



REPUBLIC OF NAURU

Appeals Act 1972

As in force from 15 April 2011

This compilation comprises Act No. 1 of 1972 as amended and in force from 15 April 2011 (being, at the time the compilation was prepared on 17 May 2011, the date of commencement of the most recent amendment).

The notes section at the end of the compilation includes a reference to the law by which each amendment was made. The Table of Amendments in the notes section sets out the legislative history of individual provisions.

The operation of amendments that have been incorporated in the text of the compilation may be affected by application provisions that are set out in the notes section at the end of the compilation.

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REPUBLIC OF NAURU

Appeals Act 1972

An Act to provide for appeals from the District Court and the Supreme Court

PART I – PRELIMINARY

1 Short title and commencement

This Act may be cited as the *Appeals Act 1972* and shall come into force on a date to be notified by the Minister in the Gazette.

2 Interpretation

In this Act, unless the context otherwise requires:

‘*appeal*’ for the purpose of Parts III and VI of this Act includes a motion for a new trial or to set aside any decision;

‘*appellant*’ includes a person who has been convicted and desires to appeal under this Act and, where the Director of Public Prosecutions is, or is deemed to be, a party to any proceedings and desires to appeal under this Act, includes the Director of Public Prosecutions;

‘*Clerk*’ means the Clerk of the District Court appointed under section 15 of the *Courts Act 1972*;

‘*conviction*’ includes a special finding under section 111 of the *Criminal Procedure Act 1972* that an accused person was not guilty by reason of insanity;

‘*count*’ has the same meaning as in the *Criminal Procedure Act 1972*;

‘*decision*’ includes an order, judgment or decree;

‘*public prosecutor*’ has the same meaning as in the *Criminal Procedure Act 1972*;

'Registrar' means the Registrar of the Supreme Court appointed under section 6 of the *Courts Act 1972*;

'sentence' includes any penalty, punishment, disqualification or order for payment of costs or compensation or for restitution imposed, ordered or made by a Court in respect of any person upon his conviction or by the Supreme Court in exercise of its powers under Part II of this Act;

'the High Court' means the High Court of Australia established under the Constitution of Australia.

PART II – APPEALS FROM THE DISTRICT COURT IN CRIMINAL CAUSES

3 Appeal to the Supreme Court

- (1) Save as hereinafter provided, a person convicted on the trial of a cause held before the District Court may appeal under this Part of this Act to the Supreme Court against either his conviction or the sentence passed on his conviction or both such conviction and sentence.
- (2) Where the District Court has ordered the acquittal of any person in any cause, the Director of Public Prosecutions or, with his sanction in writing, any person who prosecuted the case before the District Court, may appeal under this Part of this Act to the Supreme Court against the order of acquittal.
- (3) Where the District Court has convicted any person in any cause, the Director of Public Prosecutions may appeal to the Supreme Court against the sentence passed on such person's conviction.
- (4) Save as hereinafter provided, a prosecutor ordered by the District Court to pay costs or compensation may appeal to the Supreme Court against that order.
- (5) Where a person convicted on a trial by the District Court is not represented by a barrister and solicitor or a pleader he shall be informed by the magistrate having charge of the proceedings of his right of appeal at the time when sentence is passed.
- (6) An appeal to the Supreme Court may be on a matter of fact or of mixed law and fact, or on a matter of law.
- (7) For the purpose of this Part of this Act the extent of a sentence shall be deemed to be a matter of law.

- (8) The Director of Public Prosecutions shall be deemed to be a party to any criminal cause or matter in which the proceedings were instituted and carried on by a public prosecutor.

4 Limitation of appeal on plea of guilty and in petty cases

- (1) Save with the leave of the Supreme Court, an appeal may not be brought by a person who has pleaded guilty and has been convicted on that plea by the District Court, except as to the extent or legality of the sentence.
- (2) Save with the leave of the Supreme Court, an appeal may not be brought against conviction or, except by the Director of Public Prosecutions, against sentence or order for payment of the costs or compensation where in the District Court no sentence of imprisonment has been imposed, otherwise than in default of payment of a fine or costs, and no fine exceeding ten dollars has been imposed and no order of disqualification has been made.
- (3) No conviction or sentence which would not otherwise be liable to appeal shall be appealable merely on the ground that the person convicted is ordered to find security to keep the peace.
- (4) For the purposes of this section *'fine'* includes costs and compensation ordered by the District Court to be paid by a prosecutor or by a person convicted on a trial held before it.

5 Appeal to be by way of petition

- (1) Every appeal shall be in the form of a petition in writing signed by the appellant or by his barrister and solicitor or pleader and shall be presented to the Clerk within fourteen days of the date of the decision appealed against:

Provided that a magistrate of the District Court or a judge of the Supreme Court may, at any time for good cause, enlarge the period of limitation prescribed by this section.

- (2) For the purposes of this section and without prejudice to its generality, *'good cause'* shall be deemed to include:
- (a) a case where the barrister and solicitor or pleader engaged by the appellant was not present at the hearing before the District Court and for that reason requires further time for the preparation of the petition; and

- (b) any case in which a question of law of unusual difficulty is involved.

