

Serial Number 1947/163



**THE COOK ISLANDS NATIVE APPELLATE COURT
RULES 1947**

B. C. FREYBERG, Governor-General

ORDER IN COUNCIL

At the Government House at Wellington, this 29th day of
October, 1947

Present :

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to the Cook Islands Act, 1915, and the Cook Islands Amendment Act, 1946, His Excellency the Governor-General, acting by and with the advice of the Executive Council, doth hereby make the following rules.

RULES

GENERAL

1. These rules may be cited as the Cook Islands Native Appellate Court Rules 1947.

2. In these rules, unless inconsistent with the context,—

“ The Act ” means the Cook Islands Amendment Act, 1946 :

“ Court ” and “ Appellate Court ” mean the Native Appellate Court of the Cook Islands :

“ Judge ” means, as the context may require, a Judge of the Appellate Court or a Judge of the Native Land Court :

“ Registrar ” means a Registrar of the Native Land Court acting pursuant to section 33 of the Act in the capacity of Registrar of the Appellate Court, and includes a Deputy Registrar and any person for the time being discharging the duties of a Registrar :

“ Registrar of the Native Land Court ” includes any person for the time being discharging the duties of a Registrar of the Native Land Court :

A reference to a numbered form is a reference to the form so numbered in the First Schedule to these rules.

3. Where a form is prescribed a form to the effect thereof may be used, and a prescribed form may be used with such modifications as the case requires.

4. Where no form is prescribed such form may be used as the Court may direct or approve.

5. In any case an equivalent form in the Maori language of the Cook Islands may be used and shall be sufficient.

6. The Chief Judge of the Native Land Court may exercise the powers hereinafter conferred of directing that a more explicit statement of the grounds of appeal be lodged and of deciding whether security for the costs of an appeal shall be given fixing the amount of security and the time within which security shall be given and of fixing the time and place for a sitting of the Appellate Court and of granting any leave relating to the notification of an appeal, whether or not he has power to act as a member of the Appellate Court upon the hearing of the appeal.

7. Minutes of all proceedings of the Appellate Court shall be kept by one of the Judges hearing the proceedings in a minute-book to be provided for the purpose, which shall be a record of the Court and shall be retained in the custody of the Registrar.

8. The Appellate Court may arrange the order of its business as it thinks fit.

9. In a matter for which no provision is made by these rules the Appellate Court may determine its procedure as it thinks fit and shall dispose of the matter as nearly as may be in accordance with the rules affecting any similar case or, if there be no such rules, in such manner as the Court deems best calculated to promote the ends of justice.

APPEAL FROM PROVISIONAL DETERMINATION

10. An application to the Native Land Court for leave to appeal to the Appellate Court under section 26 of the Act may be made orally in open Court or in writing lodged with a Registrar of the Native Land Court, and if made in writing may be in form No. 1.

11. Every such application, however made, shall be made within two days or within such further time, not exceeding seven days, as the Native Land Court on special grounds may allow after the date of the provisional or preliminary determination from which it is desired to appeal.

12. Leave to appeal may be granted on such terms as to costs as the Native Land Court thinks fit.

13. If leave to appeal is granted, notice of appeal shall be given, and all further proceedings taken as in the case of an appeal from a final order of the Native Land Court under section 25 of the Act.

14. If notice of appeal be not given within the time prescribed by section 25 of the Act, the order of the Native Land Court granting leave to appeal shall be deemed to be discharged and shall have no further effect.

NOTICE OF APPEAL

15. The notice of appeal required by section 25 of the Act may be in form No. 2, and shall embody or be accompanied by a statement setting forth the grounds of the appeal.

16. The notice of appeal and any separate statement of grounds of appeal shall be signed by the appellant or his solicitor or by an agent whose authority to act in the matter to which the appeal relates has been filed in the Native Land Court as required by the rules of the Native Land Court.

17. If the person by whom the notice of appeal and statement of grounds of appeal are signed, whether as appellant in person or as agent for the appellant, is a Native, then his signature shall be attested in manner required by subsection (2) of section 475 of the Cook Islands Act, 1915, and there shall be written on the notice and statement the certificate of an attesting witness required by subsection (3) of that section.

