GROUNDS OF APPEAL TO THE SUPREME COURT AND THE ADMISSIBILITY OF THE SAID GROUNDS

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I feel greatly honoured and yet humbled to participate in this workshop. To be honest I am not totally at ease talking on the grounds of appeal to the Supreme Court and the admissibility of the said grounds to the learned people you that are. In fact, my belief is that there is nothing in what I'm going to tell you on this topic that you may not already know considering that as judicial, legal or members of the private bar, you are all members of this learned profession to which I am also proud to belong. Thanks be to God that this is a workshop and from its very definition we are all here to work and learn together.

On the topic we have to discuss, it is my sincere belief that we cannot talk about the grounds of appeal to the Supreme Court without first talking about the Supreme Court itself and without talking about the nature of appeal this Hon. Court can entertain. When I entered the Yaounde University many years back, the first thing that struck me was the talk of "PLAN". Nearly all the French-speaking lecturers always talked of "PLAN, PLAN" and PLAN" to a point where most of my English-speaking classmates started to wonder if this talk of "PLAN" was not specifically aimed at us. Gradually we all came to get used to the idea and even though we could not come up with detailed plans that fully satisfied our lecturers we at least did something. For our talk therefore, this is the little plan I have conceived.

I) THE SUPREME COURT

a) The Supreme Court and the various forms it may take

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II) THE NATURE OF APPEALS IT MAY HEAR AND DETERMINE

i) Special Appeals (appels)

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a) Definition of a ground of appeal

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I – THE SUPREME COURT

a) What it is and its various forms

We all know that as a principle, a supreme court as the name implies should be the highest in rank, power, importance, etc. of the courts in a particular country or State. This means that in the realm of the interpretation of the laws and the administration of justice, there is no court above this court. In some countries such a court may be named the High Court. For example in Australia, the High Court of Australia is the highest court in the Australian judicial system. However, whatever name we may call it, the Supreme Court or the High Court, it is in most countries an appellate court of last resort in all civil and criminal cases.

b) The Supreme Court of Cameroon

In our country, the Supreme Court has expressly been given its place in Article 40 of our Constitution as one of the Courts to exercise judicial power alongside the courts of appeal and other inferior courts. Based on our definition of a supreme court as the highest court of the land in a country and based on the power bestowed on it to exercise judicial power, whoever heads the Supreme Court of Cameroon should in principle be the head of that arm of Government called the Judiciary. This simply means that the head of the Judiciary in Cameroon is by our Constitution the Lord Chief Justice of the Supreme Court. Unfortunately, this is far from being the case. Of course, no one expects the Chief Justice of the Supreme Court to be elected by universal suffrage like the President of the Republic who is the head of the Executive power. The least one would have expected is that like the Presidents who head the legislative power in our country, the Lord Chief Justice would have been elected by his peers and not appointed by the President of the Republic who is said to be the head of the Higher Judicial Council of the Magistracy to which the Lord Chief Justice is not even represented. Worse still, section 34 of law no.2006/016 of 29 December 2006 to lay down the organization and functioning of the Supreme Court expressly enjoins him and the Hon. Procureur General attached to his Court to make

a joint report each year to the President of the Republic. The unfortunate impression this gives is first that the Judiciary is still the authority under the Executive that it used to be before the 1996 constitution, and again that the Supreme Court has a dual leadership (The Hon. Lord Chief Justice and the Procureur General). May be to weaken more the position of the Chief Justice and thereby the judicial power, institutions like the Economic Council and the Constitutional Council are given a higher status in the protocol list made by the executive power whereas constitutionally, these are institutions whose essential role should be to advise the various arms of government to which they are attached. Surely, if the Constitutional Council were a court, the Constitution should have said so.

Recently, we hear our Chadian colleagues coming out to express their anger at being sidelined in the talks held to draft a new constitution which they fear will reduce the power of the Judiciary. Today to the Cameroonian Judge having an appointment overrides the general interest of this learned profession. Some people may claim that in 1996 the Cameroonian magistrates successfully fought to have the judicial authority become Judicial Power. So what? Indeed, what benefit has this bought to the Judiciary as a Power? As seen in the aforementioned section 34 of law no.2006/016 subsequent laws have been passed as if no constitutional provision exists making the Judiciary a power. We thank God that whatever manoeuvers those who do not want a strong Judiciary may carry out to thwart the progress of this arm of government, the Judiciary will constitutionally never return to its hitherto status of an authority under the executive.

