

COMMENTS

REFORM OF THE SUBORDINATE COURTS' APPELLATE STRUCTURE

The Rules of Court (Amendment No 2) Rules, 1998

I. INTRODUCTION

THE Rules of Court (Amendment No 2) Rules, 1998 came into operation on 1 January, 1999.¹ They introduce a number of changes, the most important of which concern the appellate process in the subordinate courts.

II. APPEALS ARISING OUT OF PROCEEDINGS FOR SUMMARY JUDGMENT²

Until these amendments, appeals from “any judgment, order or decision of a subordinate court made in pursuance of” Order 14 were governed by Order 14, rule 14 of the Rules of Court, 1996 (“RC, 1996”). This rule provided that the appeal lay to a High Court judge in chambers. It was the only circumstance in which a registrar’s appeal was heard by a High Court judge rather than a district court judge. This exception appears to have been rationalised on the basis that an immediate appeal to the High Court would ensure that the registrar was correct to grant final judgment without the benefit of a thorough adjudication at trial. These amendments reveal that such caution is no longer well founded and that it is sufficient for a district judge to hear the appeal from the registrar. No doubt, such an approach is consistent with the recently increased jurisdiction of the subordinate courts.³ Accordingly, Order 14, rule 14 has been deleted and Order 55B, rule 1(1) has been replaced by the following paragraph:

¹ GN S 612 of 1998. Hereafter referred to as “the Amending Rules”.

² R 3 of the Amending Rules.

³ The jurisdiction of the district court was raised from \$100,000 to \$250,000 by the Subordinate Courts (Variation of District Court Limit) Order 1997 (GN S 333/97). A \$3 million dollar limit applies to its jurisdiction in probate and administration actions. The magistrate’s court limit is \$30,000.

An appeal shall lie to a district judge in chambers from any judgment, order or decision of the Registrar in chambers.

Therefore, all registrars' appeals are now heard by a district judge in chambers. The procedure for a registrar's appeal is considered under the following heading.

III. GENERAL APPELLATE PROCEDURE: AMENDMENTS TO ORDER 55B AND THE NEW ORDERS 55C AND 55D⁴

A. Background to Amendments

The appeal process within the subordinate courts and to the High Court has undergone fundamental changes since these courts were established in 1970.⁵ Under the Subordinate Courts Rules, 1970 ("SCR, 1970"), Order 49 merely provided for the procedure governing appeals to the High Court. The provisions in this Order mirrored many of those in Order 57 of the Rules of the Supreme Court ("RSC"),⁶ the Order governing appeals to the High Court. The provisions governed the notice of appeal, the time for appealing, security for costs, the record of the proceedings, the petition of appeal, the respondent's notice, the record of appeal, stay of execution, the transmission of the judgment or order appealed against to the High Court and enforcement.⁷

When the SCR, 1970 were reconstituted as the Subordinate Courts Rules in 1986 ("SCR 1986"), the appeal structure was changed. Two Orders were introduced. Order 54, which governed appeals to the High Court, retained all the provisions in the former Order 49. Some of these were amended in due course, such as rules governing the record of proceedings, the record of appeal, the periods for filing and serving the notice of appeal, and the amount of the security for costs.⁸ The amendments concerning the record of proceedings and the record of appeal followed those which had been introduced by the RSC, their purpose being to expedite the appeal process.⁹

A new Order concerning appeals came into being with the SCR, 1986. Order 55 was concerned with appeals from a registrar to a judge in chambers (governed by Order 55, rule 1) and from a judge in chambers to the High

⁴ Rr 5 and 6 of the Amending Rules.

⁵ By the Subordinate Courts Act, Cap 14, 1970 ed.

⁶ *Ie*, O 57, rr 3-7, 9 and 15.

⁷ See the former O 49, rr 1-10, SCR, 1970.

⁸ See the Subordinate Courts (Amendment) Rules, 1992 (GN S 59/92).

