

LEGAL NOTICE NO. ....

THE CONSTITUTION OF KENYA

THE SUPREME COURT ACT

(No. 7 of 2011)

THE SUPREME COURT (PRESIDENTIAL ELECTION PETITION) RULES, 2017

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THE CONSTITUTION OF KENYA

THE SUPREME COURT ACT  
(No. 7 of 2011)

IN EXERCISE of the powers conferred by Article 163(8) of the Constitution and section 31 of the Supreme Court Act, the Supreme Court makes the following Rules—

**THE SUPREME COURT (PRESIDENTIAL ELECTION PETITION) RULES, 2017**

- |                |   |
|----------------|---|
| Citation       | 1. These Rules may be cited as the Supreme Court (Presidential Election Petition) Rules, 2017.  |
| Interpretation | 2. In these Rules, unless the context otherwise requires—   |
| No.7 of 2011.  | “Act” means the Supreme Court Act;  |
| No.24 of 2011. | “Commission” means the Independent Electoral and Boundaries Commission established under Article 88 of the Constitution;                            |
|                | “Court” means the Supreme Court;  |
| No.24 of 2011. | “election” means an election for purposes of electing the President pursuant to the procedure stipulated by the Constitution and the Elections Act; |
|                | “Judge” means a Judge of the Court;   |
|                | “nomination” has the meaning assigned to it under the Elections Act;  |
|                | “petition” means a Presidential election petition filed in the Court pursuant to Article 140 of the Constitution;                                   |
|                | “petitioner” means a person filing a petition and includes a cross-petitioner;  |
|                | “practice directions” means practice directions issued by the Chief Justice under Rule 29;  |
|                | “Registrar” means the Registrar of the Court and includes a Deputy Registrar;   |
|                | “respondent” means the President-elect and includes the Deputy President-elect, the Commission and any other person named in the                    |

- petition as a respondent.
- Object and purpose of the Rules. 3. The object and purpose of these Rules is to enable the Court to exercise its exclusive original jurisdiction under Article 163(3) (a) of the Constitution.
- Application of the Rules. 4. (1) These Rules apply to the conduct of an election petition in relation to the office of the President and includes a petition filed—
- (a) upon the declaration by the Commission of the President-elect under Article 138 (10) of the Constitution and section 39 of the Elections Act, 2011;
  - (b) pursuant to Article 140 of the Constitution; and
  - (c) in relation to a presidential election other than a general election.
- (2) Where there is no applicable provision in the Act or in these Rules, the procedures set out in the Supreme Court Rules, 2017 in so far as they are not inconsistent with the Act or these Rules, shall apply to an election petition.
- Compliance with Rules 5. The effect of any failure to comply with these Rules shall be a matter for determination at the Court’s discretion subject to the provisions of Article 159 (2) (d) of the Constitution.
- Contents and form of a petition. 6. (1) A petition challenging the election of the President-elect shall be in Form A set out in the First Schedule and shall state —
- (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) A petition shall—

- (a) be signed by the petitioner or by a person duly authorized by the petitioner;
- (b) be supported by an affidavit by the petitioner; and
- (c) be in number of copies as would be sufficient for the court and all respondents named in the petition.

Affidavit in support of the petition

7. An affidavit in support of the petition shall be sworn personally by the petitioner or by one of the petitioners, if more than one, and shall—

- (a) contain the grounds on which relief is sought, setting out facts relied on by the petitioner or petitioners.
- (b) be divided into paragraphs, each of which, as nearly as may be, shall be confined to distinct portion of the subject, and every paragraph shall be numbered consecutively;
- (c) conclude with a statement setting out particulars of the relief sought.

Affidavits by witnesses

8. A petitioner shall, at the time of filing the petition, file an affidavit sworn by each witness setting out the substance of the evidence relied on.

Filing of petition.

9. (1) A petition shall be filed in Court within seven days after the date of the declaration of the results of the presidential election.

