

LEGAL NOTICE No. 116

THE ELECTIONS ACT

(No. 24 of 2011)

THE ELECTIONS (PARLIAMENTARY AND COUNTY
ELECTIONS) PETITIONS RULES, 2017
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THE ELECTIONS ACT

(No. 24 of 2011)

THE ELECTIONS (PARLIAMENTARY AND COUNTY ELECTIONS) PETITIONS RULES, 2017

IN EXERCISE of the powers conferred by section 96 of the Elections Act, 2011, the Rules Committee makes the following Rules:—

THE ELECTIONS (PARLIAMENTARY AND COUNTY ELECTIONS) PETITIONS RULES, 2017

PART I—PRELIMINARY

1. These Rules may be cited as the Elections (Parliamentary and County Elections) Petitions Rules, 2017. Citation.

2. In these Rules, unless the context otherwise requires— Interpretation.

“Act” means the Elections Act, 2011; No. 24 of 2011.

“Commission” means the Independent Electoral and Boundaries Commission established under Article 88 of the Constitution;

“election court” means the High Court in the exercise of the jurisdiction conferred upon it by Article 165 (3) (a) of the Constitution or the Resident Magistrate’s Court designated by the Chief Justice in accordance with section 75 of the Act;

“direct service” means personal service or service on a duly authorized agent; L. N. No. 128/2012.

“document” includes an electronic document;

“electronic document” means any text, graphic or spreadsheet generated and stored in any electronic media content that is intended to be used in either electronic form or as printed output but does not include computer programs or system files;

“petitioner” means a person who files a petition to the election court under the Constitution or under the Act in accordance with these Rules;

“Registrar” means—

- (a) the Registrar of the High Court; or
- (b) an executive officer, where the petition is filed in a magistrate’s court; and

“respondent” in relation to a petition, means—

- (a) the person whose election is complained of;
- (b) the returning officer;
- (c) the Commission; and
- (d) any other person whose conduct is complained of in relation to an election.

PART II—APPLICATION AND OBJECTIVES OF RULES

3. These Rules shall apply to petitions in respect of—

Application.

- (a) the election of members of Parliament;
- (b) the election of county governors; and
- (c) the election of members of county assemblies.

4. (1) The objective of these Rules is to facilitate the just, expeditious, proportionate and affordable resolution of elections petitions.

Objective of these Rules.

(2) An election court shall, in the exercise of its powers under the Constitution and the Act, or in the interpretation of any of the provisions in these Rules, seek to give effect to the objective specified in sub-rule (1).

5. (1) The effect of any failure to comply with these Rules shall be determined at the Court's discretion in accordance with the provisions of Article 159 (2) (d) of the Constitution.

Compliance with these Rules.

(2) A party to a petition or an advocate for the party shall assist an election court to further the objective of these Rules and, for that purpose, to participate in the processes of the election court and to comply with the directions and orders of the election court.

PART III—CONSTITUTION OF AN ELECTION COURT

6. (1) An election court shall be properly constituted to hear and determine—

Constitution of an election court.

- (a) a petition in respect of an election of a member of Parliament or to the office of governor, if it is composed of one High Court Judge; or
- (b) a petition in respect of an election of a member of a county assembly, if it is composed of a Resident Magistrate designated by the Chief Justice under section 75 of the Act.

(2) The Chief Justice may—

- (a) in consultation with the Principal Judge of the High Court, designate judges for the purposes of sub-rule (1) (a); and
- (b) designate magistrates for the purposes of sub-rule (1) (b), as may be required.

(3) The Chief Justice shall publish the name of the Judges and Magistrates designated under sub-rule (2) in the *Gazette* and in at least one newspaper of national circulation.

PART IV—PRESENTATION AND COMMENCEMENT OF PETITIONS

7. An election petition shall be—

Manner of filing of petition.

- (a) filed by presenting the petition to the Registrar and on the payment of fees prescribed in the Second Schedule; and

(b) in Form 1 set out in the First Schedule.

8. (1) An election petition shall state —

Contents and
form of a petition.

