

STATUTORY INSTRUMENTS

SUPPLEMENT No. 13

1st March, 2001

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THE PRESIDENTIAL ELECTIONS (ELECTION PETITIONS) RULES, 2001.

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STATUTORY INSTRUMENTS.

2001 No. 13.

The Presidential Elections (Election Petitions) Rules, 2001.

(Under section 58(11) of the Presidential Elections Act 2000,
Act No. 17 of 2000).

In exercise of the powers conferred on the Chief Justice by section 58(11) of the Presidential Elections Act, 2000 and in consultation with the Attorney-General, these Rules are made this 1st day of March, 2001.

1. Title.

These Rules may be cited as the Presidential Elections (Election Petitions) Rules, 2001.

2. Application of Rules.

These Rules shall apply to the conduct of election petitions under section 58 of the Presidential Elections Act, 2000.

3. Interpretation.

In these Rules, unless the context otherwise requires—

“Act” means the Presidential Elections Act, 2000;

“Commission” means the Electoral Commission established by article 60 of the Constitution;

“Court” means the Supreme Court;

“currency point” has the meaning assigned to it by the Act;

“election” means a presidential election to which a petition relates;

“petition” means an election petition, and includes the affidavit required by these Rules to accompany the petition;

“Registrar” means the Registrar of the Supreme Court;

“respondent” means the person whose election is complained of in a petition; and where the petition complains of the conduct of the Commission, includes the Commission.

4. Form of petition.

(1) The form of a petition shall be as specified in Form A in the Schedule to these Rules.

(2) Every petition shall state—

(a) the right of the petitioner to present the petition in accordance with section 58 of the Act;

(b) the holding and result of the election together with a statement of the grounds relied upon to sustain the prayer of the petition;

(c) the address of the place where personal service can be effected on the respondent.

(3) The only grounds to be specified in a petition for the annulment of an election are those specified in subsection (6) of section 58 of the Act.

(4) The petition shall be divided into paragraphs numbered consecutively, each of which shall, as nearly as may be, be confined to a distinct portion of the subject; and no costs shall be allowed for the drawing or copying of any petition not substantially in compliance with this subrule unless the Court otherwise orders.

(5) The petition shall conclude with a prayer, as for instance, that the Court may order—

(a) that the candidate declared elected as President was not validly elected;

(b) that a specific person be declared validly elected;

(c) that the election be annulled.

(6) At the foot of the petition shall be stated—

(a) an address for service within five kilometres from the office of the Registrar to which documents intended for the petitioner may be sent and the name of its occupier;

(b) a note, signed by the petitioner, giving the name of the petitioner's advocate or, as the case may be, stating that the petitioner acts for himself or herself.

(7) The petition shall be accompanied by an affidavit setting out the facts on which the petition is based, together with a list of any documents on which the petitioner intends to rely.

5. Mode of presentation of petition.

(1) Presentation of a petition shall be made by the petitioner leaving it in person or, by or through his or her advocate, if any, named at the foot of the petition, at the office of the Registrar within ten days after the declaration of the results of the election.

(2) With the petition shall be delivered ten copies of the petition for use by the Court and for service on the Attorney-General and the Commission, unless the Commission is a respondent in the proceedings.

(3) The petitioner or the advocate of the petitioner shall, at the time of presenting the petition—

(a) pay a fee of twenty currency points;

(b) make a deposit of fifty currency points as security for costs.

(4) If sub-rule (3) is not complied with, the petition shall not be received by the Registrar.

(5) Immediately upon presentation of the petition, the petitioner shall serve a copy of the petition on the respondent or on each respondent.

6. Service.

(1) Upon presentation of the petition and compliance by the petitioner or his or her advocate with the requirements of rule 5, the Registrar shall send a copy of the petition to the Attorney-General and the Commission, unless the Commission is a respondent in the proceedings.

(2) Service of documents referred to in these Rules upon a respondent, shall be personal except as provided in sub-rule (3) of this rule.

