PROPOSED PRACTICE FOR CIVIL APPEALS - PLEASE READ AND COMMENT

CHAPTER 7 CIVIL APPEALS

1. The registrar shall not accept any appeal matter unless the appellant or the attorney of the appellant submits to the registrar:

1.1 A complete record, indexed and paginated.

1.2 The appellant's heads of argument and practice note.

Whereupon, the Registrar shall allocate a case number and shall issue an acknowledgement of receipt thereof.

2. The appellant or the appellant's attorney shall:

2.1 thereupon serve on the respondent or the respondent's attorney of record the record and the appellant's heads of argument and practice note and a copy of the Registrar's acknowledgement, and further state that he respondent's heads of argument and practice note must be filed with the registrar not later than 30 court days from the date of that service,

2.2 File a copy of such service with the Registrar

3. The appellant or the appellant's attorney shall not earlier than the day after the respondent's heads of argument and practice are due act as follows:

3.1 If the respondent has complied with paragraph 1.3; apply to the registrar to have the matter set down on a particular date, whereupon the registrar shall do so, and shall also provide the appellant or the appellant's attorney with a notice of set down, which the appellant or the appellant's attorney shall serve on the respondent or the respondent's attorney forthwith, and file a copy of such service with the registrar in due course.

3.2 If the respondent has not complied with paragraph 1.3, set down an application to compel compliance in the special interlocutory court as provided for in paragraph 4 of the practice manual, mutatis mutandis.

3.3 The registrar shall, notwithstanding the non-compliance by the respondent with paragraph 1.3, upon presentation by the appellant or the appellant's attorney with an order of the special interlocutory court, act further in accordance with that order to set down the matter and issue a notice of set down.

4. The Deputy Judge President may direct, in any particular matter, that the parties deliver heads of argument otherwise than as provided for in paragraph 1 and 2 above, either mero motu or on receipt of a written request from one or both parties.

5. Once a date has been allocated for the hearing of any civil appeal, the parties may not agree to postpone the appeal without the leave of the Deputy Judge President or the judges to whom the appeal has been allocated for hearing.

6. If counsel intend to rely on authority not referred to in their heads of argument, copies thereof should be available for the judges hearing the appeal and counsel for each other party.

4. In regard to the content of their heads of argument, counsel are reminded of the dicta in Cateram Car Sales & Coachworks Ltd v Birkin Cars (Pty) Ltd and Another 1998 (3) SA 938 SCA at [37] – [38]and Ensign-Bickford (South Africa) (Pty) Ltd and Others v AE & CI Explosives and Chemicals Ltd 1999 (1) SA 70 SCA 84H-85C.

5. Counsels' names and contact details, including email addresses and cell phone numbers, must appear on the heads of argument.

7. Simultaneously with the filing of their heads of argument counsel shall file a practice note. The practice note shall set out -

1.1 each issue that has to be determined in the appeal;

1.2 an extremely brief submission in respect of each such issue;

1.3 what portion of the record must be read.

8.1 In all civil appeals the record shall be securely bound in volumes of no more than 120 pages, save to avoid splitting a document, in which case the volume may be longer to that extent. Each volume shall be consecutively paginated and have a cover sheet reflecting -

8.1.1 the case number;

8.1.2 the names of the parties;

8.1.3 the total number of volumes in the record;

8.1.4 the volume number of the particular volume;

8.1.5 the court appealed from;

8.1.6 the names, addresses and telephone numbers of the parties' legal representatives.

8.2 The first volume of the record shall contain a comprehensive index of the evidence, documents and exhibits. The index must identify each document and exhibit.

8.3 Unless it is essential for the determination of the appeal, and the parties agree thereto in writing, the record shall not contain -

8.3.1 the opening address to the court a quo;
8.3.2 argument at the conclusion of the application or trial;
8.3.3 discovery affidavits and notices in respect thereof;
8.3.4 identical duplications of any document contained in the record;
8.3.5 documents that were not proved or admitted in the court a quo.

8.4 If it will facilitate the hearing of the appeal, or if requested by the presiding judge in the appeal, the parties shall prepare a core bundle of documents relevant to the determination of the appeal. This bundle should be prepared in chronological sequence and must be paginated and indexed.

8.5 In the event of a party failing to comply with any of the aforegoing, the court may mero motu, or on application of any party to the appeal, make a punitive cost order.