

(Legislative Supplement No. 53)

LEGAL NOTICE NO. 113

THE SUPREME COURT ACT

(No. 7 of 2011)

THE SUPREME COURT (PRESIDENTIAL ELECTION PETITION)
RULES, 2017

ARRANGEMENT OF RULES

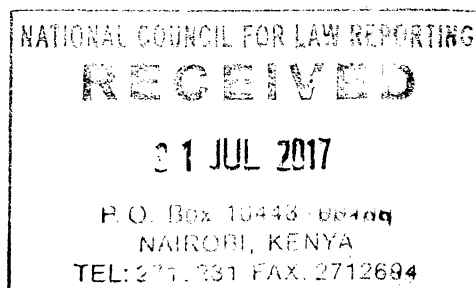
Rule

- 1—Citation.
- 2—Interpretation.
- 3—Object of these Rules.
- 4—Application of these Rules.
- 5—Compliance with these Rules
- 6—Filing of petition.
- 7—Petitions generally.
- 8—Grounds of a petition.
- 9—Affidavits by witnesses.
- 10—Service of petition.
- 11—Response to petition.
- 12—Close of pleadings.
- 13—Computation of time in multiple petitions.
- 14—Pre-trial conference.
- 15—Issues for determination during pre-trial conference.
- 16—Written submissions.
- 17—Interlocutory applications.
- 18—Hearing of petition.
- 19—Hearing to proceed uninterrupted.
- 20—Withdrawal of the petition and substitution of a petitioner.
- 21—Abatement.
- 22—Orders of the Court.
- 23—Determination of a petition.
- 24—Fees and costs.
- 25—Practice directions.
- 26—Review of these Rules.
- 27—Revocation of L.N. No 15 of 2013.

FIRST SCHEDULE—PROVISIONS RELATING TO
PETITIONS AND AFFIDAVITS

SECOND SCHEDULE—FORMS

THIRD SCHEDULE—FEES



THE SUPREME COURT ACT

(No. 7 of 2011)

THE SUPREME COURT (PRESIDENTIAL ELECTION PETITION)
RULES, 2017

IN EXERCISE of the powers conferred section 31 of the Supreme Court Act, the Chief Justice and President of the Supreme Court makes the following Rules—

THE SUPREME COURT (PRESIDENTIAL ELECTION PETITION)
RULES, 2017

1. These Rules may be cited as the Supreme Court (Presidential Election Petition) Rules, 2017. Citation.
2. In these Rules, unless the context otherwise requires— Interpretation.
- “Act” means the Supreme Court Act; No.7 of 2011.
- “Commission” means the Independent Electoral and Boundaries Commission established under Article 88 of the Constitution;
- “Court” means the Supreme Court;
- “document” includes an electronic document;
- “electronic document” means any text, graphic or spreadsheet generated and stored in any electronic media content, other than computer programs or system files, that is intended to be used in either electronic form or as printed output;
- “election” means an election of the President in accordance with the Article 138 and 140 of the Constitution;
- “Judge” means a Judge of the Court;
- “nomination” has the meaning assigned to it under the Elections Act, 2011; No.24 of 2011.
- “petition” means a presidential election petition, and includes an affidavit required by these Rules to accompany the petition;
- “petitioner” means a person filing a petition and includes a cross-petitioner;
- “practice directions” means practice directions issued by the Chief Justice under rule 25;
- “Registrar” means the Registrar of the Court and includes a Deputy Registrar; and
- “respondent” means the President-elect and includes the Deputy President-elect, and any other person named in the petition as a respondent.
3. The object of these Rules is to enable the Court to exercise its exclusive original jurisdiction under Article 163(3) (a) of the Constitution. Object of these Rules.

4. (1) These Rules apply to petitions in respect of presidential elections and includes petition arising—
- (a) upon declaration by the Commission of the President-elect;
 - (b) pursuant to Article 138(1), (2), (3), (4), (5), (6) and (10); and
 - (c) pursuant to Article 140 of the Constitution;
- (2) Where there is no applicable provision in the Act or in these Rules, the procedures set out in the Supreme Court Rules, 2012, in so far as they are not inconsistent with the Act or these Rules, shall apply to all election petitions.
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.
6. (1) A petition challenging the election of the President-elect shall be filed in Court within seven days after the date of the declaration of the results of the presidential election.
- (2) The petitioner shall, on filing a petition, deposit a sum of one million shillings as security for costs.
- (3) 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.
7. A petition under these Rules shall conform to the provisions of the First Schedule and shall be in Form A set out in the Second Schedule.
8. The grounds upon which a petition may be filed include—
- (a) the validity of the conduct of a presidential election;
 - (b) the validity of the qualification of a President-elect;
 - (c) the commission of an election offence as provided under the Election Offences Act;
 - (d) the validity of the nomination of a presidential candidate; or
 - (e) any other ground that the Court deems sufficient, provided such ground shall not be frivolous, vexatious or scandalous.
9. A petitioner shall, at the time of filing the petition, file an affidavit sworn by a witness setting out the substance of the evidence relied on.
10. (1) A petitioner shall, within two days of filing, serve the petition on the respondent—
- (a) directly on the respondent; or
 - (b) by advertisement in a newspaper with nationwide circulation.

Application of these Rules.

