

## **Guideline on Appeal 2022**

In exercise of the power conferred by Sections 30 and 30.1(d) of the Civil and Criminal Procedure Code of Bhutan 2001 as amended in 2021, the Supreme Court of Bhutan hereby adopt the Guideline on Appeal 2022.

### **1. Title, Extent and Commencement**

This Guideline shall:

- (a) be cited as the Guideline on Appeal 2022;
- (b) come into force with effect from such date as notified by the Supreme Court of Bhutan;  
and
- (c) apply to judgments rendered by the courts.

### **2. Purpose**

The purpose of this Guideline is to:

- a) enhance access to justice;
- b) streamline and ensure uniformity of the appeal procedure; and
- c) prevent frivolous appeals.

### **3. Right to Appeal**

- 3.1 A party aggrieved by the decision of a court may appeal to a higher court within 10 working days, excluding the day of judgment.
- 3.2 Any party affected by a final judgment or order of a court shall have the right to appeal in accordance with applicable laws. However, in criminal cases, the party affected can appeal only through state prosecutors.

### **4. Registration of Appeal**

- 4.1 The appellant may file his/her appeal in the registry of the appellate court, or may file a notice of appeal in the registry of the subordinate court with detailed grounds of appeal.
- 4.2 If an appeal is filed in the registry of the subordinate court, it shall submit the case documents to the appellate court.
- 4.3 If an appeal is filed in the registry of the appellate court, it shall require the subordinate

court to submit the case documents to the appellate court if it accepts the appeal.

## **5. Grounds of Appeal**

5.1 The appellant in his/her appeal must present to the appellate court only that portion of the judgment and his/her challenge to that portion, which shall include at least one or more of the following grounds, that the Court:

- a) Made a factual error;
- b) Made an error of law;
- c) Admitted erroneous or excluded evidence, which otherwise would have changed the outcome of the case;
- d) Did not allow the production of relevant evidence;
- e) Not declare a conflict of interest after parties submitted concrete grounds of conflict of interest;
- f) Did not follow due process;
- g) Erroneously assumed jurisdiction;
- h) Erroneously decided *Locus standi*;
- i) Awarded sentence on insufficient evidence; or
- j) Failed to consider the criminal defendants' allegation about fetching confession by torture or coercion.

## **6. Appeal Bond**

6.1 The appellate court, under appropriate circumstances, to secure the plaintiff's or judgment creditor's interest or discourage frivolous delays or prevent unnecessary harassment to a plaintiff or judgment creditor, may order the appellant to furnish an appeal bond as a precondition to an appeal in accordance with Section 109.3 of the Code.

- a. The bond amount or the value of the bond amount shall not be less than 25% of the amount payable to the judgment creditor according to the subordinate court's judgment; and
- b. If the appellant fails to comply with the appellate court's order, the appellate court may dismiss the appeal and order the subordinate court to enforce its judgment.

6.2 In accordance with Section 109.2 of the Code, all awards for damages and other settlements related to the subordinate court's judgment shall be held in abeyance and any injunction or temporary restraining order shall be maintained pending appeal.

6.3 In case of conviction, the trial court shall handover the convict to the Royal Bhutan Police to serve the sentence.

## **7. Exemption from Appeal Bond**

If the appellant has a genuine ground of appeal as prescribed in this Guideline, but is not able to furnish the appeal bond, he/she may approach the Supreme Court which shall convene and deliberate on the matter and issue an order accordingly.

## **8. Appeal Cost**

8.1 In accordance with Sections 111(e) Sub-section 111.1 of the Code, the appellate court may assign costs on the appellant to be paid to the respondent in civil cases, if the appeal is dismissed, in the following manner:

- (a) Nu.45,000.00 in the case of appeals to the Supreme Court if:
  - (i) the appellant is the sole party to the case that has appealed from the trial court till the Supreme Court; and
  - (ii) the appeal is dismissed or if the judgment of the High Court is affirmed by the Supreme Court.
  - (iii) In cases where the judgment is partially or fully reversed, the appeal cost shall be reimbursed to the appellant.
- (b) Notwithstanding anything mentioned above, the appellate court may order reasonable costs to be paid by the appellant based on the outcome of the case keeping in mind the costs and other expenses related to the suit in accordance with sections 97, 97.1, 111(e), and 111.1 of the Civil and Criminal Procedure Code of Bhutan 2001 as amended in 2011. The costs and expenses related to the suit may include:
  - (i) Cost of transportation;
  - (ii) Cost of lodge and food;
  - (iii) Income loss suffered by the respondent/defendant due to court proceedings;
  - (iv) Appropriate damages for mental distress and trauma suffered by the respondent/defendant; or
  - (v) Fees paid by the respondent/defendant to the lawyer to defend his/her case.

