

THE APPELLATE JURISDICTION ACT

(*Cap. 9*)

THE COURT OF APPEAL (ELECTION PETITION) RULES, 2017

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THE APPELLATE JURISDICTION ACT
(Cap. 9)

IN EXERCISE of the powers conferred by section 5 of the Appellate Jurisdiction Act, the Rules Committee makes the following Rules—

THE COURT OF APPEAL (ELECTION PETITION) RULES, 2017

PART I—PRELIMINARY

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| Citation | 1. These Rules may be cited as the Court of Appeal (Election Petition) Rules, 2017. |
| Interpretation | 2. In these Rules, unless the context otherwise requires—

“advocate” means a person who, under rule 25 of the Court of Appeal Rules, 2010 has the right of audience before the Court;

“appeal” means an appeal from the decision of the High Court acting in its original jurisdiction in an election petition;

“appropriate registry” means the Registry of the Court wherever situate and includes a sub-registry;

“Court” means the Court of Appeal and includes a single judge of the Court;

“deputy registrar” means a deputy registrar of the Court;

“judge” means a judge of the Court acting as such;

“notice of appeal” means notice lodged in accordance with rule 6;

“notice of cross-appeal” means a notice lodged in accordance with rule 8;

“Registrar” means the Registrar of the Court and includes a deputy registrar;

“registry” means the registry of the Court and includes a sub-registry;

“respondent” includes any person on whom a notice of appeal has been served and any person other than the appellant on whom a notice of cross-appeal has been served. |
| Object and purpose of the Rules | 3. The object and purpose of these Rules is to facilitate the just, expeditious and impartial determination of election petition appeals in exercise of the Court’s appellate jurisdiction under Article 164(3) of the Constitution. |

- Application of the Rules
4. (1) These Rules apply to the conduct of appeals from High Court acting in its original jurisdiction in election petitions and the matters relating thereto.
- (2) Where there is no applicable provision in these Rules, the provisions of the Court of Appeal Rules, 2010 relating to civil appeals in so far as they are not inconsistent with these Rules, shall apply to an election petition appeal.
- (3) Where there is a conflict between these Rules and the Court of Appeal Rules, 2010, the Court shall adopt a reasonable interpretation that avoids such conflict.
- (4) A decision of the Court that a provision of one set of Rules prevails over another provision does not invalidate the other provision, but the other provision is inoperative to the extent of the inconsistency.
- 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 and the need to observe the time set by the Constitution or any other law.

PART II—INITIATION OF APPEALS

- Notice of appeal
6. (1) Unless otherwise provided by statute, all election petition appeals shall be initiated by notice of appeal.
- (2) A person who desires to appeal to the Court against a decision of the High Court in an election petition shall, within seven days of the date of the decision appealed against, lodge a notice of appeal.
- (3) A notice of appeal shall identify the judgment from which the appeal is based and shall, in separate numbered paragraphs—
- (a) specify whether all or part of the judgment is being appealed and, if a part, which part;
 - (b) identify the source of the right of appeal and the basis for the jurisdiction of the Court to determine the appeal;
 - (c) precisely set out the grounds of the appeal;
 - (d) concisely state the relief sought;
 - (e) provide the address for service of the appellant and state the names and addresses of all persons intended to be served with copies of the notice; and
 - (f) contain a request that the appeal be set down for hearing in the

appropriate registry.

(4) Where it is intended to appeal against a decree, it shall not be necessary that the decree be extracted before lodging notice of appeal.

(5) A notice of appeal shall be substantially in the Form EPA 1 set out in the Schedule and shall be signed by or on behalf of the appellant.

Notice of cross-
appeal

7. (1) A respondent who desires to contend at the hearing of the appeal that the decision of the High Court or any part thereof should be varied or reversed, either in any event or in the event of the appeal being allowed in whole or in part, shall give notice to that effect, specifying the grounds of his contention and the nature of the order which he proposes to ask the Court to make, or to make in that event, as the case may be.

(2) A notice given by a respondent under this rule shall state the names and addresses of any persons intended to be served with copies of the notice and shall be lodged in quadruplicate in the appropriate registry not more than fifteen days after service on the respondent of the notice of appeal and the record of appeal.