18. The notice of appeal shall be given by lodging the same, together with any separate statement of grounds of appeal, with a Registrar of the Appellate Court, and the Registrar shall not receive any notice of appeal unless it embodies or is accompanied by the prescribed statement setting forth the grounds of the appeal.

19. Every notice of appeal shall set out an address at which notifications relating to the appeal may be given to the appellant. If the notice of appeal be lodged with the Registrar in Niue, the address shall be some place within the Island of Niue, and in any other case shall be some place within the Cook Islands (except Niue).

20. Where orders have been made appointing the same person or persons successors in the same right to the interest of a deceased person in several blocks or parcels of land it shall not be necessary to give separate notices of appeal in respect of each order, but more than one order may be included in one notice, and the notice and proceedings thereon shall be treated as one appeal.

21. After notice of appeal has been duly given all subsequent proceedings in the matter of the appeal shall, notwithstanding the powers in relation thereto conferred by the Act and these rules upon the Native Land Court and the Chief Judge or a Judge thereof, be deemed to be in the Appellate Court and shall be intitled accordingly.

22. On receipt by a Registrar of a notice of appeal the Chief Judge of the Native Land Court may in his discretion, and without the necessity of hearing parties if he be of opinion that the grounds of appeal are not sufficiently stated, direct that a more explicit statement of the grounds of appeal be lodged with the Registrar within a time to be fixed by the Chief Judge and to be computed from the day on which notice of the direction is given to the appellant, and the Registrar shall forthwith give notice in writing of the direction to the appellant accordingly.

SECURITY FOR COSTS

23. On receipt by a Registrar of a notice of appeal the Chief Judge of the Native Land Court shall in his discretion, and without the necessity of hearing parties, decide whether security for the costs of the appeal shall be given, and if he decides that security shall be so given, fix the amount thereof and the time within which the security shall be given, such time to be computed from the day on which notice of the requirement of security is given to the appellant.

24. The security for appeal shall in all cases be given by depositing the amount thereof in money with the Registrar.

25. Forthwith upon the fixing of the amount of any security and the time within which the security shall be given the Registrar shall give notice thereof in writing to the appellant.

DISMISSAL FOR NON-COMPLIANCE WITH DIRECTIONS

26. If in any case within the time fixed by the Chief Judge of the Native Land Court in that behalf an appellant fails to comply with a direction to lodge a more explicit statement of the grounds of appeal or to deposit with the Registrar the amount of any security directed to be given for the costs of the appeal, then any person interested in the proceedings, or the Registrar, may apply to the Native Land Court or a Judge thereof to dismiss the appeal.

27. Notice of every such application for dismissal and the place and time appointed by the Court or Judge for the hearing thereof shall be posted on a public notice-board and given to the appellant.

28. On the hearing of an application for dismissal the Native Land Court or the Judge thereof hearing the application may, as it or he thinks fit, dismiss the appeal or make an order enlarging to a date not later than two weeks from the day when the order is made the time for lodging a more explicit statement of the grounds of appeal or for depositing the amount of security.

29. An order dismissing an appeal may be in form No. 4, and a minute of every order dismissing an appeal under the last preceding rule shall be posted on a public notice-board.

30. If within the time enlarged as aforesaid an appellant fails to lodge a more explicit statement of the grounds of appeal or to deposit the amount of his security the provisions of Rules 26 to 29 hereof shall apply.

WITHDRAWAL OF APPEAL

31. The appellant may at any time before the hearing of the appeal by notice in writing given to the Registrar, or at any time after the hearing has commenced by oral application made in open Court, apply to the Court for leave to withdraw the appeal.

32. Leave to withdraw an appeal may be given on such terms as the Court thinks fit to impose, and the Court may in granting such leave give directions as to the disposal of any sum deposited as security for costs.