⁹ The amendments to the RSC had been introduced by the RSC (Amendment No 2) Rules, 1991 (GN S 281/91).

Court (governed by Order 55, rule 2). Initially, Order 55, rule 2 provided that no appeal lay from a judge on an interlocutory application except with his leave. This qualification was removed in 1992 so that an appeal could lie to a High Court judge in chambers “from any judgment, order or decision” of a district judge in chambers.¹⁰ This amendment gained particular significance with the considerable increase in the jurisdiction of the subordinate courts in 1993.¹¹ As interlocutory applications could often determine the outcome a case, the introduction of an automatic right of appeal to the High Court was appropriate. Another restraint on the subordinate courts’ appeal process was removed later in 1992. Order 55, rule 1(5) of the SCR, 1986 had provided that the decision of a judge in chambers on an appeal from the judgment, order or decision of the registrar was final.¹² The sub-rule contravened section 21 of the Supreme Court of Judicature Act (“SCJA”),¹³ which provides for appeals “in any suit or action” from the subordinate courts to the High Court. Accordingly, in *Augustine v Goh Siam Yong*¹⁴ the Court of Appeal held that the rule was *ultra vires*.¹⁵ The rule was consequently abrogated.¹⁶

Under the RC, 1996, the procedure for appeal came to be governed by Orders 55B and 55C. Order 55B replaced the former Order 55, rule 1 of the SCR, 1986 (concerning appeals from the judgment, order or decision of a registrar to a district judge). Order 55, rule 2 of the SCR, 1986 was deleted as it merely provided that the procedure in Order 54 of the SCR, 1986 governed an appeal from a district judge in chambers to a judge of the High Court in chambers. Order 55B also introduced amendments to the former Order 55, rule 1 of the SCR, 1986. Most importantly, it excluded appeals in respect of proceedings for summary judgment under Order 14 so that such an appeal would not lie from a registrar to a district judge, but to a judge of the High Court in chambers.¹⁷ This last development appears to have resulted from the concern that a final determination of a suit without trial should be subject to the supervision of a High Court judge. This policy

¹⁰ O 55, r 2, as amended by the Subordinate Courts (Amendment) Rules, 1992. The process for the appeal was then governed by O 54. The process is now governed by O 55C and O 55D of RC, 1996 as amended by the Amending Rules. See *infra*.

¹¹ Under the Subordinate Courts (Amendment) Act, 1993.

¹² Read with O 55, r 1(1) of the SCR, 1986.

¹³ Cap 322, 1985 Rev Ed.

¹⁴ [1992] 1 SLR 767.

¹⁵ The Court of Appeal adopted the views of the High Court. See [1989] 3 MLJ 406. Also see *Herbs and Spices Trading Post Pte Ltd v Deo Silver (Pte) Ltd* [1991] 2 MLJ 311.

¹⁶ By the Subordinate Courts (Amendment No 2) Rules, 1992 (GN S 113/92).

¹⁷ See O 55B, r 1(1) and O 14, r 14, RC, 1996 (prior to the amendment of these provisions in 1998).

was to change two years later, no doubt due to the increased confidence in the subordinate courts.¹⁸

With regard to the general procedure for appeals from the subordinate courts to the High Court, the former Order 54 of the SCR, 1986 was replaced by Order 55C of the RC, 1996. The amendments to the procedure were formal rather than substantive, including changes to the numbers of forms,¹⁹ the reduction of the period for applying for the record of proceedings,²⁰ and changes in terminology to indicate the applicability of the Order to the subordinate courts.²¹ The procedure in Order 54 applied to all appeals to the High Court except judgments or orders of the registrar in respect of proceedings for summary judgment under Order 14.²²

This position was not to last long. In 1998, fundamental changes were introduced affecting the entire structure of subordinate courts appeals.²³ These developments are categorised in the following paragraphs:

*B. Appeal from the Registrar to District Judge
in Chambers (Order 55B)*

The procedure is governed by Order 55B. Apart from the amendments to appeals in proceedings for summary judgment pursuant to Order 14,²⁴ other changes have been introduced. A new sub-paragraph (2) has been added to Order 55, rule 1. It provides:

The Chief Justice may, from time to time, direct that such class or classes or description of proceedings be heard in chambers, and any such proceedings, whether heard in open court or in chambers, shall be deemed to have been heard in chambers for the purpose of paragraph (1).