Compliance with these Rules.

Filing of petition.

Petitions generally.

Grounds of a petition.

No. 37 of 2016.

Affidavits by witnesses.

Service of petition.

(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.

11. (1) On service of a petition under rule 10, a respondent who intends to oppose the petition may, within four days of service of the petition, file and serve a response which shall—

Response to petition.

- (a) be in form of an answer to the petition in the manner specified in Form B set out in the Second Schedule; and
- (b) be accompanied by a replying affidavit(s) 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 Second 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 in the Petition in any subsequent proceedings.

12. The pleadings shall be closed upon filing a response to a petition or notice of intention not to oppose the petition under Rule 11.

Close of pleadings.

13. Where multiple petitions are filed, time, for purposes of Article 140 (2) of the Constitution, starts running on the date the last petition is filed.

Computation of time in multiple petitions.

14. (1) There shall be a pre-trial conference on the eighth day after filing of the petition.

Pre-trial conference.

(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 Second Schedule.

15. The Court shall, at the pre-trial conference—

Issues for determination during 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; and
- (d) make such other orders as may be necessary to ensure a fair determination of the petition.

16. (1) Written submissions shall be lodged in accordance with the directions of the Court.

Written submissions.

(2) Written submissions shall be divided into paragraphs, numbered consecutively and each paragraph confined to a distinct portion of the subject.

(3) 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 three centimetres by one and one-half inches.

17. (1) An interlocutory application may be made within a day after the close of pleadings and shall be determined before the hearing commences on the basis of written submissions not exceeding five pages.

Interlocutory applications.

(2) An interlocutory application shall not be filed after the hearing of the petition has commenced, if the interlocutory application could have, by its nature, been brought before the commencement of the hearing of the petition.

18. (1) The Court shall immediately after the pre-trial conference commence the hearing of the petition.

Hearing of petitions.

(2) The petition shall be determined on the basis of affidavit evidence and written submissions.

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

19. 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.

Hearing to proceed uninterrupted.

20. (1) A petitioner may, with leave of the Court, withdraw the petition at any stage of the proceedings.

Withdrawal of the petition and substitution of a petitioner.

(2) An application under sub rule (1) shall be by notice of motion in Form E set out in the Second Schedule and shall be supported by an affidavit.

(3) The Court may, on an application for withdrawal of a petition under sub-rule (2), grant leave on such terms as it may deem fit and just.

21. (1) A petition shall not abate on the sole ground that a petitioner or a respondent has died in the course of the proceedings.

Abatement.

(2) Subject to sub-rule (1), the Court may make any order as it may deem fit and just in the circumstances.

22. At the conclusion of the hearing of an election petition, the Court may make an order—
- (a) dismissing the petition;
 - (b) invalidating the declaration made by the Commission under Article 138(5) of the Constitution;
 - (c) declaring the election of the President-elect to be—
 - (i) valid; or
 - (ii) invalid;
 - (d) on payment of costs; or
 - (e) as it may deem fit and just in the circumstances.
23. (1) Within fourteen days after filing of a petition, the Court shall determine the petition but may reserve its reasons to a date not later than twenty one days from the date the Court determines the petition.
- (2) The decision of the Court shall be final.
24. (1) The filing fees for petitions and other documents filed under these Rules shall be as set out in the Third 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 (2) shall be certified by the Court.
25. (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.
26. The Court may review these Rules from time to time.
27. The Supreme Court (Presidential Election Petition) Rules, 2013 are revoked.

Orders of the Court.

Determination of a petition.

Fees and costs.

Practice directions.

Review of these Rules
Revocation of L. N. 15/2013.

FIRST SCHEDULE

(r.7)

PROVISIONS RELATING TO PETITIONS AND AFFIDAVITS

1. A petition may be filed by several persons who may be joined as co-petitioners.
2. A petition shall be signed by the petitioner or all the petitioners if they are more than one, or by the duly authorized advocate.
3. A petition shall be divided into paragraphs, numbered consecutively, each paragraph being confined to a distinct portion of the subject, and shall be printed or typed legibly.
4. A petition shall briefly set out the facts and grounds relied on to sustain the relief claimed.
5. A petitioner shall lodge, together with the petition, at least eight copies of the petition and all documents which accompany it.
6. 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 the 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 a distinct portion of the subject, and every paragraph shall be numbered consecutively; and
 - (c) conclude with a statement setting out particulars of the relief sought.

SECOND SCHEDULE

FORM A

(r.7)

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 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 thisday of20.....

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 respondents 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 thisday 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 (2))

IN THE SUPREME COURT OF KENYA AT NAIROBI

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

Between

..... Petitioner

AND

..... Respondent.

NOTICE OF MOTION

TAKE NOTICE that on theday 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 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 theday of, 20.....

.....

Registrar

THIRD SCHEDULE

(r.24 (1))

FEES

<i>Item</i>	<i>KSh.</i>
On lodging a petition.	500,000
On filing a response to the petition.	20,000
On lodging a notice of motion.	1,500
On lodging a notice of motion under certificate of urgency	2,750
On lodging an affidavit, other than an affidavit annexed to a notice of motion.	1,150
On filing notice of intention not to oppose the petition.	4,000
Filing annexures (per folio).	50
Filing written submissions (per folio).	50

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