33. When leave has been given to withdraw an appeal the appeal shall thereupon be deemed to be dismissed, and the Registrar shall give notification to that effect on a public notice-board stating any terms or directions given upon the granting of leave to withdraw the appeal.

TIME FOR HEARING

34. Every appeal shall be heard at a sitting of the Court to be held at such time and place as the Chief Judge of the Native Land Court may from time to time appoint, whether upon application made to him by the appellant or otherwise, and notice thereof shall be posted on a public notice-board, and shall, if the Chief Judge so directs, be given in writing by the Registrar to the appellant and to any other interested party to whom the Chief Judge directs that such notice shall be given.

35. Unless the Chief Judge otherwise directs, no notification of a time and place of a sitting of the Court at which an appeal is to be heard shall be given until after the expiration of two months from the date of the order or determination appealed from.

36. At the time and place appointed for a sitting, or from time to time after the commencement of a sitting, the Court or, if two or more Judges be not present, a Judge, or, in the absence of any Judge, a Registrar or person authorized by a Judge, may adjourn the sitting or may adjourn the hearing of a particular appeal, and any such adjournment may be until a specified time or *sine die* and to the same or another place, or if *sine die* without naming a place of adjournment and if not stated to be to another place shall be deemed to be to the same place.

37. Every adjournment except an adjournment ordered in the presence of parties and in the ordinary course of a continuous hearing shall be notified upon a public notice-board.

38. An application which may be made *ex parte* may be heard and determined by the Court at any time and place as the Court thinks fit.

PROCEDURE AT HEARING

39. On the hearing of an appeal no person other than the appellant shall, except by leave of the Court, be heard in support of the appeal or to put forward any claim contrary to the decision appealed from, and no other person shall be heard except a person who satisfies the Court that he is a person interested in the proceedings.

40. Where any question of fact is involved in an appeal the Court shall decide the same on the evidence taken in the Native Land Court in the proceeding appealed from, save that the Court may in its discretion allow such further evidence to be adduced it may think calculated to assist the Court to come to a just decision upon the matters in issue, including evidence given in any former proceedings before the Native Land Court or the Appellate Court and available in the records of such Court.

41. The notice of appeal may be amended at any time if the Court thinks fit and is of opinion that amendment may be allowed without injustice to other parties interested in the appeal, and shall be amended by the appellant by substituting a more explicit statement of the grounds of appeal if the Court so requires, notwithstanding that a more explicit statement may already have been lodged pursuant to a direction of the Chief Judge of the Native Land Court.

42. The Court shall have all the powers and duties as to amendment and otherwise of the Native Land Court and power to draw inferences of fact.

43. Nevertheless, no appeal shall be allowed on any ground not set forth in the statement or more explicit statement or amended statement of the grounds of appeal unless the Court is of opinion that the appeal may be so allowed without injustice to the other parties interested in the appeal.

44. If an appellant fails to prosecute his appeal the Court may of its own motion, or on the application of any interested party, dismiss the same upon such terms as to costs or otherwise as it thinks fit, but thereafter on application made to it in that behalf at any time during the same sitting or any adjournment thereof the Court may on such terms as it thinks fit allow the appeal to be reinstated.

FEEES

45. There shall be paid in respect of the matters described in the Second Schedule hereto the respective fees set out in the said Second Schedule.

46. (1) No notice of appeal or application for rehearing shall be received or recorded and no proceedings shall be taken in respect thereof unless the prescribed fee has been paid.

(2) No order made by the Appellate Court shall be issued from the office of the Court unless the prescribed fee has been paid.

(3) No party shall be heard in Court on any day unless the hearing fee prescribed and directed to be paid by that party for that day has been paid.

(4) No fee shall be payable in connection with an application made by a Registrar.

47. If it appears to the satisfaction of the Appellate Court that any person is unable to pay or ought not to be called upon to pay any fee, the Court may dispense with the payment thereof or any part thereof upon such terms as it thinks fit.

SCHEDULES

FIRST SCHEDULE

Form No. 1

APPLICATION FOR LEAVE TO APPEAL FROM A PROVISIONAL OR PRELIMINARY DETERMINATION. (Rule 10)

In the Native Land Court of the Cook Islands.