6 Form and contents of petition

- (1) Every petition shall contain in a concise form the grounds upon which it is, alleged that the District Court has erred.
- (2) If the appellant is not represented by a barrister and solicitor or pleader the petition may be prepared by the Clerk.
- (3) If the appellant is in prison custody and is not represented by a barrister and solicitor or pleader, the petition may be prepared by the officer in charge of the prison and forwarded by him to the District Court.
- (4) Additional grounds of appeal may be filed by leave of the Supreme Court at any time not later than three days before the date fixed for the hearing of the appeal in accordance with section 9 of this Act.
- (5) Where two or more persons have been jointly tried and convicted and their interests do not conflict, one petition of appeal may be presented on behalf of all of them:

Provided that in such a case the Supreme Court may hear the appeals separately or together as seems just.

- (6) Except by leave of the Supreme Court it shall not be lawful for the appellant on the hearing of the appeal to allege, or give evidence on, any ground of appeal not included in the petition or in the additional grounds, if any, filed under subsection (4) of this section.
- (7) If the case is one which requires the leave of the Supreme Court under section 4 of this Act, the application for leave to appeal shall be endorsed on the petition.
- (8) For the purposes of considering or preparing a petition of appeal a person entitled to appeal or his barrister and solicitor or pleader, the Clerk or an officer in charge of a prison shall be entitled to peruse the original record of the proceedings at such time as the Registrar or the Resident Magistrate may allow.

7 Petition to be forwarded to the Supreme Court

Upon receiving a petition of appeal the Clerk shall forthwith forward the petition together with the record of the proceedings to the Registrar.

8 Summary dismissal of appeal

- (1) When the Registrar has received the petition of appeal and the record of proceedings a judge shall peruse it.
- (2) Where an appeal is brought on one or more matters of fact alone or on the ground that the sentence is excessive and it appears to the judge that the evidence is sufficient to support the conviction and that there is no material in the circumstances of the case which could raise a reasonable doubt whether the conviction was right or lead him to the opinion that the sentence ought to be reduced, the appeal may, without being set down for hearing, be summarily dismissed by an order of the judge certifying that he has perused the record and is satisfied that the appeal has been lodged without any sufficient ground of complaint.
- (3) Whenever an appeal is summarily dismissed notice of such dismissal shall forthwith be given by the Registrar to the appellant or his barrister and solicitor or pleader.

9 Notice of hearing

If the Supreme Court does not dismiss the appeal summarily the Registrar shall:

- (a) enter the appeal for hearing;
- (b) serve on the parties a notice setting out the date and time of the hearing;
- (c) supply the respondent with a copy of the petition and a copy of the judgement or order appealed against;
- (d) except when the appeal is against sentence only, supply the respondent with a copy of the proceedings; and
- (e) where additional grounds of appeal are filed by the appellant under the provisions of subsection (4) of section 6 of this Act, serve notice on the respondent of such filing and supply the respondent with a copy of the document containing such additional grounds of appeal.

10 Admission to bail and suspension of sentence pending appeal

- (1) Where a convicted person presents or declares his intention of presenting a petition of appeal, the Supreme Court or the District Court may, if in the circumstances of the case it thinks fit, order that he be released on bail, with or without securities, or if such person is not released on bail shall, at the request of such person, order that the execution of the sentence or order against which the appeal is pending be suspended pending the determination of the appeal. If such order be made before the petition of appeal is presented and no petition is presented within the time allowed, the order for bail or suspension shall forthwith lapse.
- (2) Where the appellant is released on bail or the sentence is suspended, the time during which he is at large after being so released or during which the sentence has been suspended shall be excluded in computing the term of any sentence to which he is for the time being subject.
- (3) An appellant whose sentence is suspended but who is not admitted to bail shall during the period of such suspension be treated in like manner as a prisoner awaiting trial.

11 Suspension of order for restoration or payment of compensation, expenses, etc.

- (1) The operation of any order made on conviction by the District Court for the payment of compensation or of any of the expenses of the prosecution or for the restoration of any property to any person, and the operation of any provision of any law re-vesting in the original owner or his personal representative the property in stolen goods in case of any such conviction, shall, unless the District Court directs to the contrary in any case in which in its opinion the title to the property is not in dispute, be suspended:
 - (a) in every case until the expiration of fourteen days after the date of the conviction and of any further time allowed for appealing; and

- (b) in any case where notice of appeal or leave to appeal is given within fourteen days after the date of conviction or any further time allowed for appealing, until the determination of the appeal;

and in a case where the operation of any such order or provision is suspended until the determination of the appeal the order or provision shall not take effect as to the property in question if the conviction is quashed on appeal.

- (2) The Supreme Court may by order annul or vary an order made in the trial for the payment of compensation or of any of the expenses of the prosecution or for the restitution of any property to any person, even though the conviction is not quashed, and the order, if annulled, shall not take effect and, if varied, shall take effect as so varied.

12 Costs

- (1) The Supreme Court may make such order as to the costs to be paid by either party to an appeal as may seem just.
- (2) Such costs shall be recoverable in the manner provided by section 118 of the *Criminal Procedure Act 1972*, as though the order for their payment had been made under the provisions of that section.