II - THE NATURE OF APPEALS THE SUPREME COURT MAY HEAR AND DETERMINE

I) DEFINITION AND TYPES OF APPEALS

A - Definition

An appeal may be defined as an invitation to a higher court to review the decision of a lower court in order to find out whether on a proper consideration of the facts placed before it, and the applicable law, the said lower court had arrived at the proper decision. An appeal may also be said to be an application to that higher court to scrutinize the decision of the said lower court with a view to finding out whether the said decision is in law and on the facts correct.

As a matter of fact, an appeal may be said to be a continuation of the original case and not the commencement of a new one. That accounts for the reason why in principle it is normally and generally confined to the consideration of the record which emanated from the court below with no new issues or testimony allowed to be raised.

Whether from the Regional Court of Appeal or from the Regional Administrative Court, an appeal to the Supreme Court should be lodged by way of a notice filed in the court's registry by the appellant in person or by his counsel. The said notice may also be filed on his behalf by any person holding a special power of attorney to that effect. It follows that any party aggrieved by a judgment of the Administrative Court or the regional Court of Appeal should personally give notice of appeal. Where the said party has a lawyer, the latter can appeal on the said party's behalf because of the fiduciary (lawyer-client) relationship that exists between them. No such relationship exists between a party and a third party which means that a third party who lodges an appeal on behalf of the said party must be armed with a special power of attorney authorizing him to lodge the appeal.

B - Types of Appeal

The Administrative Court like the regional Court of Appeal, is a court whose jurisdiction covers the administrative region in which it is situated. However, unlike the Court of Appeal that has appellate jurisdiction, the Administrative Court has no such jurisdiction. It is in fact and in law a court of original jurisdiction and consequently only has the power to hear and determine matters coming before it as an instance court. Since its jurisdiction covers the regional territory, appeals against its decisions cannot be heard by the regional Court of Appeal which is a court whose jurisdiction covers the same regional territory. Like every appeal against a decision of a regional court of appeal therefore, any appeal lodged against a decision of a regional administrative court is heard and determined by the Supreme Court itself.

Again, unlike the regional Court of Appeal, two types of appeal depending on the nature of the case may emanate from the regional Administrative Court and depending on the type of appeal, the Supreme Court may examine the appeal either as a court of appeal or as the highest court of the land. This may sound strange to a Common Law trained legal practitioner who may not easily see how the Supreme Court can hear and determine an appeal not as a supreme court but as a court of appeal. Indeed, the term "appeal" in the English language and indeed in the Common Law denotes a proceeding undertaken to have a decision reconsidered by a higher

court which can be the Court of Appeal or the Supreme Court. The Common Law thus draws no distinction between appeals that are lodged in any of the appellate courts or in the Supreme Court for that matter. The French inspired Civil Law system however draws a clear distinction between two types of appeals that may be filed before the Court of Appeal and the Supreme Court, namely "Appel" and "Pourvoi" which I propose we translate as special appeal and normal appeal respectively for "appel" and normal appeal for "pourvoi".

As a rule, the term special appeal (Appel) refers to any appeal against a decision delivered by a court of original jurisdiction and such an appeal is normally heard and determined by a court of appeal. One determining factor of this type of appeal is that it is suspensive in the sense that it stays the execution of the underlying judgment. The term normal appeal (Pourvoi) on the other hand as concerns courts with non-criminal jurisdiction, refers exclusively to an appeal to the Supreme Court against the judgment of a court whose jurisdiction may cover an administrative region like a regional Court of Appeal and a regional Administrative Court.

The logic behind these two appellations is simple: the Supreme Court by virtue of the fact that it is an appellate court, may only hear and determine an appeal which emanates from a court of appeal or an administrative court whose jurisdiction may cover an administrative region. Any such appeal should be considered a normal appeal (pourvoi) considering that such appeals in principle all relate exclusively to law. It is trite knowledge that appeals to a court of appeal (appel) may relate to facts alone or to both facts and law. It is thus in exceptional and special basis that the Supreme Court may entertain appeals that ought to be entertained by a court of appeal. Such exceptional appeal may thus rightly be termed 'special appeals'.

In administrative proceedings, special appeals (Appel) to the Supreme Court concerns decisions taken at the first instance by the Administrative Court in clearly defined disputes. Section 2 of law no.2006/022 of 29 December 2006 to lay down the organization and functioning of the Administrative Courts gives jurisdiction to the Administrative Courts to hear and determine at the first instance disputes arising from regional and council elections and section 114 (1) of this same law expressly provides that judgments in electoral disputes may only be subject to special appeal (appel). In dealing with urgent administrative applications, section 29 of the said law also places appeals against rulings on such applications in the same category as the judgments in litigations on regional and council elections. Section 2 of law no.2006/022 (supra) while giving jurisdiction to the Administrative Courts to hear

and determine litigations on regional and council elections at the first instance also gives the said court jurisdiction to hear and determine all administrative litigations concerning the State and the decentralized public and local authorities at the last instance. From the above analysis, this means that any appeal against a decision given in a dispute arising from a municipal or regional election should be by way of a special appeal (appel) and any other appeal against a decision taken either by the regional Administrative Court or the Regional Court of Appeal should be by way of a normal appeal (pourvoi).