(3) The petitioner shall, upon filing a petition deposit a sum of one million shillings as security for costs.

(3) A petition may be filed by several persons who may be joined as co-petitioners.

(4) A petition is considered filed upon—

- ( a) payment of the prescribed court fee;
- (b) depositing the security for costs; and
- ( c ) stamping by the Registrar.

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- Service of petition. 10. (1) Within two days of filing, the petitioner shall serve the petition on the respondent—
- (a) directly on the respondent; or
  - (b) by advertisement in a newspaper with national circulation.
- (2) Subject to sub-rule (1), the petitioner shall, within six hours of filing the petition, serve the respondent with the petition by electronic means.
- Response to petition. 11. (1) Upon service of a petition under Rule 10, a respondent who wishes to oppose the petition may within four days of service of the petition file and serve a response which shall—
- (a) be in form of an answer to the petition in the manner specified in the manner in Form B set out in the First Schedule; and
  - (b) may be accompanied by replying affidavits sworn by the respondent and any witnesses, setting out the substance of the evidence relied on.
- (2) Where the respondent does not intend to oppose the petition the respondent shall—
- (a) file a notice of intention not to oppose the petition within three days of service of the petition in Form C set out in the First Schedule; and
  - (b) cause a copy of the notice to be served upon the petitioner.
- (3) Subject to the Court's direction, a respondent who has given notice of intention not to oppose a petition under sub-rule (2) shall not be allowed to appear or act as a party against the Petition in any subsequent proceedings.
- Close of pleadings 12. The pleadings shall be closed upon filing a response under Rule 11.
- Multiple petitions 13. Where multiple petitions are filed, the time for hearing and determination of the petition for purposes of Article 140 (2) of the Constitution, starts running on the date the last petition is filed.

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- Pre-trial conference
14. (1) There shall be a pre-trial conference eight days after filing of the petition.
- (2) The Registrar shall notify all the parties to the petition of the date and time of the conference in Form D set out in the First Schedule.
- Issues for determination during pre-trial conference.
15. The Court shall, at the pre-trial conference—
- (a) frame contested and uncontested issues in the petition;
  - (b) consider consolidation of petitions in cases where more than one petition is filed;
  - (c) give directions specifying the place and time of the hearing of the petition;
  - (d) direct the Commission on the handling of all the relevant election materials and documents relating to the petition before commencement of the hearing; and
  - (e) make such other orders as may be necessary to ensure a fair determination of the petition.
- Storage and production of election materials and documents
16. (1) Upon conclusion of the pre-trial conference, the Court may, with the concurrence of the parties give directions on—
- (a) the storage of all election materials and documents relating to the petition;
  - (b) handling and safety of the materials and documents; and
  - (c) the time of furnishing them to the court;
- (2) In giving directions under sub-rule (1), the Court shall have regard to—
- (a) prudent, efficient and economic use of storage and transport facilities;
  - (b) maintaining the integrity of and ensuring non-interference with the material; and
  - (c) bulkiness.
- (3) The Commission shall maintain the custody of all election material as by law required until the Court directs their release.

(4) Only the material relating to a particular petition may be furnished to the Court.