13 Discontinuance of appeal

- (1) An appellant may by giving notice in writing to the Registrar discontinue his appeal at any time before the date of hearing and, upon such discontinuance and without prejudice to the power of the Supreme Court to make an order for costs, no further steps shall be taken in the appeal and the District Court may proceed to enforce the decision appealed from.
- (2) The Registrar shall send to the respondent a copy of the notice of discontinuance.

14 Determination of appeal by the Supreme Court in ordinary cases

- (1) At the hearing of an appeal the Supreme Court shall hear the appellant or his barrister and solicitor, pleader, if he appears, and the respondent or his barrister and solicitor or pleader, if he appears.

- (2) The Supreme Court on any appeal against conviction shall allow the appeal if it thinks that the verdict should be set aside on the ground that:
- (a) it is unreasonable or cannot be supported having regard to the evidence;
 - (b) any question of law has been wrongly decided; or
 - (c) there was a miscarriage of justice,

and in any other case shall dismiss the appeal:

Provided that the Supreme Court may, notwithstanding that it is of the opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has occurred.

- (3) Subject to the special provisions of this Act, the Supreme Court shall, if it allows an appeal against conviction, quash the conviction and either direct a judgment and verdict of acquittal to be entered or, if the interests of justice so require, order a new trial.
- (4) At the hearing of an appeal the Supreme Court may, If it thinks that a different sentence should have been passed, quash the sentence passed by the District Court and pass in substitution therefor such other sentence, whether more or less severe, which the District Court could lawfully have passed as it thinks ought to have been passed; any such sentence passed by the Supreme Court shall, for the purposes of this Act, be deemed to have been passed by the District Court, save that no further appeal shall lie thereon to the Supreme Court.
- (5) The Supreme Court on an appeal against acquittal shall allow the appeal if it thinks that the verdict should be set aside on the ground that:
- (a) the facts found by the District Court to have been proved establish the offence charged or any other offence of which the accused person could have been convicted on the trial of that charge;
 - (b) on the evidence before it the District Court could not properly have decided that the facts establishing any such offence as is referred to in the preceding paragraph had not been proved;

- (c) the District Court wrongly excluded evidence tendered by the prosecution which, if admitted and believed by the Court, would have been likely to result in the Court finding facts proved as is referred to in paragraph (a);
- (d) the District Court wrongly decided at the close of the case for the prosecution that a case had not been made out against the respondent sufficiently to require him to make a defence in respect of the charge or any count of the charge; or
- (e) the District Court wrongly decided that the charge was defective and did not record its findings of the facts;

and in any other case shall dismiss the appeal. Where the appeal is allowed on ground (a) or ground (b), the Court shall, unless it is a proper case for the charge to be dismissed or the accused person to be discharged under any written law, enter a conviction in respect of the offence of which the accused person has been proved to be guilty and of which he could have been convicted on the trial of the charge; where the appeal is allowed on ground (c), it shall order that a new trial be held before the District Court; and, where the appeal is allowed on ground (d) or ground (e), it shall order, if the trial was not commenced, that the charge be tried and, if the trial was commenced, that the trial be continued and completed in the District Court or, if for any reason the magistrate, or any of the magistrates who presided at the trial will not be able to preside at the continued trial, that a new trial be held before the District Court.

- (6) Where under the last preceding subsection the Supreme Court has set aside a verdict of acquittal and entered a conviction, it shall proceed to pass sentence on the person so convicted in respect of the offence of which it has convicted him and such sentence shall, for the purposes of this Act; be deemed to have been passed by the District Court, save that no further appeal shall lie thereon to the Supreme Court.

15 Powers of the Supreme Court in special cases

- (1) If it appears to the Supreme Court that an appellant, though not properly convicted on any count, has been properly convicted on any other count, the Court may, on the count on which it considers that the appellant has been properly convicted, affirm the sentence passed by the District Court or pass in substitution therefor such other sentence, whether more or less severe, which the District Court could lawfully have passed, as it thinks proper.

- (2) Where the appellant has been convicted of an offence and the District Court could on the charge have found him guilty of some other offence, and on the findings of the District Court it appears to the Supreme Court that the District Court must have been satisfied of facts which proved him guilty of that other offence, the Supreme Court may, instead of allowing or dismissing the appeal, substitute for the verdict found by the District Court a verdict of guilty of that offence and pass in substitution for the sentence passed by the District Court such sentence, whether more or less severe, as the District Court could lawfully have passed for that other offence.
- (3) If on any appeal it appears to the Supreme Court that, although the appellant committed the act or made the omission charged against him he was not of sound mind at the time when the act or omission alleged to constitute the offence occurred, so as not to be responsible therefor according to law, the Court may quash the conviction and set aside the sentence passed at the trial and order the appellant to be kept in custody in such place and in such manner as the Court shall direct until the President's pleasure be known and the President may thereupon and from time to time give such order for the safe custody of the appellant during such pleasure in such place and in such manner as to the President may seem fit.
- (4) Any sentence passed or order made by the Supreme Court under the provisions of this section shall, for the purposes of this Act, be deemed to have been passed by the District Court, save that no further appeal shall lie thereon to the Supreme Court.

16 Adjourment

- (1) The Supreme Court may at any stage adjourn the hearing of an appeal.
- (2) An appeal may be heard and any judgment or order thereon made by one judge:

Provided that, where the Court is constituted by more than one judge and the Court is equally divided in opinion, the appeal shall be heard de novo by the Court constituted by three judges.