Sub-section 3 of the said section 114 (supra) clearly provides that an appeal against interlocutory rulings may only be filed together with an appeal against the judgment in the substantive matter. The obvious implication of this is that a party who is aggrieved by a ruling on an interlocutory issue cannot appeal against it. Such a party must wait for the final judgment in the lawsuit and if dissatisfied, appeal against the said judgment. Any grievance he might have had against the ruling may only feature at that point in time as a ground of appeal geared toward the annulment of the final judgment. As a matter of law, such appeal may even be entertained where the interlocutory ruling he contemplated appealing against has already been executed.

It is interesting to note that section 108 (1) of law no.2006/016 (supra), apparently contradicting section 29 of law no. 2006/022 (supra) has classified appeals against all urgent rulings in the same category of appeals (pourvoi) as those filed against the other decisions of the Administrative Courts. According to the said section 108 (1):

"In case of appeal against urgent administrative orders, the procedure to be followed shall be the one provided for under sections 89 to 103 …"

The French version of the above subsection states:

"En cas de pourvoi contre les ordonnances de référé administrative, la procédure à suivre est celle prévue aux articles 89 à 103 …"

The word "pourvoi" is highlighted here to show that any appeal against the ruling of the Administrative Court should be by way of a normal appeal. Again, by referring to sections 89 to 103 of law no.2006/016 (supra) section 108 cited above leaves no doubt that an appeal against a ruling relating to an urgent administrative order should be by way of a normal appeal (pourvoi). As a matter of fact, section 114 (2) of law no.2006/022 expressly provides that the decisions delivered at the first instance under conditions provided by separate instruments, those delivered at first instance

in electoral matters and in urgent applications should be by way of a special appeal (appel) before the Administrative Bench of the Supreme Court.

Faced with the provisions of section 108 (1) of law no.2006/016 (supra) and section 114 (1) of law no.2006/022 (supra), a party thinking of appealing against an interlocutory ruling of the administrative court may find himself wondering what type of appeal he may file. As earlier stated, "Pourvoi" is what we have described as the normal appeal that may be filed against a decision taken by the regional Court of Appeal. It is equally this type of appeal that may be filed against any decisions delivered by the Administrative Court sitting as a court of first and last instance in disputes involving the State, decentralized public authorities and local administrative authorities. This type of appeal is thus heard and determined by the Supreme Court not as a court of appeal but rather in its capacity as the highest court of the land. This category of appeal like the other appeals to the Supreme Court does not stay the execution of the decision appealed against. The appellant who wants a stay must therefore apply for it.

It is common knowledge that a special appeal in the Supreme Court like an appeal to the regional Court of Appeal (appel) is by way of a rehearing. Hearing a matter de novo should not be confused with a retrial. Rehearing here refers to the power of the appellate court to make its own evaluation of the evidence in the record of proceedings at the trial, the power it has to review the findings and inference of fact from the transcript of the evidence in the lower court. It may where it considers it proper substitute its own view of the facts for those of the trial court. A retrial on the other hand means a new trial on the entire case on both questions of fact and issues of law conducted as if there had been no trial in the first instance. A rehearing in this context thus means that without necessarily recalling the witnesses, the Supreme Court may make its own evaluation of the evidence that was tendered before the lower court. From the record of proceeding of that court, it may review the findings and inferences of facts of the said trial court and may even substitute them with its own.

However, a normal appeal (pourvoi) is specifically different. Indeed, the possible grounds upon which such an appeal may be based are provided for by section 35 (1) of law no.2006/016 (supra). Appeals here are entirely on point of law which ipso facto excludes the general or omnibus ground of appeal. A prudent appellant must therefore know and choose the right type of appeal he intends to lodge. Surely the choice of a wrong type may prove fatal to his appeal.