- Hearing of petition
17. (1) The Court shall immediately after the pre-trial conference commence the hearing of the petition.
- (2) The petition shall be determined on the basis of affidavit evidence, written submissions and oral highlights.
- Interlocutory applications.
18. Interlocutory applications by any person or other parties to the petition shall be made on the day after the close of pleadings and shall be determined on the basis of written submissions not exceeding five pages.
- Security for costs.
19. (1) The petitioner shall, upon filing a petition deposit a sum of one million shillings as security for costs.
- (2) If no security is given, the Court may, on its own motion or on an application by the respondent, issue an order directing the dismissal of the petition and for payment of the respondent's costs.
- Notification of filing of a petition
20. The Registrar shall within three days of the filing of a petition cause to be published in the Gazette and in a newspaper with national circulation a notification of filing a petition in Form E set out in the First Schedule.
- Substitution of petitioner.
21. (1) The petitioner may apply to the Court to substitute a co-petitioner or strike out any of the petitioners.
- (2) Any person who was entitled to be a petitioner in the petition may apply and be joined as a co-petitioner at any time before the conclusion of the hearing of the petition.
- (3) An application under sub-rule (1) and (2) shall be by notice of motion in Form F set out in the First Schedule and shall be supported by an affidavit.
- Joinder of respondent.
22. (1) Any person entitled to be joined as a respondent may apply to be joined as a respondent to the petition.
- (2) An application under sub-rule (1) shall be by notice of motion in Form F set out in the First Schedule and supported by an affidavit.
- (3) The petition shall be heard and determined, whether or not any person, subsequent to the filing of the petition applies to be joined as a



- respondent.
- Withdrawal of the petition and substitution of a petitioner.
23. (1) A petitioner may, with leave of the Court, withdraw the petition at any stage of the proceedings.
- (2) An application under sub-rule (1) shall be by notice of motion in Form F set out in the First Schedule and shall be supported by an affidavit.
- (3) The Court may, upon application for withdrawal of a petition under sub-rule (1), grant leave on such terms as it may deem fit and just.
- Hearing to proceed uninterrupted.
24. Save in exceptional circumstances as may be determined by the Court, the hearing of a petition once commenced shall proceed uninterrupted on a day to day basis until its conclusion.
- Abatement.
25. (1) A petition shall not abate on the sole ground that a petitioner or a respondent has died in the course of the proceedings.
- (2) Subject to sub-rule (1), the Court may make any order as it may deem fit and just in the circumstances.
- Orders of the Court.
26. (1) At the conclusion of the hearing of an election petition, the Court may make an order—
- (a) dismissing the petition;
- (b) declaring the election of the President-elect to be—
- (i) valid; or
- (ii) invalid.
- (c) invalidating the declaration made by the Commission under Article 138(5) of the Constitution;
- (d) on payment of costs; or
- (e) as it may deem fit and just in the circumstances.
- Determination of a petition.
27. (1) The Court shall, at the close of a hearing, give its decision but may reserve its reasons for the decision to a date not later than fourteen days.
- (2) The decision of the Court shall be final.

- Fees and costs.

28. (1) The filing fees for petitions and other documents filed under these Rules shall be as set out in the Second Schedule.

(2) The Registrar shall be a taxing officer with power to tax the costs arising out of the proceedings under these Rules as between the parties.

(3)The costs taxed by the Registrar under sub-rule (1) shall be certified by the Court
- Practice directions.

29. (1) The Chief Justice may issue practice directions for the better carrying out of the provisions of these Rules.

(2) Where these Rules do not provide for the exercising of a right or for a procedure, the Court may adopt any procedure that is not inconsistent with the Constitution, the Act, these Rules or practice directions.
- Extension of time.

30. Subject to the Constitution, the Court may extend the time for doing anything required to be done under these Rules.
- Review of Rules.

31. The Court may review these Rules from time to time.
- Revocation of L.N. No 14 of 2013

32. The Supreme Court (Presidential Election Petition) Rules, 2013, Legal Notice number 15 of 2013 are hereby revoked.

**FIRST SCHEDULE: FORMS**

**FORM A (r.6)**

**IN THE SUPREME COURT OF KENYA AT NAIROBI**

Petition No... ..of 20.....

Between

..... Petitioner

**AND**

..... Respondent.

**PETITION**

1. The humble petition of AB is as follows..... (set out, in consecutive paragraphs the specific issues contended by (each of the) petitioner(s) referring where necessary to the section of the Constitution or any Act of Parliament or decided cases relied upon.)