17 Further evidence

- (1) In dealing with an appeal from the District Court the Supreme Court, if it thinks additional evidence is necessary, may either take such evidence itself or direct it to be taken by the District Court.

- (2) Where the additional evidence is taken by the District Court, that Court shall certify such evidence to the Supreme Court, which shall thereupon proceed to dispose of the appeal.
- (3) Evidence taken in pursuance of this section shall be taken as if it were evidence taken at a trial before the District Court.

18 No appeal on point of form or matter of variance unless raised in the District Court

Save where the appellant was not represented at the hearing before the District Court by a barrister and solicitor or a pleader, no finding, sentence or order passed by the District Court shall be reversed or altered on appeal, or revision under the provisions of section 23 of this Act, on account of any objection to any information, complaint, charge, summons or warrant for any alleged defect therein in matter of substance or form or for any variance between such information, complaint, charge, summons or warrant and the evidence adduced in support thereof, unless it be found that such objection was raised before the District Court and that, notwithstanding that it was shown to the District Court that by such variance the appellant had been deceived or misled, the District Court refused to adjourn the hearing of the case to a future day.

19 Supreme Court order on appeal to be certified to the District Court

When a case is decided on appeal by the Supreme Court, the Registrar shall certify its judgment or order to the District Court which shall thereupon make such orders as are conformable to the decision of the Supreme Court and shall take such steps as may be necessary to enforce such decision.

20 Right of appellant to be present

An appellant, notwithstanding that he is in custody, shall be entitled to be present, if he desires it, at the hearing of his appeal under the provisions of this Part of this Act.

21 Power of the Supreme Court to call for records

The Supreme Court may call for and examine the record of any criminal cause or matter of the District Court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of the District Court.

21A The Director of Public Prosecutions may require record to be sent to the Supreme Court

- (1) Where:
- (a) the Director of Public Prosecutions considers that:
 - (i) any finding, sentence or order of the District Court in any criminal cause or matter is illegal or improper or that there was any irregularity in any proceedings in any such cause or matter; and
 - (ii) the interests of justice require that the Supreme Court should examine the record of that cause or matter and exercise its powers under section 23; and
 - (b) no appeal has been commenced by any person in respect of that cause or matter;

the Director of Public Prosecutions may, by notice in writing under his hand, require the resident magistrate to send to the Supreme Court the record of that cause or matter.

- (2) Every notice under the preceding subsection shall include a brief statement of the Director's reasons for the requirement therein.
- (3) Upon receiving a notice under subsection (1), the resident magistrate shall send to the Supreme Court the record of the cause or matter to which it relates, together with a copy of the notice.

22 Power of the Resident Magistrate to call for records of the District Court and to report to the Supreme Court

- (1) The Resident Magistrate may call for and examine the record of any criminal cause or matter of the District Court constituted by three lay magistrates for the purpose of satisfying himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of the Court.
- (2) If the Resident Magistrate acting under the last preceding subsection considers that any finding, sentence or order of the District Court is illegal or improper, or that any such proceedings are irregular, he shall forward the record, with such remarks thereon as he thinks fit, to the Supreme Court.

23 Powers of the Supreme Court on revision

- (1) In the case of any proceedings in the District Court the record of which has been called for or which has been forwarded by the Resident Magistrate under the provisions of section 22 of this Act, or which otherwise comes to its knowledge, the Supreme Court may:
 - (a) in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 14, 15 and 17 of this Act and may increase the sentence; and
 - (b) in the case of any other order, other than an order of acquittal, alter or reverse such order.
- (2) No order under this section shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by a barrister and solicitor or a pleader in his own defence.
- (3) Where the Supreme Court quashes the sentence passed by the District Court and passes sentence under the provisions of this section, such sentence shall, for the purposes of this Act, be deemed to be a sentence passed by the District Court, save that no further appeal shall lie thereon to the Supreme Court.
- (4) Nothing in this section shall be deemed to authorise the Supreme Court to convert a finding of acquittal into one of conviction.
- (5) Subject to section 21A, no proceedings by way of revision shall be entertained at the instance of any party to the proceedings.
- (6) Where the record of any criminal cause or matter has been called for under section 21, or has been sent or forwarded to the Supreme Court under section 21A or section 22, the resident magistrate, a judge or, if there is no judge present in Nauru, the Registrar may, if he considers that the interests of justice so require, suspend any sentence imposed or order made in that cause or matter upon such terms and for such period as he considers reasonable and, where a sentence of imprisonment is suspended, may, if he thinks fit, order that any person subject to that sentence be released on bail, with or without sureties. In any such case the time during which that person is at large after being so released shall be excluded in computing the term of the sentence.

24 Discretion of the Supreme Court as to hearing parties

No party shall have any right to be heard either personally or by a barrister and solicitor or a pleader before the Supreme Court when it is exercising its powers of revision:

Provided that the Court may, if it thinks fit, where exercising such powers, hear any party personally or by a barrister and solicitor or a pleader and that nothing in this section shall be deemed to affect subsection (2) of the last preceding section.