- (a) the name and address of the petitioner;
- (b) the date when the election in dispute was conducted;
- (c) the results of the election, if any, and however declared;
- (d) the date of the declaration of the results of the election;
- (e) the grounds on which the petition is presented; and
- (f) the name and address of the advocate, if any, for the petitioner which shall be the address for service.

(2) The petition shall be divided into paragraphs, each of which shall be confined to a distinct portion of the subject, and every paragraph shall be numbered consecutively.

(3) The petition shall conclude with a statement setting out the particulars of the relief sought which may include—

- (a) a declaration on whether or not the candidate whose election is questioned was validly elected;
- (b) a declaration of which candidate was validly elected;
- (c) an order as to whether a fresh election should be held;
- (d) scrutiny and recounting of the ballots cast at the election in dispute;
- (e) payment of costs; or
- (f) a determination as to whether or not electoral malpractice of a criminal nature may have occurred.

(4) The petition shall—

- (a) be signed by the petitioner or by a person authorised by the petitioner;
- (b) be supported by an affidavit sworn by the petitioner containing the particulars set out under rule 12; and
- (c) be in such number of copies as would be sufficient for the election court and all respondents named in the petition.

(5) The Registrar shall acknowledge receipt of the petition in Form 2 set out in the First Schedule.

9. The Commission shall—

Commission to be
respondent in
every petition.

- (a) be a respondent in every petition filed under these Rules; and
- (b) be served with a petition filed pursuant to these Rules in the manner provided under Rule 12 (2).

10. (1) Within seven days after the filing of a petition, the petitioner shall serve the petition on the respondent by—

Service on the
respondent.

- (a) direct service; or
- (b) an advertisement that is published in a newspaper of national circulation.

(2) Service on the Commission shall be by—

- (a) delivery at the constituency, county or head office of the Commission;
- (b) delivery at such other office as the Commission may notify; or
- (c) an advertisement that is published in a newspaper of national circulation.

(3) Where a petition is served in accordance with sub-rules (1) (b) and (2) (c), the advertisement shall comply with these Rules if the advertisement is—

- (a) in Form 3 set out in the First Schedule;
- (b) of at least font size twelve; and
- (c) captured in dimensions of not less than ten centimetres by ten centimetres.

(4) A person served with a petition shall file and serve upon all the other parties a notice of address for service within five days from the date of such service.

11. (1) Upon being served with a petition in accordance with rule 10, a respondent may oppose the petition by filing and serving a response to an election petition within fourteen days.

Response to
petition.

(2) The response to a petition under sub-rule (1) shall be in Form 4 set out in the First Schedule.

(3) There shall be as many copies of the response filed as there are persons to be served, including a copy for the election court.

(4) Unless otherwise ordered by the election court, every response to a petition shall be served within seven days from the date of filing of that response.

(5) A response to a petition shall respond to each claim made in the petition.

(6) Where the petitioner claims the seat in issue for himself or herself or any other person, the response to a petition shall state the facts upon which the respondent relies to prove that the petitioner was not duly elected in the same manner as if the respondent had presented a petition against the election of that person.

(7) Respondents may file a joint response to a petition.

(8) A respondent who has not filed a response to a petition as required under this rule shall not be allowed to appear or act as a party in the proceedings of the petition.

12. (1) A petition shall be supported by an affidavit which shall— Affidavits generally.

- (a) set out facts and grounds relied on in the petition; and
- (b) be sworn personally by the petitioner or by at least one of the petitioners, if there is more than one petitioner.

(2) An affidavit in support of a petition under sub-rule (1) shall state—

- (a) the name and address of the deponent;
- (b) the date when the election in dispute was conducted;
- (c) the results of the election, if any, however declared;
- (d) the date of the declaration of the results of the election;
- (e) the grounds on which the petition is presented; and
- (f) the name and address of the advocate, if any, acting for the petitioner which shall be the address for service.

(3) Each person who the petitioner intends to call as a witness at the hearing, shall swear an affidavit.