(3) Where the respondent cannot be found within two days for effecting personal service on him or her, the petitioner or his or her advocate shall immediately make an application to the Court supported by affidavit, stating that all reasonable efforts have been made to effect personal service on the respondent but without success.

(4) If the Court on an application under sub-rule (3) of this rule is satisfied that all reasonable efforts have been made to effect personal service on the respondent but without success, the Court may order that service be effected in any of the ways prescribed by Order V of the Civil Procedure Rules for service other than personal, fixing the day of appearance within three days.

(5) The Registrar shall, in any case, post on the Court notice board a copy of the petition and shall also, as soon as possible if the Court so directs, cause a copy of the petition to be published in the Gazette.

7. Respondent to furnish address.

(1) A respondent on whom a petition has been served shall, within three days after the service of the petition on him or her, furnish to the Registrar in writing signed by the respondent or the advocate of the respondent, an address to which any document may be sent relating to the proceedings on the petition and intended for the respondent.

(2) If the respondent fails to comply with sub-rule (1) of this rule, the Registrar shall post up every such document as is referred to in that sub-rule on the court notice board, and the posting up shall be sufficient notice of it to the respondent.

8. Answer of respondent to petition

(1) If the respondent wishes to oppose the petition, the respondent shall, within three days after the petition was served on him or her, file an answer to the petition.

(2) The respondent's answer shall be filed with the Registrar together with ten copies of it for use by the Court and for service on the Attorney-General, the Commission and the other respondents, if any.

(3) The answer of the respondent shall be accompanied by—

(a) an affidavit stating the facts upon which the respondent relies in support of his or her answer;

(b) a fee of five currency points.

(4) The respondent shall, immediately upon filing the answer with the Registrar, serve a copy on the petitioner or his or her advocate.

(5) Where the respondent requires further and better particulars of the petition he or she shall apply for the particulars together with the answer.

(6) The petitioner shall, subject to the directions of the Court, supply any particulars requested under sub-rule (5) of this rule on or before the date set for trial of the petition.

9. Unopposed petition.

(1) If a respondent upon whom a petition has been served intends not to oppose the petition, he or she shall file a written notice of that intention, signed by the respondent, at the office of the Registrar at least three days before the day appointed for the trial, exclusive of the day on which the notice is filed.

(2) The respondent shall provide to the Registrar with the notice at the time of filing, a sufficient number of copies of the notice for use by the Court and for service on the Attorney-General, the Commission and the other respondent, if any.

(3) The respondent shall, immediately upon filing the notice, serve a copy on the petitioner or on his or her advocate.

(4) If a notice is filed under sub-rule (1) of this rule the Registrar shall forthwith—

(a) serve a copy of the notice on the Attorney-General and on the Commission;

(b) post up a copy of the notice on the Court notice board.

(5) The Registrar shall also, as soon as possible, cause a copy of the notice to be published in the Gazette.

(6) Notwithstanding that the petition is not opposed, it shall not be abated on that account.

10. Place and time of trial.

(1) The trial of a petition shall be held at such time and place as the Court shall direct.

(2) Where the petition and answer have been duly served and any application for further and better particulars has been determined or, as the case may be, where notice of intention not to oppose has been served, the Court shall set a date for trial of the petition which shall be within five days after the date in which further and better particulars were ordered or agreed to be given.

(3) The Court shall, in any case fix the date for trial of the petition to be within five days after due service of the petition on the respondent where the respondent has neither filed an answer to the petition nor filed a notice of intention not to oppose the petition.

(4) In a case to which sub-rule (3) of this rule applies, or where the respondent has filed a notice of intention not to oppose the petition, the petition shall, unless withdrawn, proceed to be heard and determined ex-parte so far as the respondent is concerned.