This calls for a little comment on the solution that was given to those cases with both types of appeal. For the brief period the late Justice André BELOMBE headed the Administrative Bench, the policy was that whenever there were two appeals (appel and pourvoi) lodged against one and the same judgment but each having its own file, the two appeals were consolidated and examined as a single file. A single judgment was eventually pronounced declaring both appeals inadmissible on the ground of the appellant's inability to decide which of the types of appeal to lodge. The reasoned explanation given to this position at the time was that the appellant's ignorance of these types of appeal or his inability to choose the proper type of appeal should in no way compel the Supreme Court to beat out its brain over which of the two appeals to examine. It was the responsibility of the appellant to make sure he was lodging the proper type of appeal. The Court therefore had no business making that decision for him. With the demise of Justice BELOMBE, the Administrative Bench made a complete U-turn of this precedent. As it rightly reasoned, where an appellant lodges two appeals in the registry of the Court, it is the duty of the Court to examine both without presuming that both appeals are against the same decision. Besides, there is no guaranty both appeal files would be handled by the same Judge-Rapporteur who may know they concern one and the same judgment. In accordance with this reasoning, where an appellant files the two types of appeal, the Administrative Court today will examine both separately and the appeal that is wrongly filed will be dismissed while the other will be examined on its merits. This same position may not be adopted where both categories of appeal are lodged in the same file as one appeal. In such a case, the Court will simply declare it inadmissible on the ground that the appeal is vague, that is, it has failed to state explicitly and definitely what type of appeal is lodged.

That said, any party who is aggrieved by a judgment and who intends to appeal against it must clearly state the type of appeal he is lodging. Since in the English language there is no distinction between the two types of appeal, the prudent appellant may make known the category of appeal he is lodging by citing the relevant section of law no.2006/016 (supra) under which such appeal may be founded.

In conclusion, for the appeal of the aggrieved party to be admissible for hearing and determination by the Supreme Court, such appeal should be filed by the aggrieved part in person:

1) Filed by the appellant himself or by his counsel; a third party may lodge the appeal on his behalf, however such third party must have a special power of attorney to that effect.

2) Time-limit:

- for criminal matters - appeal should be lodged within ten (10) clear days from the date the judgment is delivered on the merits and if it is provided that the party be given notice of the judgment, the time-limit should run from the date following such notification.

- -For ruling on objections in limine, the time-limit is seven (7) days.

- for other matters: appeal should be lodged within thirty (30) clear days from the date the judgment is delivered on the merits.

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3) Payment of appeal fee of 10.000 frs plus a deposit for the reproduction of record of proceeding. No appeal fee for criminal and labour matters

4) An indication of the type of appeal. This is most relevant for appeals coming from the Administrative Courts. Surely the special appeal is under section 74 (1) of law no.2006+/016 (supra) while the normal appeal is under section 90(1) of the said law no.2006/016 (supra).

Finally, it should be noted that besides appeals against decisions in disputes arising from council and regional elections which are classified as special appeals (appel) and therefore lodged following the procedure prescribed by section 74(1) of law no.2006/016, any other appeal to the Supreme Court against any decision relating to any administrative dispute or any appeal against an interlocutory ruling and of course appeals from the Regional Courts of Appeal should be lodged following the procedure prescribed by section 90 of law no.2006/016 (supra) cited above which has left no doubt that an appeal against an interlocutory ruling is a normal appeal (pourvoi).

III - THE GROUNDS UPON WHICH AN APPEAL TO THE SUPREME COURT MAY BE BASED

a) Definition of a ground of appeal

The grounds of appeal constitute the most important part of the Notice of Appeal. There is therefore no doubt that the organizers of this workshop have made it a topic for our discussion.

What then is a ground of appeal? The verb "to ground" simply means to provide a basis for something such as a legal claim or argument. A ground of appeal should therefore mean the reason or point that something as a legal claim or argument relies on for validity. A legal claim or argument may thus be said to be groundless if it lacks a basis or a rationale. Grounds for appeal may thus be said to be the errors of procedure of law that form a basis for asking the appellate court to review the case of the trial or lower court. In other words it is the error of law or fact alleged by an appellant as the defect in the judgment appealed against and relied upon to have it set aside. A ground of appeal may thus be a reason why the appellant considers the judgment appealed against to be wrong. It constitutes a challenge to the ratio of the decision.

Grounds of appeal fall into two categories. There are grounds of appeal which raise solely questions of law while there may be others that raise questions of fact alone or mixed. A question of law is one in which the issue for determination may be what the true rule of law should be while a question of fact is one that is not determined by law.