This provision potentially expands the appellate jurisdiction of a district judge through the classification of proceedings as proceedings heard in chambers and therefore subject to appeal to a district judge.

¹⁸ See *infra*.

¹⁹ O 55C, r 1(1), 3(1), 5(1), 6(4) and 7(6), RC, 1996.

²⁰ O 55C, r 4(1), RC, 1996.

²¹ O 55C, r 11, RC, 1996.

²² *Supra*.

²³ These amendments were introduced by the Rules of Court (Amendment No 2) Rules, 1998 (GN S 612/98).

²⁴ See under the preceding heading.

The former paragraphs (2), (3) and (4) of Order 55B, rule 1 are renumbered (3), (4) and (5) respectively. They remain the same except that in the renumbered paragraph (3) the words “in Chambers” are incorporated after “District Judge”. Therefore, the procedure for appeal is the same as it was under the previous Order 55B, rule 1. The appeal is brought by serving on every other party to the proceedings in which the judgment, order or decision was given or made a notice in Form 114 to attend before the district judge in chambers on a day specified in the notice.²⁵ The notice must, unless the court orders otherwise, be issued within 14 days after the judgment, order or decision appealed against was given or made and served on all other parties within 7 days of it being issued.²⁶ As usual, the appeal does not operate as a stay of proceedings unless the court orders a stay.²⁷

*C. Appeal from the Decision of a District Judge in Chambers
to the High Court (Order 55C)*

The 1998 amendments delete Order 55C and introduce two new Orders: Orders 55C and 55D. The former Order 55C concerned the procedure for appeal from the subordinate courts whether from a decision of a district judge in chambers or from a decision of a district judge or magistrate in open court. Under the new rules, a distinction is made between an appeal from a decision of a district judge in chambers and an appeal from a decision of a district judge or magistrate in open court. The new Order 55C governs an appeal from a decision of a district judge in chambers (not given or made in his capacity as the registrar) and includes a judgment given, or an order or a decision made, on appeal from the registrar.²⁸ As in the case of Order 55B,²⁹ certain proceedings may be classified as proceedings in chambers for the purpose of Order 55C:

The Chief Justice may, from time to time, direct that such class or classes or description of proceedings be heard in chambers, and any such proceedings, whether heard in open court or in chambers, shall be deemed to have been heard in chambers for the purpose of paragraph (1).³⁰

²⁵ O 55B, r 1(3), RC, 1996.

²⁶ O 55B, r 1(4), RC, 1996.

²⁷ O 55B, r 1(5), RC, 1996.

²⁸ O 55C, r 1(1), RC, 1996.

²⁹ *Supra*.

³⁰ O 55C, r 1(2), RC, 1996.

The procedure under the new Order 55C is quicker and less complicated than that which had operated under the former Order 55C. Indeed, the new rules are closer to the procedure for registrars' appeals governed by Order 55B. The new Order 55C recognises that some of the steps in the more lengthy process of appeal from a subordinate court trial (that is, a decision of a district judge or magistrate in open court) are not essential to an appeal from a district judge in chambers to a High Court judge in chambers. The swifter and less cumbersome procedure will ensure that the additional time and expense hitherto incidental to the former Order 55C will no longer obstruct litigants.

