

# Kenya School of Law

**ADVOCATES TRAINING PROGRAM**

**2015-16 ACADEMIC YEAR**

Trial Advocacy

**APPELLATE ADVOCACY**

Samuel Akhwale

Lecturer,

Kenya School of Law

# Acknowledgment

**Firm 7, Class D ,Class of 2015/16**

# OUTLINE

## Levels of Appeal

- ❖ High Court
- ❖ Court of Appeal
- ❖ Supreme Court
- ❖ Appeals from decisions of Quasi-Judicial bodies

# Source of Appellate Jurisdiction

- ❖ Constitution

- ❖ Statute

Is not inherent.

The statute may grant Appeal as of right or with leave of the Court appealed from.

# Levels

- ❖ Magistrate Court of first class
- ❖ High Court
- ❖ Court of Appeal
- ❖ Supreme Court

# Appeals from Subordinate Courts

## **Magistrates Courts Act Cap. 10**

**Sec. 10** -From Magistrate's court of 3<sup>rd</sup> class on Criminal matter

:To Resident Magistrates Court'

By Petition, within 14 days.

**Sec.11**-From Magistrate's court of 3<sup>rd</sup> class on Civil matter

:To Resident Magistrates Court.

By Petition, within 28 days.

Higher court may extend period.

**Sec. 12** -Powers of the Appellate court.

# Civil Appeals to High Court

## **Sec. 65(1) Civil Procedure Act, Cap. 21.**

From original decree or part of a decree; on a question of Law or fact.

From Kadhi's court: Chief Kadhi or 2 other Kadhis to sit as assessors.

# Criminal Appeal to High Court

**Sec.347-**From a conviction. Be on both fact and Law.

**Sec. 348-** No appeal from a plea of guilt unless is on legality of sentence.

**Sec. 349-** Be within 14 days

**Sec. 350-** Be in Form of a Petition

**Sec. 359-** Be heard by two judges unless CJ otherwise directs.



# Hearing of Criminal Appeals

**Sec. 353-** Court to give notice to Appellant and Respondent or their advocates; of date and place of hearing, furnish copies of proceedings and grounds of appeal.

**Sec. 354-** Counsel for Advocate and Respondent to address court.

**Sec.354(3)** - Court may dismiss appeal, reverse finding and sentence and acquit; order re-trial; reduce or increase sentence;

**Sec. 354(4)** - If Appellant desires to, is entitled to be present at hearing of appeal.

# Constitutional power of High Court

**Art. 165 (3)(c)** – High Court to hear appeals from decisions of tribunals.

# Civil Appeals to High Court-contd.

Civil Procedure Act Cap. 21

**Sec.79B-** Summary dismissal of appeal

**Sec.79 C-** From subordinate courts, to be heard by one judge unless CJ otherwise directs.

# Appeals to Court of Appeal

**Court of Appeal Rules 2010, made under Appellate Jurisdiction Act Cap. 9.**

Court of Appeal established under Art. 164 of the Constitution to hear appeals from High court and from any other Tribunal as prescribed by an Act of Parliament.

**Jurisdiction-Sec. 3 Appellate Jurisdiction Act**

# Types of Appeals to CoA

Where High Court was a trial court.

Where High court was the appellate court.

# Criminal Appeal to Court of Appeal

**Sec. 361(1) Cap. 75**

Only on a matter of law.

Severity of sentence is a matter of fact. If High court enhanced sentence, then is a matter of law if is about legality of that sentence.

# Appeal from trial at High Court

## **Sec. 379 CPC.**

If sentenced to death, over 12 months imprisonment or over Ksh.2000/- may appeal on grounds of law or fact against conviction, or with leave, against sentence.

# Appeal against acquittal

**Sec. 379(5) CPC.**

AG(DPP) To to within a month of acquittal file a certificate that matter is of such exceptional public importance and that it is desirable in the public interest that the point should be determined by the Court of Appeal, the Court of Appeal shall review the case or such part of it as may be necessary, and shall deliver a declaratory judgment thereon.

The declaratory judgment not to operate to reverse an acquittal, but shall thereafter be binding upon all courts subordinate to the Court of Appeal.



# Other Appeals

- ❖ **To Supreme Court**
- ❖ **From decisions of Tribunals.**

# Supreme Court

Supreme Court Act Cap. 9A. Operationalised Art. 163(9) of Constitution.

Leave is sought at first instance from Court of Appeal.

**Sec.15**-Appeals to it are with leave of the court itself.

**Sec.16**-Criterion-

# Quasi Judicial bodies

Bodies from whose decisions appeals may lie to High Court:

- ❖ Political parties tribunal
- ❖ National Environmental Tribunal.
- ❖ Rent Tribunal.
- ❖ Business Premises Tribunal.
- ❖ Tax Appeals Tribunal.
- ❖ Standards Tribunal.
- ❖ Energy Tribunal.
- ❖ Cooperatives tribunal.
- ❖ VAT Appeals Tribunal
- ❖ Transport Licensing Tribunal
- ❖ Public Procurement Appeals Review Board
- ❖ Legal Education Appeals Tribunal.

# Q and A

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