In the matter of.....

PURSUANT to section 26 of the Cook Islands Amendment Act, 1946, I (we), the undersigned, hereby apply to the Native Land Court for leave to appeal to the Native Appellate Court of the Cook Islands from the determination of the Native Land Court made on the.....day of....., 19.., in the matter of.....

Dated this.....day of....., 19..

Form No. 2

NOTICE OF APPEAL. (Rule 15)

In the Native Appellate Court of the Cook Islands.

In the matter of.....

To the Registrar.

TAKE notice that I (we) hereby appeal from the final order of the Native Land Court of the Cook Islands given at.....on the.....day of....., 19.., in the matter of.....upon the following grounds (or upon the grounds set out in the signed statement accompanying this notice).

Dated this.....day of....., 19..

.....
If the person signing the notice of appeal is a Native, add :—

Signed by.....on the..... day of....., 19.., in the presence of—

.....
A Judge or Registrar of the High Court or the Native Land Court; or a Commissioner of the Native Land Court,.....; or a Judge of the Native Appellate Court; or a Resident Commissioner; or a Resident Agent; or a Collector of Customs; or a Medical Officer.

I certify that the effect of the foregoing instrument was explained to the person(s) signing it before the execution thereof by him (them), and that he (they) understood the effect thereof, and that I have signed this certificate at the time when I attested the signing of the said instrument.

.....

Form No. 3

APPLICATION FOR DISMISSAL OF APPEAL. (Rule 26)

In the Native Land Court of the Cook Islands.

In the matter of.....; and in the matter of the appeal of.....

To the Native Land Court (or to....., Esquire, (Chief) Judge of the Native Land Court).

I,, a party interested in the above-described proceedings (or a Registrar of the Native Appellate Court of the Cook Islands) hereby apply to have the above-described appeal dismissed upon the grounds that the appellant has failed within the time fixed in that behalf by the Chief Judge to comply with a direction to lodge a more explicit statement of the grounds of appeal (or a direction to deposit with the Registrar the amount of certain security directed to be given for the costs of the appeal).

Dated this.....day of....., 19...

Form No. 4

ORDER OF THE NATIVE LAND COURT OR A JUDGE DISMISSING AN APPEAL.
(Rule 29)

In the Native Land Court of the Cook Islands.

In the matter of.....; and in the matter of the appeal of.....

At a sitting (of the Court) held at.....on the.....day....., 19.., before....., Esquire, (Chief) Judge of the Native Land Court.

UPON hearing the application of....., and it being proved to the satisfaction of the Court (or to my satisfaction) that notice of the application and of the place and time appointed for the hearing thereof has been given as required by the Cook Islands Native Appellate Court Rules 1947, and that the above-named appellant(s) has (have) failed within the time fixed in that behalf by the Chief Judge to comply with a direction to (as the case may be), it is ordered that the said appeal be and is hereby dismissed on the grounds of the failure aforesaid.

As witness the hand of the Judge (and the Seal of the Court).

.....
Judge.

SECOND SCHEDULE

FEEs

1. On lodging notice of appeal against an order or determination relating to—				£	s.	d.
(a) Appointment of a trustee or successor .. .. .	..	..	..	0	10	0
(b) An investigation of title .. .. .	..	..	..	2	0	0
(c) Any other matter .. .. .	..	..	..	1	0	0
2. On lodging an application for rehearing under section 32 of the Cook Islands Amendment Act, 1946 .. .. .	..	..	..	1	0	0
3. On an order made under section 26, section 28, or section 32 of the last-mentioned Act .. .. .	..	..	..	1	0	0
4. Hearing in Court (payable at discretion of Court) each party per diem not exceeding .. .. .	..	..	..	2	0	0

W. O. HARVEY,
Clerk of the Executive Council.

Issued under the authority of the Regulations Act, 1936.
Date of notification in *Gazette*: 30th day of October, 1947.
These regulations are administered in the Department of Island Territories.