8.2 Appeals from tribunals or administrative dispute settlement bodies or similar bodies shall be treated as the first instance of appeal, and appeal cost shall be applied accordingly under Guideline 8.1.

## **9. Assessment of Appeal Petition by the Registry of the Appellate Courts**

9.1 The registry of the appellate court shall assess the admissibility of the appeal petition in accordance with the Code and this Guideline.

9.2 There shall be no appeal from the following judgments and grounds of appeal:

- a) Negotiated Settlements;
- b) Summary judgments;
- c) Default judgments;
- d) Reasoned Dismissal Orders;
- e) Withdrawn judgments;
- f) Time extension regarding judgment enforcement as the only ground of appeal; or
- g) An appeal regarding his/her conviction if the defendant pleaded guilty to the offence that he/she was charged for in the subordinate court. However, he/she may appeal regarding the gravity of the sentence.

## **10. Requirements for Appellate Review**

10.1 The appellate court may review only those decisions upon which there are properly preserved records in accordance with Section 110.1 of the Code.

10.2 The Court, the appellant and his/her *Jabmi*, shall ensure that any challenge or objection to a decision of the subordinate court is properly recorded in accordance with Section 110.2 of the Code.

10.3 The appellate court shall not allow the parties to introduce fresh evidence on appeal or rely on evidence not introduced during proceedings in the subordinate court in accordance with Section 110.4 of the Code.

10.4 A case in which the presiding Judge of a lower court has recused due to conflict of interest shall not be submitted to an appellate court, and the case shall not be treated as an appeal. The case may be adjudicated by another court of the same hierarchy after seeking permission from the Chief Justice of Bhutan.

## **11. Review**

- 11.1 The subordinate courts, including the High Court, may rectify their judgments to correct the typographical errors and other clerical errors.
- 11.2 The Supreme Court must endeavour to pronounce dismissal judgments within three months from the date of registration of appeal in the Supreme Court.
- 11.3 On complete reversal of the lower court's judgment by the appellate court, the appellate court shall send a copy of the reversed judgment to the lower court.
- 11.4 The Supreme Court and High Court must require the court of the first instance to enforce judgments when the court of first instance's judgment is upheld on appeal.
- 11.5 In accordance with Section 111 of the Code, the appellate court may:
- (a) dismiss the appeal;
  - (b) reverse all or part of the judgment awarded by the subordinate court after due process of law;
    - (i) The appellate court shall state clearly the parts of the subordinate court's judgment that have been reversed.
  - (c) remand the case to the subordinate court with instructions;
    - (i) The power to remand shall be exercised only if necessary with due consideration of facts and circumstances of the case; and
    - (ii) A case may not be remanded if the rectification is minor that can be affected by the appellate court without the involvement of the subordinate court.
  - (d) order a new proceeding in extraordinary circumstances where it is of the opinion that the subordinate court's judgment led to a manifest miscarriage of justice, which can only be corrected with a new proceeding in the lower court.

## **12. Interpretation**

The Supreme Court shall be the competent authority for the interpretation of this Guideline.

## **13. Revision**

The Supreme Court may revise this Guideline from time to time as deemed necessary.

#### **14. Definitions**

- (a) **‘Court’** refers to a court of law as prescribed in the Code including tribunals and equivalent administrative bodies for dispute settlement.
- (b) **‘Frivolous appeal’** means those appeals not fulfilling the requirements prescribed in this Guideline.
- (c) **‘Notice of appeal’** means an application by a party to the lower court stating his/her intention to appeal its judgment to the appellate court.
- (d) **‘Judgment’** includes the decision of tribunals or administrative dispute settlement bodies the appeal from which lies in a court of law as prescribed by law.
- (e) **‘Affected Party’** means a party to a case including any other person directly affected by the court’s judgment.