(4) A petitioner shall, at the time of filing the petition, file the affidavits sworn under sub-rule (3).

(5) A response to the petition under rule 11 shall be supported by an affidavit sworn by the respondent.

(6) Each person who the respondent intends to call as a witness at the hearing, shall swear an affidavit.

(7) A respondent shall, at the time of filing the response to a petition, file the affidavits sworn under sub-rule (6).

(8) Except with the leave of the election court and for sufficient cause, a witness shall not give evidence unless an affidavit sworn by the witness is filed as required under these Rules.

(9) The election court may, on its own motion or on the application by any party to the petition, direct a party or witness to file a supplementary affidavit.

(10) An affidavit shall—

- (a) state the substance of the evidence;
- (b) be divided into paragraphs, each of which, as nearly as may be, shall be confined to a distinct portion of the subject, and numbered consecutively; and
- (c) contain a list of exhibits and copies of any documents which the deponent intends to rely on.

(11) Each affidavit shall be served to all parties to the petition.

(12) An affidavit shall form part of the record of the hearing and may be deemed to be the deponent's evidence for the purposes of an examination-in-chief.

(13) Every deponent shall, subject to the election court's direction, be examined-in-chief and cross-examined:

Provided that the parties may, by consent, accept not to cross-examine the deponents but shall have the deponent's evidence admitted as presented in the affidavits.

(12) The Oaths and Statutory Declarations Act and Order 19 of the Civil Procedure Rules, 2010 shall apply to affidavits under these Rules

13. (1) Within ten days of the filing of a petition, a petitioner shall deposit security for the payment of costs in compliance with section 78 (2) (b) and (c) of the Act.

Deposit of
security for costs.

(2) The security for costs deposited under sub-rule (1) shall—

- (a) be paid to the Registrar;
- (b) be for the payment of costs, charges or expenses payable by the petitioner; and
- (c) subject to the directions of an election court, be vested in, and drawn upon from time to time by, the Registrar for the purposes for which security is required.

(3) The Registrar shall—

- (a) issue a receipt for the deposit under this rule;
- (b) shall file the duplicate of the receipt issued under paragraph (a) in a record kept by him or her;
- (c) keep a record of deposits in which shall be entered from time to time the amount of a deposit and the petition to which the deposit relates;
- (d) allow any person concerned with the petition to examine the record of deposits.

PART V—CASE MANAGEMENT

14. (1) Upon receipt of a petition, the Registrar shall enter the names of the —

List of petitions.

- (a) petitioner;
- (b) respondent;
- (c) petitioner's advocate, if any;
- (d) respondent's advocate, if any; and
- (e) the addresses to which notices may be sent, in a register kept by the Registrar for that purpose.

(2) The register referred to in sub-rule (1) may be inspected at any time during official working hours and shall be affixed for that purpose on a notice board designated "The Elections Act-Election Petitions" at the registry.

15. (1) Within seven days after the receipt of the last response to a petition, an election court shall schedule a pre-trial conference with the parties in which the election court shall—

Pre-trial conferencing and interlocutory applications.

- (a) frame the contested and uncontested issues in the petition;
- (b) analyse methods for resolving the contested issues;
- (c) determine interlocutory applications;
- (d) confirm the number of witnesses the parties intend to call;
- (e) give an order, where necessary, for furnishing further particulars;
- (f) give directions for the disposal of the suit or any outstanding issues;
- (g) give directions as to the place and time of hearing the petition;
- (h) give directions as to the filing and serving of any further affidavits or the giving of additional evidence;
- (i) give directions on limiting the volume of any copies of documents that may be required to be filed; or
- (j) make such other orders as may be necessary to prevent unnecessary expenses.

(2) An election court shall not allow any interlocutory application to be made on conclusion of the pre-trial conference, if the interlocutory application could have, by its nature, been brought before the commencement of the hearing of the petition.

16. (1) On conclusion of the pre-trial conference under rule 15, the election court may give directions on—

Storage of ballot boxes and other materials.