25 Number of judges on revision

All proceedings before the Supreme Court in the exercise of its revisional jurisdiction may be heard and any judgment or order thereon may be made or passed by one judge sitting in Chambers:

Provided that where the Court is constituted by more than one judge and the Court is equally divided in opinion, the appeal shall be heard *de novo* by the Court constituted by three judges;

And provided further that, where the Court decides to hear any party, the hearing shall be in open court.

26 Supreme Court order on revision to be certified to the District Court

Where a case is revised by the Supreme Court the Registrar shall certify its decision or order to the District Court which shall thereupon make such orders as are conformable to the decision so certified and shall take such steps as may be necessary to enforce such decision or order.

PART III – APPEALS FROM THE DISTRICT COURT IN CIVIL CAUSES AND MATTERS

27 Appeal to the Supreme Court in civil causes and matters

An appeal shall lie under this Part of this Act in any cause or matter, not being a criminal proceeding, to the Supreme Court against any final decision of the District Court.

28 Appeal to be by way of petition

- (1) Every appeal shall be in the form of a petition in writing signed by the appellant or by his barrister and solicitor or pleader and shall be lodged with the Clerk.
- (2) The petition shall state whether the whole or only part of the decision is complained of and in the latter case shall specify which part.
- (3) A copy of the petition shall be served by or on behalf of the appellant on all parties directly affected by the appeal either before or immediately after the petition is lodged in the Supreme Court, and it shall not be necessary to serve parties not so affected.
- (4) The Supreme Court may direct notice of the appeal to be served on all or any parties to the proceedings or upon any person not a party, and may adjourn the hearing of the appeal on such terms as may seem just, and may give such judgment and make such order as might have been given or made if the persons served with the notice had originally been parties.

29 Time for appeal

No appeal shall be brought after the expiration of twenty-one days from the day on which the decision of the District Court was given or made or after the expiration of such further time as may be allowed by the Supreme Court or a judge on application made within four months after the expiration of the said twenty-one days.

30 Security for appeal

- (1) Except where the Resident Magistrate orders otherwise on the ground of the appellant's poverty, the appellant shall give security to the satisfaction of the Resident Magistrate to abide the event of the appeal. The security shall be for such amount, not exceeding one hundred dollars, as may be estimated by the Resident Magistrate to be the amount of the costs likely to be awarded in respect of the appeal in the event of its being dismissed.
- (2) If no such security as is required under the last proceeding subsection is given within seven days of the lodging of the petition of appeal, or within such further time as the Resident Magistrate may permit, the petition of appeal shall be deemed to be abandoned.

- (3) As soon as security is given as provided in the foregoing provisions of this section, the Clerk shall forward to the Registrar:
 - (a) a copy of the pleadings;
 - (b) a copy, signed by the magistrate, of the record of the proceedings made by the magistrate; and
 - (c) all affidavits and exhibits remaining in his custody.

31 Cross-appeals

- (1) It shall not be necessary for a respondent to lodge a petition by way of cross-appeal, but if a respondent intends upon the hearing of the appeal to contend that the decision of the District Court should be varied, he shall give notice of his intention to any parties who may be affected by such contention and to the Registrar.
- (2) The omission to give such notice within a reasonable time shall not diminish the powers conferred on the Supreme Court but may, at the discretion of that Court, be a ground for an adjournment of the appeal or for a special order as to costs.

32 Procedure where appeal not prosecuted

- (1) If the appellant does not appear at the time appointed for hearing the appeal and is not represented by a barrister and solicitor or a pleader, his appeal shall, unless the Supreme Court for good reason orders otherwise, stand dismissed.
- (2) If the appellant does not prosecute his appeal with due diligence, the respondent may by summons apply to the Supreme Court to dismiss the petition of appeal and the Supreme Court may dismiss the petition accordingly.
- (3) In any cause to which this section applies the Supreme Court may order the payment by the appellant to the respondent of such amount for costs as it thinks proper.

33 Powers of the Supreme Court

- (1) On the hearing of an appeal under this Part of this Act the Supreme Court may:
 - (a) order a rehearing of the case in the District Court upon such terms as it thinks fit;
 - (b) order that the case be referred back to the District Court for amendment;
 - (c) order judgment to be entered in the District Court for either party; or
 - (d) make a final or other order on such terms as it thinks proper to ensure the determination on the merits of the real questions in dispute between the parties;

and it may make such order as to costs as it thinks proper.

- (2) The powers conferred by this section may be exercised by the Supreme Court notwithstanding that by the petition of appeal the appellant sought that part only of the decision be reversed or varied, and such powers may be exercised in favour of all or any of the respondents or parties, although those respondents or parties may not have appealed from or complained of the decision.

34 Supreme Court order to be certified to the District Court

When a case is decided on appeal by the Supreme Court, the Registrar shall certify its decision to the District Court which shall thereafter be deemed to have entered such judgment, or made such order, as accords with that decision, save that no further appeal shall lie thereon to the Supreme Court.