- 2. (briefly set out the point of law raised).
- 3. (briefly set out the facts necessary to enable the Court to properly decide the point of law raised).
- 4. (set out in summary of the grounds for the petition).
- 5. (set out the arguments supporting each of the grounds of the petition).
- 6. The question or issue for the determination by the Court is..... (state the question).
- 7. The relief sought by the petitioner is.....

DATED this .....day of .....20.....

Signed.....

Petitioner.....

.....Advocate for the petitioner

To:  
The Supreme Court of Kenya

Copies to be served on .....

Lodged in the Registry at.....on the.....day of.....

Registrar

FORM B (r.11 (1) (a))  
 IN THE SUPREME COURT OF KENYA AT NAIROBI  
 Petition No... ..of 20.....

Between

..... Petitioner

AND

..... Respondent.

**RESPONSE TO PETITION**

In response to the petition, the respondents state that.....-  
(state the facts and grounds on which the petitioners rely).

Wherefore your respondents pray that it be determined that the said ..... was duly elected and the election was valid or invalid.

Dated ....., 20..... (Signed) A.

Dated ....., 20..... (Signed) B

FORM C (r.11 (2) (a))
IN THE SUPREME COURT OF KENYA AT NAIROBI
Petition No... ..of 20.....

Between

..... Petitioner

AND

..... Respondent.

NOTICE OF INTENTION NOT TO OPPOSE THE PETITION

TAKE NOTICE that the respondent in this petition intends not to oppose the petition.

Dated this .....day of ....., 20.....

Signed.....Respondent.....

Advocate for the respondent

To:

The Registrar /Deputy Registrar of the Supreme Court of Kenya

Copies to be served on ..... lodged in the registry/sub-registry at

..... of ....., 20.....

Registrar

FORM D (r.14 (2))
IN THE SUPREME COURT OF KENYA AT NAIROBI
Petition No... ..of 20.....

Between

..... Petitioner

AND

..... Respondent.....

NOTICE BY REGISTRAR OF PRE-TRIAL CONFERENCE

TAKE NOTICE that the date of the pre-trial conference has been fixed on this

.....day of ....., 20.....

Signed

.....

Registrar

FORM E (r.20)
IN THE SUPREME COURT OF KENYA AT NAIROBI
Petition No... of 20.....

Between
..... Petitioner
AND
..... Respondent.

NOTICE OF FILING OF PETITION

TAKE NOTICE that a petition has been filed by .....
against the following respondents.....

Dated this .....day of ....., 20.....

Signed
.....
Registrar

FORM F (r.21 (3), 22 (2) and 23 (2))
IN THE SUPREME COURT OF KENYA AT NAIROBI
Petition No... of 20.....

Between
..... Petitioner
AND
..... Respondent.

NOTICE OF MOTION

TAKE NOTICE that on ..... the .....day of ....., 20 .....,
at .....o'clock in the morning / afternoon or as soon thereafter as he can be heard,.
..... , Advocate for the above-named applicant, will move the Court a Judge of the
Court for an order that .....

on the grounds that.....

And for an order that the costs of and incidental to this application abide the result of the said
appeal .....

The application will be supported by the affidavit of ..... sworn on the
..... day of ....., 20..... The address for service of the
applicant is .....

Dated this ..... day of ....., 20 .....

Signed..... Applicant .....

Advocate for the applicant

Lodged in the Registry on the .....day of .....,  
20.....

Registrar

SECOND SCHEDULE  
FEES (r.29 (1))

Upon lodging a petition	Kes	500,000
Upon filing a response to the petition	Kes	20,000
Upon lodging a notice of motion	Kes	1,500
Upon lodging a notice of motion under certificate of urgency	Kes	2,750
Upon lodging an affidavit, other than an affidavit annexed to a notice of motion	Kes	1,150
Upon filing notice of intention not to oppose the petition	Kes	4,000
Filing annexures ( per folio)	Kes	50
Filing written submissions (per folio)	Kes	50

Dated.....2017

.....  
DAVID MARAGA,  
Chief Justice/President of the Supreme Court