- (a) the storage of the election materials including ballot boxes and documents relating to the petition;
- (b) the handling and safety of the election materials; or
- (c) the time for furnishing the election materials to the election court.

(2) In giving directions under sub-rule (1), the election court shall—

- (a) consider the prudent, efficient and economic use of storage and transport facilities;
- (b) consider the maintenance of the integrity of the election materials; and
- (c) ensure that the election materials are not interfered with.

(3) An election court may direct that the Commission maintains the custody of all election materials in relation to a petition.

(4) Only the material relating to a particular petition may be furnished to an election court.

(5) The election court may order that additional seals be placed on the ballot boxes related to the election for which a petition has been lodged.

17. Where more than one petition is lodged relating to the same election, the election court shall consolidate the petitions, and hear and determine them together.

Consolidation of petitions.

18. (1) The election court shall, by notice, specify the time and place of the hearing of a petition.

Time and place of hearing.

(2) A notice under sub-rule (1) shall be issued not less than seven days before the date fixed for hearing and shall be served to the addresses of each party provided under rule 14 (1) (e).

19. (1) Where any act or omission is to be done within such time as may be prescribed in these Rules or ordered by an elections court, the election court may, for the purposes of ensuring that injustice is not done to any party, extend or limit the time within which the act or omission shall be done with such conditions as may be necessary even where the period prescribed or ordered by the Court may have expired.

Extension and reduction of time.

(2) Sub-rule (1) shall not apply in relation to the period within which a petition is required to be filed, heard or determined.

20. (1) Save in exceptional circumstances, once the hearing of a petition has commenced it shall proceed uninterrupted on a day to day basis until it is determined.

Conduct of a hearing.

(2) Despite sub-rule (1), the election court may adjourn the hearing of a petition for a period not exceeding five days.

(3) If a judge or magistrate hearing a petition is unable to continue hearing the petition due to illness or any other reason before the petition is determined, the Chief Justice shall appoint another judge or magistrate, as the case may be, to continue the hearing and determine the petition.

(4) Where another judge or magistrate has been appointed under sub-rule (3), the judge or magistrate shall continue with the proceedings from where the previous judge or magistrate had stopped.

21. (1) A petition shall not be withdrawn without leave of the election court.

Withdrawal of petition.

(2) The election court may grant leave to withdraw a petition on such terms as to the payment of costs or as the election court may otherwise determine.

(3) An application for leave to withdraw a petition shall—

- (a) be in Form 5 set out in the First Schedule;
- (b) be signed by the petitioner or a person authorised by the petitioner;
- (c) state the grounds for withdrawing the petition; and
- (d) be lodged at the registry.

(4) The parties to a petition shall each file an affidavit, before leave for withdrawal of a petition is determined, addressing the grounds on which the petition is intended to be withdrawn.

(5) Despite sub-rule (4), an election court may, on cause being shown, dispense with the affidavit of a party to the petition if it seems to the election court on special grounds to be fit and just.

(6) Each affidavit filed under sub-rule (4) shall contain the following declaration—

“to the best of the deponent’s knowledge and belief, that no agreement or terms of any kind has been made, and that no undertaking has been entered into, in relation to the withdrawal of the petition.”

(7) Despite sub-rule (6), where a lawful agreement shall have been made with respect to the withdrawal of the petition, the affidavit shall set out the terms of the agreement.

22. (1) The petitioner shall serve each respondent with a copy of the application to withdraw a petition.

Notice of intention to withdraw and election petition.

(2) The petitioner shall publish in a newspaper of national circulation a notice of intention to withdraw an election petition in Form 6 set out in the First Schedule and the petitioner.

23. (1) The Registrar shall issue a notice for hearing an application to withdraw an election petition in Form 7 set out in the First Schedule, to the parties in an election petition.

Notice for hearing of an application to withdraw an election petition.

(2) The notice issued under sub-rule (1) shall specify the time and place for the hearing of the application for the withdrawal of the petition under rule 21.