PART IV – PROCEDURE AND RULES

35 Appeals to be by way of rehearing

- (1) All appeals under Parts II and III of this Act shall be by way of rehearing.
- (2) Where any question of fact is involved in any appeal under Parts II and III of this Act, the evidence taken in the District Court bearing on the question shall, subject to the provisions of

section 17 of this Act, be brought before the Supreme Court as follows:

- (a) as to any evidence given orally, by the production of a copy of the written record made by the magistrate or such other materials as the Supreme Court may deem expedient;
 - (b) as to any evidence received by written statements or by affidavits and as to any exhibits, by the production of the written statements and affidavits and such of the exhibits as may have been forwarded by the Clerk and by the production by the parties to the appeal of such exhibits as are in their custody.
- (3) Where the language used by the District Court at the hearing of the cause or matter to which any appeal under Parts II and III of this Act relates was Nauruan, the record made by the magistrate and any affidavits and exhibits in the Nauruan language shall be translated into the English language by the Clerk before the record is transmitted to the Registrar and shall be certified by the Clerk to be a correct translation; and any party to the appeal may, on payment of the prescribed fee, obtain from the Registrar a copy of that translation.

36 Rules for appeals

The Chief Justice may make rules of court for carrying Parts II, III and IV of this Act into effect, for regulating generally the practice and procedure under Parts II, III and IV of this Act and for prescribing fees and costs which may be demanded and received by the Clerk and the Registrar in connection with such practice and procedure.

PART V – APPEALS FROM THE SUPREME COURT IN CRIMINAL CAUSES

37 Appeals from the Supreme Court in criminal causes

- (1) A person convicted on a trial held before the Supreme Court may appeal to the High Court:
 - (a) against his conviction on any ground of appeal which involves a question of fact alone, a question of mixed law and fact or a question of law alone; and

- (b) against the sentence passed on his conviction, unless the sentence is one fixed by law;

and the High Court has jurisdiction to hear and determine the appeal.

- (2) The High Court may, if it thinks fit, grant to any party to an appeal from the District Court to the Supreme Court under Part II of this Act leave to appeal to the High Court against the decision of the Supreme Court therein upon such grounds as the High Court may allow and the Full Court of the High Court has jurisdiction to hear and determine the appeal; but no appeal shall lie against the confirmation by the Supreme Court of an order of acquittal by the District Court.
- (3) For the purposes of the last preceding subsection, there shall be deemed to have been an appeal from the District Court to the Supreme Court under Part II of this Act in any cause where the Supreme Court has exercised its revisional powers and the decision of the Supreme Court in the exercise of its revisional jurisdiction shall be deemed to be the decision of the Supreme Court in the appeal.

38 Powers of High Court on hearing of appeal

- (1) On the hearing of any appeal under this Part the High Court may affirm, reverse or modify the judgment appealed from and may give such judgment as ought to have been given in the first instance or may remit the cause, together with its judgment or order thereon, to the Court of first instance for determination, by the way of trial *de novo* or re-hearing, with such directions as the High Court may think necessary.
- (2) The High Court may, notwithstanding that it may be of the opinion that the point raised in an appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has in fact occurred.

39 Stay of sentence and orders

- (1) Sentence of death and any order made by the Supreme Court on conviction, or made or confirmed by the Supreme Court under the provisions of Part II of this Act, for the payment of compensation or of any of the expenses of the prosecution or for the restoration of any property to any person, and the operation of any provision of any law re-vesting in the original owner or his personal representative the property in stolen

goods in case of any such conviction, shall be stayed in every case:

- (a) until the expiration of twenty-one days after the date on which the Supreme Court imposed, made or confirmed it;
- (b) where any period longer than twenty-one days is allowed for applying under this Part to the High Court for leave to appeal or for filing a notice of appeal under this Part to the High Court, until the expiration of that period;
- (c) where an application has been made under this Part to the High Court for leave to appeal, until the application has been heard and determined by the High Court or discontinued and, if leave to appeal is granted, for a further period until the expiration of the time allowed for filing the notice of appeal; and
- (d) where a notice of appeal to the High Court under this Part has been filed in a Registry of the High Court, until the appeal has been heard and determined by the High Court or discontinued;

but, if in any cause the Supreme Court is satisfied that the title to any property to which any such order relates or in respect of which such provision of the law operates is not in dispute, it may direct that the order or the operation of such provision of the law shall not be stayed insofar as it relates to such property.

- (2) Where in respect of any cause an application for leave to appeal under this Part has been made or notice of appeal under this Part has been filed, the sentence and any order made upon the conviction or by the Supreme Court on an appeal under Part II of this Act, other than an order quashing a conviction, shall be stayed, unless the Supreme Court otherwise orders:
 - (a) where an application has been made for leave to appeal, until the application has been heard and determined by the High Court or discontinued and, if leave to appeal is granted, for a further period until the expiration of the time allowed for filing the notice of appeal; and
 - (b) where notice of appeal has been filed, until the appeal has been heard and determined by the High Court or discontinued;

but the Supreme Court shall not order the execution of a sentence of death until the appeal has been determined or discontinued.

