participants to a reference?

Rule 51(1) of the Supreme Court Rules 2020, provides that the person filing the reference may propose to the Court of any other person to participate in the reference.

The Court may also on its own motion identify any other person to participate in a reference under Rule 51(2) of the Supreme Court Rules 2020.

Upon identifying the participants to a reference, mentions are conducted to ensure compliance of filing of the necessary pleadings. Once compliance is confirmed, the reference is placed before the Court for hearing by a Bench appointed by the Honourable Chief Justice and President of the Court.

After hearing of the reference, the Court then renders its advisory opinion.

Can I apply to be enjoined in a reference?

No. Under Rule 51(5) of the Supreme Court Rules 2020, the Court does not allow participation of amicus curiae or interested parties in a reference.

What are the Court fees in connection to a reference?

Filing a reference is free.



APPLICATIONS

What Rule is used when filing an application?

Applications in the Court are filed under different rules depending on the nature of the application. For example:

- a. an application seeking extension of time is filed under Rule 15(2) of the Supreme Court Rules 2020;
- b. an application seeking to be enjoined in any proceedings as an interested party is filed under Rule 24(1) of the Supreme Court Rules 2020;
- c. an application seeking leave to admit further evidence is filed under Rule 26(2) of the Supreme Court Rules 2020.
- d. an application seeking review of certification is filed under Rule 33(2) of the Supreme Court Rules 2020.

Can my application be heard orally?

Applications in the Court are NOT heard orally. All applications are determined on the basis of written submissions under Rule 31(1) of the Supreme Court Rules 2020.

How are applications determined?

Applications can be filed under certificate of urgency or without the certificate of urgency. Applications under certificate of urgency are determined on priority basis as provided by Rule 32(1) of the Supreme Court Rules 2020.

What are the fees in connection to applications?

Application fees are based on whether the application is filed under certificate of urgency or not.

1. Kshs. 1,500 for applications under certificate of urgency;
2. Kshs. 800 for applications not under certificate of urgency;
3. Kshs. 20 per annexure if any.

What is the next step after filing an application?

Mentions are conducted to ensure compliance of filing of the necessary pleadings. Once compliance is confirmed, the application is placed before the Court for ruling by a Bench appointed by the Honourable Chief Justice and President of the Court.

TAXATIONS

How can I recover costs?

Upon conclusion of a case, if the Court awards costs, the successful party files a bill of costs. The bill of costs is taxed by the Deputy Registrar. If aggrieved with the decision of the taxing master, a party may apply for review before a single Judge.

NOTES



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CONTACTS

**You may also contact
the Supreme Court Registry
via Email. supremeregistry@court.go.ke
you can also access important information on the
Judiciary website www.judiciary.go.ke**