The procedure under the new Order 55C is as follows. The appeal is commenced by issuing and serving, within the prescribed time-limits,³¹ a notice on the other party informing him of the hearing before a judge of the High Court in chambers.³² Where leave to appeal is required under section 21(1) of the SCJA, the applicant must apply to a district judge in chambers within 7 days of the decision. If the district judge refuses leave, a further application may be made to the High Court within 7 days of the refusal.³³ If leave is granted, the notice of appeal must be filed and served within 14 days from the date on which leave was given.³⁴ Leave is only required under section 21(1) if the amount in dispute or the value of the subject-matter is \$50,000 or less. This limit was recently set by an amendment to the SCJA.³⁵ The remaining rules in Order 55C provide that an appeal does not operate as a stay of execution³⁶ and that the enforcement of a judgment or order which has been the subject-matter of an appeal must take effect in the subordinate courts.³⁷

*D. Appeal from the Decision of a District Judge or Magistrate in
Open Court to the High Court (Order 55D)*

While the new Order 55C presents a "fast-track" procedure for appeals from a decision of a district judge in chambers, the new Order 55D governs appeals from a decision of a district judge or magistrate in open court to the High

³¹ The notice must be issued within 14 days after the judgment, order or decision appealed against was given or made. It must be served within 7 days of its issue. See O 55C, r 1(4), RC, 1996.

³² O 55C, r 1(3)-(4), RC, 1996.

³³ O 55C, r 2(1)(a) and (b), RC, 1996.

³⁴ O 55C, r 2(2), RC, 1996.

³⁵ Supreme Court of Judicature (Amendment) Act, 1998.

³⁶ O 55C, r 1(5), RC, 1996.

³⁷ O 55C, r 3, RC, 1996.

Court.³⁸ The former procedure under the former Order 55C, which governed all appeals to the High Court, is revamped and many procedures are introduced which hitherto were only applicable to an appeal from the High Court to the Court of Appeal pursuant to Order 57. The provisions in Order 55D concern an application for a new trial,³⁹ the notice of appeal,⁴⁰ the time for appealing,⁴¹ the record of proceedings,⁴² the record of appeal and the appellant's Case,⁴³ the preparation of cases,⁴⁴ the transmission of the record of appeal,⁴⁵ directions of the court as to service,⁴⁶ withdrawal of the appeal,⁴⁷ general powers of the court,⁴⁸ powers of the court as to a new trial,⁴⁹ stay of execution,⁵⁰ extension of time,⁵¹ the situation in which the appellant or respondent does not appear,⁵² expedited appeals,⁵³ the transmission of the judgment or order of the High Court to the subordinate courts,⁵⁴ enforcement⁵⁵ and interpretation.⁵⁶

E. Forms and Fees⁵⁷

New forms were introduced to complement the new Orders 55C and 55D.⁵⁸ Form 114A was replaced by a new Form 114A governing the notice of appeal to the High Court pursuant to Order 55D, rule 3.⁵⁹ Form 114B was amended by changing the marginal note from Order 55C, rule 3 to Order 55D, rule 3. Forms 114C and 114D were deleted. Form 114E was replaced

³⁸ O 55D, r 1, RC, 1996 states that the Order is applicable "to every appeal to the High Court from the subordinate courts except for appeals to which Order 55C is applicable".

³⁹ O 55D, r 2, RC, 1996.

⁴⁰ O 55D, r 3, RC, 1996.

⁴¹ O 55D, r 4, RC, 1996.

⁴² O 55D, r 5, RC, 1996.

⁴³ O 55D, r 6, RC, 1996.

⁴⁴ O 55D, r 7, RC, 1996.

⁴⁵ O 55D, r 8, RC, 1996.

⁴⁶ O 55D, r 9, RC, 1996.

⁴⁷ O 55D, r 10, RC, 1996.

⁴⁸ O 55D, r 11, RC, 1996.

⁴⁹ O 55D, r 12, RC, 1996.

⁵⁰ O 55D, r 13, RC, 1996.