- (3) The Supreme Court may, if it thinks fit, make the stay of a sentence of imprisonment conditional upon the person subject to such sentence entering into such a bail recognizance, with or without sureties, as it considers reasonable.
- (4) The High Court may set aside any order of the Supreme Court that a sentence or order is not to be stayed or is to be stayed conditionally upon the person subject to such sentence entering into a bail recognizance and, in any such case, may make the stay of a sentence of imprisonment conditional upon the person subject to such sentence entering into such a bail recognizance, with or without sureties, as the High Court considers reasonable.
- (5) A person whose sentence of imprisonment has been stayed under subsection (2) or subsection (4) of this section conditionally upon his entering into a bail recognizance shall not depart Nauru without leave of the Supreme Court. Any police officer having reason to believe that any such person intends to depart Nauru without such leave may arrest him without warrant and take him forthwith before the Supreme Court or, if the Supreme Court is not in session, before the Registrar. If the Court or the Registrar upon proper inquiry finds that such person did intend to depart Nauru without the leave of the Supreme Court, the Court or the Registrar may commit such person to prison to be detained therein until his appeal, or his application for leave to appeal, is determined by the High Court or discontinued.
- (6) An appellant or applicant for leave to appeal whose sentence of imprisonment has not been stayed or who, if it has been stayed conditionally upon his entering into a bail recognizance, has not entered into such a recognizance shall, if he makes application therefor, be treated as a prisoner awaiting trial; but in that event eight weeks of the time during which he is in custody and is treated as a prisoner awaiting trial in pursuance of the provisions of this subsection, or the whole of that time if it is less than eight weeks, shall be disregarded in computing the term of his sentence.
- (7) Where a sentence of death is stayed under this section, the person subject to that sentence shall be detained in prison during the period for which it is stayed.

40 Director of Public Prosecutions to be party to certain appeals

For the purposes of this Part of this Act, the Director of Public Prosecutions shall be deemed to be a party to any criminal cause in which the proceedings were instituted and carried on by a public prosecutor.

41 Legal aid

- (1) A Justice of the High Court or a judge of the Supreme Court may at any time grant legal aid to a party to an appeal, or to an application for leave to appeal, under this Part to enable such party to have a written case prepared for him by a barrister and solicitor of the Supreme Court or to be represented by counsel at the hearing of the appeal or the application by the High Court, if, in the opinion of the Justice or the judge, it appears desirable in the interests of justice that such party should receive such aid having regard to his financial means, the nature of the cause and the grounds of the appeal or the application.
- (2) The expenses of legal aid granted to an appellant under this section shall be paid out of the Treasury Fund up to an amount allowed by the High Court but subject to any provision as to rates and scales of payment made by rules of court.

42 Appellant not entitled to attend hearing if sentenced to imprisonment

- (1) A party to an appeal under this Part who has been sentenced to imprisonment in the cause to which the appeal relates or in any other cause, unless such imprisonment has been served, shall not be entitled to be present at the hearing of the appeal but shall be entitled, at his own expense or with legal aid if it is granted, to be represented at the hearing by counsel.
- (2) The High Court may exercise its powers under section 38 of this Act notwithstanding that any party to an appeal has not attended or been represented by counsel at the hearing of the appeal.

42A Application for leave to appeal

An applicant for leave to appeal under this Part shall present his case and his argument to the High Court in writing or by counsel.

43 Costs of appeal

On the hearing and determination of an appeal, or of an application for leave to appeal, under this Part, the High Court may order the payment of such costs as it thinks just.

PART VI – APPEALS FROM THE SUPREME COURT IN OTHER CAUSES AND MATTERS

44 Appeals from the Supreme Court

Subject to the provisions of section 45, an appeal shall lie to the High Court:

- (a) against any final judgment, decree or order of the Supreme Court in any cause or matter, not being a criminal proceeding or an appeal from any other Court or tribunal;
- (b) with the leave of the trial judge or the High Court, against any judgment, decree or order, not being a final judgment, decree or order, of the Supreme Court in any cause or matter, not being a criminal proceeding or an appeal from any other Court or tribunal; and
- (c) with the leave of the High Court, against any judgment, decree or order of the Supreme Court in the exercise of its appellate jurisdiction under Part III of this Act or under any other written law, except Part II of this Act;

and the High Court has jurisdiction to hear and determine the appeal.

45 No appeal in certain cases

No appeal shall lie under this Part:

- (a) where the appeal involves the interpretation or effect of the Constitution;
- (b) in respect of the determination by the Supreme Court of a question concerning the right of a person to be, or to remain, a member of the Parliament;
- (c) in respect of a judgment, decree or order given or made by consent;

- (d) in respect of a judgment, decree or order given or made by the Supreme Court upon an appeal from the Nauru Lands Committee or any successor to that Committee that performs the functions performed by the Committee immediately prior to the date on which this Part of this Act came into force;
- (e) from an order allowing an extension of time for appealing from a decision;
- (f) from an order of a judge giving unconditional leave to defend an action;
- (g) from the decision of the Supreme Court or of any judge thereof where it is provided by any written law that such decision is to be final; or
- (h) from an order absolute for the dissolution or nullity of marriage in respect of any party who, having had time and opportunity to appeal from the decree nisi on which the order was founded, has not appealed from that decree.

45A Application to the High Court for leave to appeal

An applicant to the High Court for leave to appeal under this Part shall present his case and his argument to the High Court either in writing or by his counsel.