24. (1) At the hearing of the application for the withdrawal of a petition, a person who is qualified to be a petitioner in respect of the election to which the petition relates may apply to the election court to be substituted as the petitioner in place of the petitioner who has applied to withdraw the petition.

Substitution of a petitioner.

(2) The election court may grant the application to substitute the applicant under sub-rule (1) as the petitioner.

(3) The election court may direct that the security deposited on behalf of the original petitioner shall remain as security for any costs that may be incurred by the substituted petitioner, and that to the extent of the sum deposited as security, the original petitioner may be liable to pay the costs of the substituted petitioner.

(4) If the election court does not make an order under sub-rule (3), security of the same amount as would be required of a new petitioner and subject to the same conditions imposed on the original petitioner, the substituted petitioner shall pay, within three days after the order of substitution, the security before proceeding with the petition.

(5) Subject to sub-rules (3) and (4), a substituted petitioner shall stand in the same position, to the extent possible, and shall be subject to the same liabilities as the original petitioner.

(6) Where there is more than one petitioner, an application to withdraw a petition shall be made with the consent of all the other petitioners.

25. (1) A petition shall not abate merely by reason of the death of a sole petitioner or of one of the petitioners of several petitioners.

Death of petitioner.

(2) In case of the death of a sole petitioner or of one of the petitioners where there are several petitioners, the intended substitution of a new petitioner shall be notified to the election court within seven days of the notification of the death.

26. (1) Upon the death of a petitioner, a party or person interested to be substituted as the petitioner shall give a notice of death of the petitioner or of the survivor of several petitioners in the manner provided under rule 25.

Application to be substituted as petitioner upon death of petitioner.

(2) An application for an order to be substituted as a petitioner shall be made within seven days from the day of the notice issued under sub-rule (1).

(3) The election court may substitute as a petitioner any applicant who is desirous of being substituted and on whose behalf security of the same amount is given as required in the case of a new petition.

27. (1) If, before the hearing of a petition, the person whose election is being contested—

Death, resignation of, or notice not to oppose by elected person.

- (a) dies or vacates the seat; or
- (b) gives notice in writing to the Registrar that he or she does not intend to oppose the petition, the petition shall abate.

(2) The Registrar shall publish in the *Gazette* a notice stating that the person whose election is being contested has—

- (a) died;
- (b) vacated his or her seat; or
- (c) given notice in writing that he or she does not intend to oppose the petition.

(3) A person who may have been a petitioner in respect of the election to which the petition relates, may apply to the election court to be admitted as a respondent to oppose the petition within ten days after the notice under sub-rule (2) has been published in the *Gazette* or within such other period as the election court may allow.

(4) A notice under sub-rule (1) (b) shall—

- (a) be in writing;
- (b) be signed by the person whose election is being contested;
- (c) be filed at the office of the Registrar; and
- (d) be filed not less than six days before the day appointed for the hearing of the petition and shall exclude the day of publishing the notice.

PART VI—SCRUTINY AND RECOUNT

28. A petitioner may apply to an elections court for an order to—
- (a) recount the votes; or
 - (b) examine the tallying, if the only issue for determination in the petition is the count or tallying of votes received by the candidates.

Recount of votes or examination of tallying.

29. (1) The parties to the proceedings may apply for scrutiny of the votes for purposes of establishing the validity of the votes cast.

Scrutiny of votes.

(2) On an application under sub-rule (1), an election court may, if it is satisfied that there is sufficient reason, order for scrutiny or recount of the votes.

(3) The scrutiny or recount of votes ordered under sub-rule (2) shall be carried out under the direct supervision of the Registrar or Magistrate and shall be subject to the directions the election court gives.

(4) The scrutiny or recount of votes in accordance with sub-rule (2) shall be confined to the polling stations in which the results are disputed and may include the examination of—

- (a) the written statements made by the returning officers under the Act;
- (b) the printed copy of the Register of voters used during the elections sealed in a tamper proof envelope;
- (c) the copies of the results of each polling station in which the results of the election are in dispute;
- (d) the written complaints of the candidates and their representatives;
- (e) the packets of spoilt ballots;
- (f) the marked copy register;
- (g) the packets of counterfoils of used ballot papers;
- (h) the packets of counted ballot papers;
- (i) the packets of rejected ballot papers;
- (j) the polling day diary; and
- (k) the statements showing the number of rejected ballot papers.