(3) A notice of cross-appeal shall be substantially in the Form EPA 2 set out in the Schedule and shall—

- (a) be signed by or on behalf of the respondent;
- (b) identify the part of the judgment sought to be varied;
- (c) specify the grounds for variation; and
- (d) state precisely the relief sought.

(4) A notice of cross-appeal shall be served within five days of service of the record of appeal.

Contents of record
of appeal

8. (1) The record of appeal shall contain copies of the following documents—

- (a) an index of all the documents in the record with the numbers of the pages at which they appear;
- (b) a statement showing the address for service of the appellant and the address for service of the respondent being his last known address and proof of service on the respondent of the notice of appeal;
- (c) the pleadings;
- (d) the trial judge's notes of the hearing;

- (e) the transcript of any shorthand notes taken at the trial;
- (f) the affidavits read and all documents put in evidence at the hearing, or, if such documents are not in the English language, certified translations thereof;
- (g) the judgment;
- (h) certified decree or order;
- (i) the notice of appeal; and
- (j) such other documents, if any, as may be necessary for the proper determination of the appeal, including any interlocutory proceedings which may be directly relevant:

Provided that the copies referred to in paragraphs (d), (e) and (f) shall exclude copies of any documents or any parts thereof that are not relevant to the matters in controversy on the appeal.

(2) A judge or registrar of the High Court may, on the application of any party, direct which documents or parts of documents should be excluded from the record and an application for such direction may be made informally.

(3) The documents mentioned in sub-rule (1) shall be bound in the order in which they are set out in that sub-rule and documents produced in evidence shall be put in order of the dates they bear or, where they are undated, the dates when they are believed to have been made, without regard to the order in which they were produced in evidence:

Provided that an affidavit filed in support of a chamber summons or notice of motion shall be bound immediately following the summons or notice, as the case may be.

(4) Each copy of the record of appeal shall be certified to be correct by the appellant or by any person entitled to appear on his behalf.

(5) The record of appeal shall be filed within thirty days from the date of the judgment of the High Court.

(6) The appellant shall serve a copy of the record of appeal on all the parties named in the notice of appeal within five days of filing of the record of appeal.

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- Style of cause in notice **9.** The style of cause shall set out without abbreviation—
- (a) the name of the appellant together with the designation “Appellant (s)”; and
 - (b) the name of each party against whose interest the appeal is taken, together with the designation “Respondent (s)”.
- Sittings of the Court **10.** The sittings of the Court and the matters to be disposed of at such sittings shall be determined by the President of the Court and shall be advertised and notified in such manner as the President may direct but nothing in this rule shall preclude the Court from disposing of any business that has not been so advertised or notified.
- Hours of lodging documents **11.** The President of the Court may, adjust and direct the hours during which the Registry or any sub-registry shall be open for the receipt of documents concerning election appeals to cater for increased or anticipated increase in the number of cases.
- Acceptance of documents lodged out of time **12.** The Registrar shall not refuse to accept any document on the ground that it is lodged out of time but shall mark the document “Lodged out of time” and inform the person lodging it thereof.
- Maintenance of election petitions appeals register **13.** (1) The Registrar shall maintain a register of election petitions appeals, in which shall be entered particulars of every election petition appeal to the Court.
- (3) The register to be maintained under this rule shall show the number of the election petition appeal, the number of the petition in the High Court, the names of the parties and the dates when the essential steps in the proceedings were taken.
- (4) The register shall in addition contain against the entry relating to each appeal a reference to every application made in relation to that appeal, whether made before or after the institution of the appeal.
- Extension and reduction of time **14.** (1) The Court may, for sufficient reason, extend or reduce time prescribed by these Rules for doing an act upon such terms and conditions as may appear to it just and expedient, and a reference in these Rules to any such time shall be construed as a reference to that time as extended or reduced.
- (2) The power of the Court to extend or reduce time under sub-rule (1) is subject to the timelines set out by the Constitution and Elections Act.