⁵¹ O 55D, r 14, RC, 1996.

⁵² O 55D, r 15, RC, 1996.

⁵³ O 55D, r 16, RC, 1996.

⁵⁴ O 55D, r 17, RC, 1996.

⁵⁵ O 55D, r 18, RC, 1996.

⁵⁶ O 55D, r 19, RC, 1996.

⁵⁷ Rr 11 and 12 of the Amending Rules, respectively.

⁵⁸ The forms are in Appendix A to RC, 1996.

⁵⁹ *Supra*.

by a new Form 114E governing the notice of filing the record of appeal pursuant to the new Order 55D, rule 8.⁶⁰ The fees concerning the various steps in the appeal process have also been modified.⁶¹

IV. OBSERVATIONS ON THE NEW ORDERS 55C AND 55D

The amendments to these Orders in 1998 were prompted by the increase in the jurisdiction of the subordinate courts in 1997⁶² and the transfer of jurisdiction in divorce and ancillary matters from the High Court to the subordinate courts.⁶³ These developments have led to an increase in the number of appeals against judgments and orders of the latter. The district courts, which can hear claims up to \$250,000,⁶⁴ now encounter cases involving more complex issues of fact and law. Until 1997, the High Court would hear claims over \$100,000⁶⁵ and an appeal to the Court of Appeal would be governed by Order 57. It appears to the author that these developments raised two fundamental questions before the amendments were introduced. Is it possible to employ a swifter procedure for certain types of appeals to obviate the additional use of the court's and parties' time that the increase in the number of appeals is likely to involve? Is the present subordinate courts appeal procedure sufficient to compliment the more complex cases likely to arise from the increased jurisdiction of those courts?

The first question was answered by distinguishing for the first time between appeals from a decision of a district judge in chambers to a High Court judge in chambers (which usually concern specific issues arising from a party's application) and appeals from the decision of a district judge or magistrate in open court (normally a full trial). It was clear that some of the more lengthy and cumbersome procedures were not essential for the purpose of appeals from a district judge in chambers. Accordingly, the new Order 55C provides a faster track of appeal for this purpose.⁶⁶ Order 55D, as already mentioned, caters to the more involved process of an open court hearing.

⁶⁰ *Supra*.

⁶¹ The amendments concern items 61-70 in Appendix B to RC, 1996.

⁶² See *supra*, note 3

⁶³ On 1 April, 1996.

⁶⁴ See *supra*, note 3.

⁶⁵ The district court limit before the increase.

⁶⁶ *Supra*, "C. Appeal from the Decision of a District Judge in Chambers to the High Court".

The second question which has been posed was met by introducing elements of the procedure governing appeals from the High Court to the Court of Appeal pursuant to Order 57. The requirement that the parties file an appellant's and respondent's "Case" ensures that the High Court judge hearing the appeal pursuant to Order 55D will be in as advantageous a position as the Court of Appeal. The "Cases" will enable the High Court to be fully cognisant of the issues to be raised on appeal so that a more thorough adjudication can be achieved. As proceedings before the Court of Appeal has shown, the "Case" process shortens the hearing by eliminating the additional time which would otherwise be necessary for the court to grasp the issues and arguments in the absence of written presentation. As the court is aware of the matters to be raised before the hearing, it can require argument on any point it regards as essential to its determination and decline to hear argument which is insignificant, thereby saving the court's time. The "Case" system is a very significant improvement on the petition of appeal and the respondent's notice (the procedures under the former Order 55C). The petition merely required the appellant to state "particulars of the matters of law of fact" arising out of the appeal "without argument or narrative".⁶⁷ The respondent could state in his notice the "grounds" of his contention that the decision appealed against should be varied. The petition and respondent's notice did not provide the High Court with sufficient information for the purpose of a thorough understanding of the issues before the hearing of the appeal.

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⁶⁷ See the former O 55C, r 5(2), RC, 1996.

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