(5) Notice of the time and place of trial shall be given by the Registrar as soon as possible in the following manner—

(a) by posting up the notice on the Court notice board;

(b) by sending a copy of the notice to each party to the proceedings, the Attorney-General and the Commission, unless in the case of the Commission, it is a respondent in the proceedings.

(6) The Registrar shall also, as soon as possible, cause a copy of the notice to be published in the Gazette.

(7) If, after notice of trial has been given as provided in this rule and before the trial has begun, the Registrar receives—

(a) information of the death of the sole petitioner or the survivor of several petitioners; or

(b) notice of the petitioner's intention to apply for leave to withdraw the petition as provided in these Rules, the Registrar shall forthwith countermand the notice of trial; and the countermand shall be given in the same manner, as nearly as may be, as the notice of trial.

11. Trial in open court.

(1) A petition shall be tried in open court by an odd number of Justices of the Court not being less than five.

(2) Where any Justice of the Court is prevented by illness or other reason from attending the hearing of a petition, another Justice may be substituted and the hearing shall continue subject to sub-rule (1) of this rule.

12. Expeditious hearing.

(1) The Court shall, in accordance with subsection (3) of section 58 of the Act, inquire into and determine the petition expeditiously and shall declare its findings not later than thirty days from the date the petition is filed.

(2) The Court shall sit from day-to-day and may, for the purposes of hearing and determining the petition—

(a) suspend any other matter pending before it;

(b) sit during Sundays and on public holidays where it considers it necessary for ensuring compliance with subsection (3) of section 58 of the Act; and

(c) in any case, the Court or the Chief Justice may order that the Registry of the Court shall stay open on Sundays and public holidays to facilitate the filing and service of documents connected with the proceedings on the petition.

13. Adjournments.

The Court may, in exceptional cases, on application by a party to a petition, or of its own motion, adjourn the trial of a petition from time to time.

14. Evidence at trial.

(1) Subject to this rule, all evidence at the trial, in favour of or against the petition shall be by way of affidavit read in open court.

(2) With leave of the Court, any person swearing an affidavit which is before the Court, may be cross-examined by the opposite party and re-examined by the party on behalf of whom the affidavit is sworn.

(3) The Court may, of its own motion examine any witness or call and examine or recall any witness if the court is of the opinion that the evidence of the witness is likely to assist the Court to arrive at a just decision.

(4) A person summoned as a witness by the Court under sub-rule (3) of this rule may, with leave of the Court, be cross-examined by the parties to the petition.

15. Procedure generally.

Subject to the provisions of these Rules, the practice and procedure in respect of a petition shall be regulated, as nearly as may be, in accordance with the Civil Procedure Act and the Rules made under that Act relating to the trial of a suit in the High Court, with such modifications as the Court may consider necessary in the interests of justice and expedition of the proceedings.

16. Consolidation of petitions.

Where more petitions than one are presented in relation to the same election, the Court may direct that some or all of the those petitions be dealt with as one petition.

17. Enlargement or abridgement of time.

The Court may of its own motion or on oral application by any party to the proceedings upon such terms as the justice of the case may require, enlarge or abridge the time appointed by the Rules for doing any act if, in the opinion of the Court, there exist such special circumstances as make it expedient to do so; except that when considering enlarging the time, the Court shall take into account the provisions of subsection (3) of section 58 of the Act.

18. Death of petitioner.

(1) A petition shall be abated by the death of a sole petitioner or of the survivor of two or more petitioners.

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

(3) If the Registrar is satisfied as to the death of a sole petitioner or the survivor of several petitioners, the Registrar shall forthwith cause a notice of it to be posted on the notice board of the Court and, as soon as possible, published in the Gazette.

19. Death of respondent.

If the respondent to a petition dies, the petition shall not on that account be abated but shall continue.

20. Withdrawal of petition.

(1) A petition shall not be withdrawn except with leave of the Court and after such notice has been given as the Court may direct.

(2) Where there is more than one petitioner, no application for leave to withdraw the petition shall be made except with the consent of the other petitioners.