PART III—SERVICE AND FILING OF APPEALS

Service of notice of appeal and cross appeal

- 15.** (1) Notice of appeal shall be served upon all affected parties within five days from the date of filing of the notice.
- (2) A person served with a notice of appeal shall file and serve upon all the other parties a notice of address for service within five days from the date of service of the notice of appeal.
- (3) A notice of appeal shall be served by the appellant on the respondent by—
- (a) direct service; or
 - (b) publication in a newspaper of national circulation.
- (4) 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) publication in a newspaper of national circulation.
- (5) Where a petition is served by publication in a newspaper as provided under sub-rules (3) (b) and (4) (c), the advertisement shall be sufficient if it is—
- (a) in Form EPA 3 set out in the Schedule;
 - (b) is of at least font size twelve; and
 - (c) is captured in dimensions of not less than ten by ten centimetres.
- (6) The Court or a judge may direct the notice of appeal be served on any person not a party and may make such interim orders as the Court or judge considers just.

Stay of proceedings

- 16.** The filing and service of a notice of appeal stays the execution of any judgment or decree pending the disposition of the appeal.

PART III—HEARING OF APPEALS AND CONDUCT OF PROCEEDINGS

Application to strike out notice of appeal or appeal

- 17.** (1) A person affected by an election petition appeal may, within seven days from the date of service of the notice of appeal or record of appeal as the case may be, apply to the Court to strike out the notice or the appeal on the

ground that no appeal lies or that some essential step in the proceedings has not been taken within the prescribed time.

(2) Where no application is filed within the period stipulated under sub-rule (1), a person may not raise the issue later.

Pre-hearing
conference

18. (1) Within seven days after the receipt of the last response to an appeal, the Court shall schedule a pre-hearing conference.

(2) The purpose of the pre-hearing conference is to give directions to ensure that appeals are heard and determined without undue delay including—

- (a) framing contested and uncontested issues in the appeal;
- (b) considering consolidation of appeals in cases where more than one appeal is filed;
- (c) giving directions specifying the place and time of the hearing of the appeal;
- (d) directions on the hearing and determination of interlocutory applications, if any;
- (e) directing the Commission on the handling of all the relevant election materials and documents relating to the appeal before commencement of the hearing;
- (f) directions on whether the appeal shall be heard by oral or written submissions;
- (g) the period within which written submissions are to be filed and exchanged; and
- (h) making such other orders as may be necessary to ensure a fair determination of the appeal.

Entering an appeal
for hearing

19. The Court shall immediately after the pre-hearing conference commence the hearing of the appeal.

Written
submissions

20. (1) Any party to an appeal may lodge in the appropriate registry written submissions of the arguments in support of or in opposition to the appeal or the cross-appeal if any, as the case may be and shall before or within seven days after lodging the submissions serve a copy thereof on all the other parties in the appeal.

(2) The written submissions shall be lodged in accordance with the

directions of the Court.

(3) An appellant who has lodged written submissions under sub-rule (1) may, if served with notice of a cross-appeal, lodge supplementary submissions of the arguments in opposition to it within fourteen days of service.

(4) Written submissions shall, except where otherwise provided or otherwise ordered, consist of the following seven parts—

- (a) *Part I. Introduction:* The appellant and respondent shall each briefly summarize the context for the appeal.
- (b) *Part II. Jurisdiction and Standard of Review:* The appellant shall state the source of the right of appeal, the basis for the jurisdiction of the Court to determine the appeal and the applicable standard of appellate review. The respondent shall state its position with respect to the same matters.
- (c) *Part III. Summary of Facts:* The appellant shall concisely state the facts. The respondent shall state its position taken with respect to the appellant's statement of facts and any facts it considers relevant.
- (d) *Part IV. Points in Issue:* The appellant shall concisely state the points in issue in the appeal. The respondent shall state its position in regard to the appellant's points which the respondent wishes to put in issue. If a respondent intends to contend that the judgment should be upheld, whether in whole or in part, for reasons not found in the judgment and not raised in the appellant's submissions, it shall state that intention.
- (e) *Part V. Argument:* This part shall contain a statement of the argument, setting out concisely the points of law or fact to be argued and the basis for the argument, with a particular reference to the page and line of the record of appeal and the authorities relied upon in support of each point. When a statute, regulation, rule, or other subsidiary legislation is cited or relied upon as necessary to the determination of the appeal, the relevant sections shall be annexed to the written submissions as an appendix or sufficient copies of the statute, regulation, rule, or other subsidiary legislation be filed.
- (f) *Part VI. Relief:* This part shall state the precise order the party desires the court to make, including any special disposition as to costs.
- (g) *Part VII. Authorities:* This part shall contain a table of authorities and statutes that the party has referred to, arranged alphabetically and

citing the Supreme Court Reports where possible. Counsel citing decisions of authority from electronic databases in the submissions must also provide the citation from traditional print sources.