46 Powers of High Court on hearing of appeal

Upon the hearing of any appeal under this Part of this Act the High Court may affirm, reverse or modify the judgment or order appealed from and may give such judgment or make such order as ought to have been given in the first instance, or remit the case, together with its judgment or order thereon, to the Court of first instance for determination by way of trial *de novo* or rehearing, with such directions as the High Court may think necessary.

PART VII – GENERAL PROVISIONS RELATING TO APPEALS TO THE HIGH COURT

47 Quorum of judges

The jurisdiction of the High Court to hear and determine appeals and applications for leave to appeal under Parts V and VI of this

Act shall be exercised by a Full Court consisting of any two or more Justices of the High Court sitting together.

48 Decision in cases of difference of opinion

Where the Justices sitting as a Full Court to hear and determine appeals and applications for leave to appeal under Parts V and VI of this Act are divided in opinion as to the decision to be given on any question, the question shall be decided according to the decision of the majority, if there is a majority; but, if the Court is equally divided in opinion, the decision appealed from shall be affirmed or the application for leave to appeal refused, as the case may be.

49 Powers of the High Court

- (1) For the purposes of and incidental to the hearing and determination of appeals under Parts V and VI of this Act the High Court shall have all the power, authority and jurisdiction which it has for the purposes of and incidental to the hearing and determination of appeals from the Supreme Courts of the States of Australia.
- (2) The High Court may, if it thinks it necessary or expedient in the interest of justice in an appeal under Part V of this Act, order any witnesses who would have been compellable witnesses at the trial to attend and be examined before any judge or the Registrar of the Supreme Court or any other person appointed by the Supreme Court for the purpose and allow the admission of any depositions so taken as evidence before the High Court.

50 Place of hearing

Appeals and applications for leave to appeal under Parts V and VI of this Act shall be set down for hearing and heard at such place as the High Court may direct.

51 Judgment of High Court

When an appeal, or an application for leave to appeal, has been heard and determined by the High Court, and the Registrar of the Supreme Court has been notified by the Registrar of the High Court of the judgment given and the orders made therein, such judgment and orders shall have force and effect in Nauru as if they were the judgment and orders of the Supreme Court and effect shall be given to them in Nauru accordingly.

52 High Court Rules to govern procedural matters

Save as provided by section 53, procedural matters relating to appeals from the Supreme Court to the High Court shall be governed by Rules of Court relating thereto made under section 86 of the *Judiciary Act 1903* of the Commonwealth of Australia.

53 Rules of Court

The Chief Justice may make Rules of Court to provide for:

- (a) application to a Judge of the Supreme Court for legal aid, and rates and scales of payment in respect of legal aid, in appeals, and applications for leave to appeal, to the High Court under Part V of this Act; and
- (b) the practice and procedure to be followed in respect of applications to the trial judge Under Part VI of this Act for leave to appeal to the High Court.

Notes for Appeals Act 1972

Table of Constituent Legislation

Short title	Number	Certification	Commencement
<i>Appeals Act 1972</i>	1972/01	26.01.1972	27.11.1972 (GN No. 324/1972)
<i>Appeals (Amendment) Act 1974</i>	1974/15	31.12.1974	23.09.1976 (section 4, Act 2011/08)
<i>Appeals (Amendment) Act 1976</i>	1976/12	23.09.1976	23.09.1976
<i>Statute Law Revision Act 2011</i>	2011/08	15.04.2011	15.04.2011

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted
om. = omitted os. = omitted and substituted

Provision affected	How affected
Long title	Am. by Act 2011/08.
Section 2	Am. by Act 1974/15.
Section 12	Subs (2) am. by Act 1974/15.
Section 14	Subs. (3) am. by Act 2011/08. Subs. (5) rs. by Act 1974/15.
Section 15	Subs. (1) am. by Act 2011/08.
Section 21A	Ad. by Act 1974/15.
Section 23	Subs (5) am. by Act 1974/15. Subs (6) ad. by Act 1974/15.
Section 35	Subs (1) am. by Act 1974/15. Subs (2) am. by Act 1974/15. Subs (3) am. by Act 1974/15.
Section 36	Am. by Act 1974/15.
Part V	Ad. by Act 1974/15.
Section 37	Ad. by Act 1974/15.
Section 38	Ad. by Act 1974/15.
Section 39	Ad. by Act 1974/15.
Section 40	Ad. by Act 1974/15.
Section 41	Ad. by Act 1974/15.
Section 42	Ad. by Act 1974/15. Am. by Act 1976/12. Subs (1) am. by Act 2011/08.

Appeals Act 1972

Provision affected	How affected
Section 42A	Ad. by Act 1976/12.
Section 43	Ad. by Act 1974/15.
Part VI	Ad. by Act 1974/15.
Section 44	Ad. by Act 1974/15.
Section 45	Ad. by Act 1974/15.
Section 45A	Ad. by Act 1976/12.
Section 46	Ad. by Act 1974/15. Am. by Act 1976/12.
Part VII	Ad. by Act 1974/15.
Section 47	Ad. by Act 1974/15.
Section 48	Ad. by Act 1974/15.
Section 49	Ad. by Act 1974/15.
Section 50	Ad. by Act 1974/15.
Section 51	Ad. by Act 1974/15.
Section 52	Rs. by Act 1976/12. Am. by Act 2011/08.
Section 53	Ad. by Act 1974/15.