(5) For purposes of sub-rule (4) (b), every returning officer shall upon declaration of the results, seal the printed copy of the Register of Voters used at that election in a tamper proof envelope and such envelope shall be stored by the Commission subject to the elections court directions under rule 16.

PART VII—COSTS AND DEPOSITS

30. (1) The election court may, at the conclusion of a petition, make an order specifying—

Costs.

- (a) the total amount of costs payable;
- (b) the maximum amount of costs payable;
- (c) the person who shall pay the costs under paragraph (a) or (b);
and
- (d) the person to whom the costs payable under paragraphs (a) and (b) shall be paid.

(2) When making an order under sub-rule (1), the election court may —

- (a) disallow any prayer for costs which may, in the opinion of the election court, have been caused by vexatious conduct, unfounded allegations or unfounded objections, on the part of either the petitioner or the respondent; and
- (b) impose the burden of payment on the party who may have caused an unnecessary expense, whether that party is successful or not, in order to discourage any such expense.

(3) The abatement of a petition shall not affect the liability of the petitioner or of any other person to the payment of previously incurred costs.

31. (1) A Registrar shall tax the costs of a petition on the order of the election court in the same manner as costs are taxed in civil proceedings in accordance with the Advocates Act.

Taxation and
recovery of costs.
Cap. 16.

(2) An order of the Registrar under sub-rule (1) shall be confirmed by the relevant election court.

(3) An election court may direct that the whole or any part of any money deposited by way of security shall be applied in the payment of taxed costs.

32. There shall be paid, in respect of all proceedings under these Rules, the fees prescribed in the Second Schedule.

Fees.

33. (1) The money deposited under rule 13 shall, when it is no longer needed for payment of costs, charges or expenses be returned or disposed of as the election court may, by order, determine to be just.

Return of money
deposited.

(2) An order under sub-rule (1) may be made upon an application by a party to the petition and proof that all just claims have been satisfied or sufficiently provided for as the election court may require.

(3) The order may direct the payment of the money either to the party in whose name it is deposited or to any person entitled to receive it.

(4) On the conclusion of a petition, the election court shall issue notice to the parties to show cause why the security for costs should not be disposed of.

PART VIII—APPEALS

34. (1) An appeal from a Resident Magistrate's Court under section 75 (1A) of the Act shall be in the form of a memorandum of appeal and shall be signed in the same manner as a petition.

Appeals from
Resident
Magistrate's
Court.

(2) The memorandum of appeal under sub-rule (1) shall concisely set out under distinct heads the grounds of appeal without any argument or narrative from the judgment appealed from and the grounds shall be numbered consecutively.

(3) The memorandum of appeal under sub-rule (1) shall be filed at the nearest High Court registry within thirty days from the date of the judgment.

(4) The appellant shall, upon filing the memorandum of appeal in accordance with sub-rule (3), pay the fees prescribed in the Second Schedule.

(5) The appellant shall, within seven days of the filing of the memorandum of appeal in accordance with sub-rule (3), serve the memorandum of appeal on all parties directly affected by the appeal.

(6) The appellant shall, within twenty-one days of the filing of the memorandum of appeal in accordance to sub-rule(3), file a record of appeal which shall contain the following documents—

- (a) the memorandum of appeal;
- (b) pleadings of the petition;
- (c) typed and certified copies of the proceedings;
- (d) all affidavits, evidence and documents entered in evidence before the magistrate; and
- (e) a signed and certified copy of the judgment appealed from and a certified copy of the decree.

(7) On the filing of the memorandum of appeal in accordance with sub-rule (3), the registrar of the court to which the appeal is preferred shall, within seven days, send a notice of appeal to the election court from whose decree the appeal is preferred.