(5) Each paragraph in Parts I to VI inclusive shall be numbered consecutively.

(6) Written submissions shall be printed—

- (a) on one side of the paper only with the printed pages facing up on the left;
- (b) in at least font size twelve;
- (c) with at least one and one-half line spacing, except for quotations from authorities, which shall be indented and single-spaced; and
- (d) with margins of no less than 3.0 centimetres or one and one-half inches.

(7) A party who has lodged written submissions under this rule may, with leave of the Court, address the Court at the hearing of the appeal.

Hearing to be on day to day basis

21. (1) The Court shall, as far as practicable, hear the case on a day-to-day basis once the proceedings have commenced.

(2) Despite sub-regulation (1), the Court may, where sufficient cause is shown, upon the application of any of the parties, adjourn the proceedings from time to time.

Duration for hearing and determination of election petition appeals

22. (1) An appeal filed under these Rules shall be heard and determined within six months of the date of judgment of the High Court.

(2) 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.

Recess and leave

23. The President of the Court shall, in consultation with the Chief Justice schedule the recess and terms of leave for the judges of the Court in a manner to ensure that no Court recess or leave coincides with the period within which appeals from petitions relating to a general election are expected to be filed.

Prohibition of delayed interlocutory applications

24. The court shall not allow any interlocutory application made after the hearing of the appeal has commenced if the interlocutory application could have, by its nature, been brought before the commencement of the hearing.

PART IV—GENERAL PROVISIONS

Orders of the Court.

25. (1) At the conclusion of the hearing of an election appeal, the Court may make an order—

(a) dismissing the appeal;

(b) declaring the election to be—

(i) valid; or

(ii) invalid.

(c) invalidating the declaration made by the Commission;

(d) on payment of costs; or

(e) as it may deem fit and just in the circumstances.

Security for costs.

26. (1) The appellant shall, upon filing an election petition appeal deposit a sum of five hundred thousand shillings as security for costs of the appeal.

(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.

(3) The Court may at any time if it thinks fit, direct that further security for costs be given and may direct that security be given for the payment of past costs relating to the matters in question in the appeal.

(4) Where security for costs has been lodged, the Registrar may pay out the same either by consent of the parties or in conformity with the decision of the Court and having regard to the rights of the parties thereunder.

Review of Rules.

27. The Rules Committee may review these Rules from time to time.

SCHEDULE: FORMS
FORM EPA 1

IN THE COURT OF APPEAL AT.....ELECTION PETITION NO.OF, 20.....
IN THE MATTER OF.....
IN THE MATTER OFELECTION PETITION NO..... OF,20.....
BETWEEN
..... APPLICANT
AND
..... RESPONDENT

(APPEAL FROM THE.....OF THE HIGH COURT OF AT
(HON. JUSTICE)..... DATED, 20.....,
IN..... ELECTION PETITION NO. OF 20

NOTICE OF APPEAL

TAKE NOTICE thatbeing dissatisfied with the decision of the Honourable
Justice..... given at on the day of 20.....intends
to appeal to the Court of Appeal against the whole of the said decision/such part of the said
decision as decides that

The address for service of the appellant is..... It is intended to serve
copies of this notice on.....

Dated this day of..... 20.....
Signed..... Appellant
Advocate for the appellant

FORM EPA 2

(Headings as in Form EPA 1)
NOTICE OF CROSS-APPEAL

TAKE NOTICE that on the hearing of this appeal the above-named respondent will contend
that the, above-mentioned decision ought to be varied or reversed to the extent and in the
manner and on the grounds hereinafter set out, namely—

- 1.....
- 2.....

It is proposed to ask the Court for an order that.....

It is intended to serve copies of this notice on.....

Dated thisday of. 20.....

Respondent.....Signed.....
Advocate for the respondent

FORM EP 3

(r.16 (5))

SERVICE OF ELECTION PETITION BY ADVERTISEMENT

To:
of.....

Take notice that an appeal in regard to the decision of the Honourable Justice.....in the county/constituency/county assembly ward has been filed in theCourt of Appel at..... in EPA No.of 20,in which you are named as Respondent/s.

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 the, 20..... (*signed*)