

COURT OF APPEAL

PRACTICE DIRECTION NO 2/2016

(Applications to the Court to allow appeals or grant applications by consent without a hearing on the merits)

1. Introduction

- 1.1 This Practice Direction is made with the concurrence of the President and Judges of the Court of Appeal.
- 1.2 The court has from time to time been asked by parties, to an appeal or application, to allow or grant same by consent, without a hearing on the merits.
- 1.3 In respect of appeals, the court has traditionally held the view that an appeal ought not generally to be allowed without a hearing on the merits, because the act of allowing an appeal implies that the court below was wrong in some respect.
- 1.4 The court recognises, however, that there may be cases in which good grounds exist for treating with an appeal in this manner, such as in interlocutory appeals where the consent of the parties to a particular outcome, with the court's approval, could result in considerable savings in terms of the efficient use of the court's time and expense to the litigants. Such cases may include appeals in which it is plain from the record of appeal that something has indeed gone wrong below in the court below, for example where a decision has been arrived at *per incuriam* or under the influence of a long discarded principle.
- 1.5 Accordingly, cognisant of its powers under rule 2.15(a) and (b) of the Court of Appeal Rules 2002, the court issues this Practice Direction in order to facilitate the allowing of appeals and granting of applications by consent in cases in which the court deems it appropriate so to do.
- 1.6 This Practice Direction takes effect on 12 December 2016.

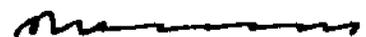
2. General Principle

- 2.1 The court will not normally make an order allowing an appeal unless satisfied that the decision of the court below was wrong or unjust because of a serious procedural or other irregularity.
- 2.2 The court may, however, set aside or vary the order of the court below by consent and without determining the merits of the appeal if it is satisfied that there are good and sufficient reasons so to do.
- 2.3 Where the parties, by consent, request the court to allow an appeal or grant an application without a hearing on the merits, the court may consider the request on paper.

- 2.4 The request should set out the relevant history of the proceedings and the matters relied on as justifying the order and be accompanied by a draft order.

3. Procedure

- 3.1 Parties who wish to request by consent that an appeal should be allowed or an application granted without a hearing on the merits may do so by filing a notice of application for court orders together with a supporting affidavit which, *inter alia*.
- 3.1.1. sets out the history of the proceedings;
 - 3.1.2. indicates that the parties' consent to the allowing of the appeal is based on competent legal advice;
 - 3.1.3. advances plausible reasons to show that the decision of the lower court was wrong;
 - 3.1.4. exhibits proof of the consent of the parties to the order being sought; and
 - 3.1.5. exhibits the draft order being sought, which order should state that it is being made by consent.
- 3.2 The notice of application for court orders, affidavit in support and any other supporting documents are to be served on all parties and an affidavit of service is to be filed.
- 3.3 Within three days of the filing of the notice of application for court orders and the supporting documents, four judges' bundles, comprising same and including the affidavit of service, are to be filed for the use of the court.
- 3.4 The matter will then be referred to the court for consideration of the application.
- 3.5 The court may direct that the parties submit additional information or documentation.
- 3.6 The general rule is that parties will be notified of any decision made by the court, within fourteen days of the filing of the judges' bundles.
- 3.7 Nothing in this Practice Direction precludes the court from directing that the parties appear for a hearing in open court.



C. Dennis Morrison, CD, OJ
President of the Court of Appeal
12 December 2016