(3) Subject to sub rule (1) of this rule, an application for leave to withdraw a petition shall be supported by an affidavit of the petitioner and his or her advocate, if any, stating to the best of their knowledge and belief that no agreement or terms of any kind has or have been made, or undertaking made in relation to the petition or, if any lawful agreement has been made, stating the terms of the agreement.

(4) The petitioner shall, when filing the application for leave to withdraw, give to the Registrar a sufficient number of copies for use by the Court and for service on the Attorney-General and the Commission, unless in the case of the Commission, it is a respondent.

(5) The Registrar shall, as soon as possible upon receipt of an application under this rule—

(a) serve a copy of the application on the respondents and on the Attorney-General;

(b) cause to be posted on the Court notice board and published in the Gazette a notice in Form B in the Schedule to these Rules.

(6) The Attorney-General or a representative of the Attorney-General may appear at the hearing and oppose the withdrawal and the court may receive the evidence of any person if the Attorney-General or his or her representative considers it material.

(7) If the Court gives leave for the withdrawal of a petition, the Court shall make a report to the Commission stating the reasons for the withdrawal.

(8) If the petition is withdrawn, the petitioner shall be liable to pay costs of the respondent.

21. Recount.

Where, upon hearing a petition and before coming to a decision, the Court is satisfied that a recount is necessary and practical, it may order a recount of the votes cast.

22. Irregularities.

No proceedings upon a petition shall be defeated by any formal objection or by the miscarriage of any notice or any other document sent by the Registrar to any party to the petition.

23. Costs.

(1) All costs of and incidental to the presentation of the petition and the proceedings consequent on the petition shall be defrayed by the parties to the petition in such manner and in such proportions as the Court may determine.

(2) Subject to sub-rule (1) of this rule, where costs are awarded to a party against the petitioner in proceedings under these Rules, the deposit made by the petitioner as security for costs under rule 5 of these Rules, shall be applicable in payment of the sum ordered but otherwise, shall be refunded to the petitioner.

24. Revocation of S.I. No. 24 of 1996.

The Presidential Elections (Election Petitions) Rules, 1996 are revoked.

SCHEDULE.

FORM A.

ELECTION PETITION

IN THE SUPREME COURT OF UGANDA

Rule 4

THE PRESIDENTIAL ELECTIONS (ELECTION PETITIONS) RULES, 2001.

Presidential Election held on the day of, 20.....

The petition of AB of (or of AB of and CD of as the case may be) whose name(s) is (or are) stated at the foot of this petition.

1. Your petitioner(s) AB (and CD) is (are) a person(s) who was (or were) a candidate(s) at the above-mentioned presidential election.

2. And your petitioner(s) states (state) that the election was held on the day of, 20....., when AB, CD, EF, etc, were candidates and the Commission has returned EF as validly elected.

3. And your petitioner(s) says (say) that (here state grounds relied on by the petitioner(s) (see section 58 (6) of Act).

Therefore your petitioner(s) prays (pray) that it may be declared that:

(a) EF was not validly elected;

(b) AB was validly elected;

(c) The election be annulled.

Dated this day of, 20

Signed:.....

Address for service (within five kilometres from the office of the Registrar)
..... Occupier

The name(s) of my (or our) advocate(s) is (are):

I am (or we are) acting for myself or (ourselves):

The addresses of the respondent(s) is (are):

Signed:

N.B. The petition must be accompanied by an affidavit setting out the facts on which the petition is based.

FORM B.

NOTICE OF APPLICATION TO WITHDRAW ELECTION PETITION.

Rule 20.

THE PRESIDENTIAL ELECTIONS (ELECTION PETITIONS) RULES, 2001.

Notice is hereby given that application has been made to the Supreme Court of Uganda for leave to withdraw the petition presented by A.B. (and EF) touching the election to the Office of President of EH.

Dated this day of, 20.....

Signed:

Registrar.

B. J. ODOKI,
Chief Justice.