(8) The election court from which an appeal is preferred shall, upon receiving a notice under sub-rule (7), send the proceedings and all relevant documents relating to the petition to the High Court to which the appeal is preferred.

(9) The High Court to which the appeal is preferred shall, within thirty days of lodging the memorandum of appeal in accordance with sub-rule (5), fix a date for—

- (a) the giving of directions including directions as to the manner in which evidence and exhibits may be presented; and
- (b) the hearing of the appeal.

(10) The High Court to which the appeal is preferred may confirm, vary or reverse in whole or in part, the decision of the court from which the appeal is preferred and shall have the same powers and perform the same duties as are conferred and imposed on the court exercising original jurisdiction.

(11) An appeal filed under sub-rule (1) shall be heard and determined within three months of the date of lodging the appeal.

35. An appeal from the judgment and decree of the High Court in a petition concerning the membership of the National Assembly, Senate or office of county Governor shall be heard and determined under the Court of Appeal Rules, 2010.

Appeals from the High Court.
L. N. No. 152/2010.

PART IX—MISCELLANEOUS

36. Despite any provision in these Rules, the election court may, at any time before or during the hearing, issue any orders of an administrative nature, including—

Power of an election court to issue administrative orders.

- (a) an order to require written submissions; and
- (b) an order prescribing the timelines for certain actions.

37. The Chief Justice may issue practice directions for the better carrying out of the provisions of these Rules.

Practice directions by Chief Justice.

38. The Elections (Parliamentary and County Elections) Petition Rules, 2013 are revoked.

Revocation of L. N. No. 54 of 2013.

FIRST SCHEDULE

FORMS

FORM 1

(r. 7(b))

IN THE HIGH COURT OF KENYA/IN THE RESIDENT MAGISTRATES COURT
AT---

THE ELECTIONS ACT, 2011

ELECTIONS (PARLIAMENTARY AND COUNTY ELECTIONS) PETITION RULES,
2017

ELECTION PETITION NUMBER.....OF 20.....

ELECTION PETITION

Election for the(state whether Governor/Senator/member of National
Assembly/member of Senate/member of county assembly) of(state the
respective county/constituency/ward)

The Petition of (State name of Petitioner)

Your Petitioner state that the election was held on the day of
....., 20....., when.....(insert names of
candidates)were candidates, and the returning officer has returned.....(insert
name of candidate declared as winner)as being duly elected.

And your Petitioner say that
(state the facts and grounds on which the Petitioner relies).

Wherefore your Petitioner prays that it be determined that the said..... (insert
name of candidate declared as winner)was not duly elected and the election was void (or
as the case may be).

Dated, 20.....

.....
Petitioner

FORM 2

(r. 8(5))

IN THE HIGH COURT OF KENYA/IN THE RESIDENT MAGISTRATES COURT
AT----

THE ELECTIONS ACT, 2011

ELECTIONS (PARLIAMENTARY AND COUNTY ELECTIONS) PETITION RULES,
2017

ELECTION PETITION NUMBER.....OF 20.....

ACKNOWLEDGEMENT OF RECEIPT OF AN ELECTION PETITION

Received on the day of, 20.....
at the Registry of the High/Resident Magistrates Court, a petition concerning the election
of..... for purporting to be signed
by..... (insert the names of Petitioners)

.....
Registrar

FORM 3

(r. 10(3)(a))

IN THE HIGH COURT OF KENYA/IN THE RESIDENT MAGISTRATES COURT
AT----

THE ELECTIONS ACT, 2011

ELECTIONS (PARLIAMENTARY AND COUNTY ELECTIONS) PETITION RULES,
2017

ELECTION PETITION NUMBER.....OF 20.....

SERVICE OF ELECTION PETITION BY ADVERTISEMENT

To:
of.....

Take notice that an Election Petition in regard
to.....County/Constituency/County assembly ward has been filed in
the.....Court atin Election Petition No.of 20
.....,in which you are named as a Respondent.