b) The grounds that may be allowed in the Supreme Court

As we earlier stated two types of appeal are admissible in the Supreme Court for hearing and determination, namely the special and normal appeals known in the French inspired Civil Law as "appel" and "pourvoi". Special appeals which are for specifically named cases may be equated to appeals heard and determined by the regional courts of appeal. Since in appeals before the regional court of appeal, questions of law and fact or of mixed law and fact may be raised, in special appeals (appel) before the Supreme Court grounds of appeal relating to questions of fact are allowed. A ground that raises any of the questions of law enumerated in section 35 of law no.2006/016 (supra) may be allowed if no reference is made of its reliance on any of the enumerated questions of law. Consequently, in a special appeal before the Supreme Court, a ground of appeal that raises the issue for instance misinterpretation of the facts or of the case file and is said to be in accordance with section 35 (1) (b) of law no.2006/016 (supra) shall be declared inadmissible on the ground that an appeal founded based on the said section cannot be a ground of a special appeal before the Supreme Court. It therefore goes without saying that all grounds

including the general or omnibus ground of appeal may be allowed if they are not said to be founded on section 35 (1) (b) of law no.2006/016 (supra).

As concerns normal appeals (pourvoi), questions of facts are totally unacceptable. All grounds of appeal should therefore relate to questions of law. In accordance with the spirit of a code, law no.2006/016 (supra) in its section 35 enumerates the grounds on which a normal appeal may be based. These include:

- a) want of jurisdiction
- b) misinterpretation of the facts of the case or the case file
- c) default, contradiction or insufficiency of reason
- d) irregularity that could be that:

°the contested decision not taken by the prescribed number of Judges or taken by Judges who did not sit

°the Legal Department not given the floor or unrepresented

°hearing not held in public

- e) breach of the law
- f) non-response to the submissions of the parties or of the legal Department
- g) abuse of office
- h) violation of a general principle of law
- i) non-compliance with the jurisprudence of the Supreme Court sitting in its panel of Joint Divisions of Joint Benches.

Examination of a Ground of Appeal

Any ground an appellant may be minded to raise should be related to any of the enumerated grounds of appeal. Whether a ground of appeal is fit for examination by the Supreme Court may depend on a number of factors.

Type of Appeal – where a ground of appeal raised in a special appeal is stated as based on any of the enumerated grounds on which a normal appeal could be based, such a ground will be declared legally inadmissible for examination.

Ground alleging violation of the law or a general principle of law – where a ground of appeal alleges a violation of the law the alleged violated law should be reproduced

in its entirety. More often it is the violation of a particular section of the law that is alleged to have been violated. If so, not only should the said section be reproduced in its entirety, the law itself should be quoted correctly and appellant should finally show in what respect the said section was violated by the lower court. The same goes for a ground that alleges the violation of a general principle of law. The said general principle should be corrected stated before stating how it was violated. This is the interpretation given to the prescription in section 53 (2) of law no.2006/016 (supra) which provides that the duly stamped memorandum of submissions in support of the appeal should cite the provision of the law violated and argue the legal grounds of appeal. The long and short of the above prescription is that any ground that alleges the violation of a said section of the law should not only correctly cite the law and reproduce the section of that law allegedly violated, it should clearly and distinctively argue in that ground how the said section was violated. Any ground that fails to do this will be dismissed for violating section 53 (2) of law no.2006/016 (supra).

Ground of appeal on a point or ground not argued in the court below – A point or issue is said to be raised for the first time when it has never been canvassed by the parties or any of them at any of the court below, nor raised in the judgment appealed against. Unlike in the Common Law system where such a point may be raised by leave of court, law no.2006/016 (supra) makes no provision for such leave.

That goes to say that a ground of appeal founded on a point or issue that has never been canvassed by the parties or any of them at any of the courts below, nor raised in the judgment appealed against shall be declared inadmissible for examination. As an exception, a new ground that goes to the existence of the suit could be taken for the first time on appeal. Ex. A ground contesting the propriety of an action before the Administrative Court on the ground that no pre-litigation complaint had preceded such action may be admissible.

According to section 35 (2) of the aforementioned law no.2006/016 (supra) the Supreme Court may on its own motion raise any of the above grounds of appeal. The obvious implication of the above legal provision is that the Supreme Court cannot be heard to be raising on its own motion a ground of appeal which the appellant had already raised and had unsuccessfully argued.

IN SUMMARY:

i) for a ground of appeal to be admissible for examination it should be for the type of appeal lodged. Thus any of the grounds of appeal enumerated in section 35

(1) of law no.2006/016 (supra) raised as a ground in a special appeal to the Supreme Court will be declared inadmissible for examination.

ii) A ground of appeal which alleges the violation of a section of a law and fails to correctly cite the law or fail to reproduce the alleged violated section in its entirety shall be declared inadmissible for examination for violating section 52 (3) of law no.2006/016 (supra).

iii) A ground of appeal which is raised on a point or issue that has never been canvassed by the parties or any of them at any of the courts below, nor raised in the judgment appealed against shall be declared inadmissible for examination.

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