Service of the summons on you will be by means of this advertisement. A copy of the
summons and the petition may be obtained from the court
at..... (insert postal address of registry)

And further take notice that, unless you enter an appearance within days, the
petition will be heard in your absence.

Dated, 20.....

.....
Petitioner

FORM 4

(r. 11(2))

IN THE HIGH COURT OF KENYA/IN THE RESIDENT MAGISTRATES COURT
AT----

THE ELECTIONS ACT, 2011

ELECTIONS (PARLIAMENTARY AND COUNTY ELECTIONS) PETITION RULES,
2017

ELECTION PETITION NUMBER.....OF 20.....

RESPONSE TO AN ELECTION PETITION

Election for the (state whether
Governor/Senator/member of National Assembly/member of Senate/member of county
assembly) of.....(state the respective county/constituency/ward)

The Response of(state name of Respondent)

In response to the petition, the Respondent states that (state the facts or grounds on which
the Respondent relies).

Wherefore your Respondent prays that it be determined that the said
..... (name of candidate) was duly elected and the election was
valid (or as the case may be).

Dated, 20.....

.....
Respondent

FORM 5

(r. 21(3)(a))

IN THE HIGH COURT OF KENYA/IN THE RESIDENT MAGISTRATES COURT
AT----

THE ELECTIONS ACT, 2011

ELECTIONS (PARLIAMENTARY AND COUNTY ELECTIONS) PETITION RULES,
2017

ELECTION PETITION NUMBER.....OF 20.....

APPLICATION TO WITHDRAW AN ELECTION PETITION

The petition of presented the
..... day of, 20.....

The Petitioner applies for leave to withdraw the petition upon the following grounds
(state grounds).

The Petitioner prays that a day may be appointed for hearing this application.

Dated, 20.....

.....
Petitioner

FORM 6

(r. 22 (2))

IN THE HIGH COURT OF KENYA/IN THE RESIDENT MAGISTRATES COURT
AT----

THE ELECTIONS ACT, 2011

ELECTIONS (PARLIAMENTARY AND COUNTY ELECTIONS) PETITION RULES,
2017

ELECTION PETITION NUMBER.....OF 20.....

INTENTION TO WITHDRAW AN ELECTION PETITION

In the election petition for theCounty/Constituency/Ward/ in which
..... is the Petitioner and.....is the Respondent.

Notice is hereby given that the above Petitioner did on theday of.....,
20 lodge at the office of the Registrar an application for leave to withdraw the
election petition, which application the following is a copy- (*attach copy*).

Take notice that any person who might have been a Petitioner in respect of the said
election may, within seven days after the date of this notice, give notice in writing to the
Registrar of the intention on the hearing of the application to be substituted as a
Petitioner.

Dated, 20.....

.....
Registrar

FORM 7

(r. 23(1))

IN THE HIGH COURT OF KENYA/IN THE RESIDENT MAGISTRATES COURT
AT----

THE ELECTIONS ACT, 2011

ELECTIONS (PARLIAMENTARY AND COUNTY ELECTIONS) PETITION RULES,
2017

ELECTION PETITION NUMBER.....OF 20.....

HEARING OF AN APPLICATION TO WITHDRAW AN ELECTION PETITION

In the election petition for theCounty/Constituency/Ward/ in which
..... is the Petitioner and.....is the Respondent.

Notice is hereby given that the above Petitioner did on theday
of....., 20 lodge at the office of the Registrar an
application for leave to withdraw the election petition.

And take notice that the application to withdraw the petition shall be heard on the
..... day of, 20..... at theRegistry of the
High/Resident Magistrates Court.....

Dated, 20.....

.....
Registrar

SECOND SCHEDULE

FEES

(r. 32, 34(4))

	<i>KSh.</i>
Filing of a Petition in the High Court	30,000
Filing of a Petition in the Magistrates' Court	15,000
Lodging a Memorandum of Appeal	15,000

Dated the 26th May, 2017.

DAVID MARAGA,
*Chief Justice and President of the Supreme Court of Kenya
and Chairperson, Rules Committee.*