

SUBSIDIARY LEGISLATION

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THE NATIONAL ELECTIONS ACT
(CAP. 343)

RULES

(Made under section 117)

THE NATIONAL ELECTIONS (ELECTION PETITIONS) RULES, 2010

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THE NATIONAL ELECTIONS ACT
(CAP. 343)

RULES

(Made under section 117)

THE NATIONAL ELECTIONS (ELECTION PETITIONS) RULES, 2010

PART I
PRELIMINARY PROVISIONS

Citation 1. These Rules may be cited as the National Elections (Election
Petitions) Rules, 2010.

Interpret- 2. In these Rules unless the context otherwise requires-
ation "Act" means the National Elections Act;
"court" means the High Court;
"election officer" means a Returning Officer, a presiding officer or
any other officer upon whom any function of an official nature is
conferred upon by the Act;
"prescribed" means, in relation to forms, forms prescribed in the First
Schedule to these Rules, and in relation to fees, the fees
prescribed in the Second Schedule to these Rules;
"Registrar" means the Registrar of the High Court, a Deputy Registrar
or a District Registrar.

PART II
PRESENTATION OF AN ELECTION PETITION AND SECURITY FOR COSTS

Who may 3. An election petition may be presented by one or more of the
petition an persons identified in the Act.
election

Avoida- 4. Avoidance of election of a member of Parliament, shall be by
nce of way of an election petition.
election

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- Particulars required to be stated in petition
- 5.-(1) Every petition shall carry a title in the prescribed Form A as specified in the First Schedule to these Rules and shall state-
- (a) the name and address of the petitioner;
 - (b) the name and address of the respondent or, where there are two or more respondents, of each of the respondents;
the grounds upon which the petitioner relies for the relief
 - (c) the nature of the relief or reliefs sought by the petitioner.
- (2) Every petition shall be divided into paragraphs numbered consecutively, each of which shall, as nearly possible, be confined to a distinct portion of the subject matter.
- Parties
- 6.-(1) Except for a petition presented by the Attorney-General, in every petition the Attorney-General shall be made a party thereto as the respondent.
- (2) Where a petition alleges any misconduct or contravention of any provisions of any written law by the successful candidate or by any person acting for or on behalf of the successful candidate, the successful candidate shall be made a party to the petition in addition to the Attorney-General.
- (3) Where a petition alleges any misconduct or contravention of any provisions of the Act or any written law by the election officer, such election officer shall be made a party to the petition in addition to the Attorney-General.
- (4) In a petition presented by the Attorney-General, the Attorney-General may make all such persons parties to the petition as respondents who are likely to be adversely affected in the event of the relief sought by the Attorney-General being granted.
- Addition and substitution of parties
- 7.-(1) Where the only person made a party to a petition is the Attorney-General and in the opinion of the court it is desirable or necessary for the purpose of determination of the issues involved that the unsuccessful candidate or any other person be made a party

to the petition, the court may by order direct that the unsuccessful candidate or such other person be made a party, and upon such order being made the proceedings shall be adjourned until such time as the person who is to be made a party has been served with a copy of the petition.

(2) Where in any petition the Attorney-General has been joined as a party with the unsuccessful candidate and the Attorney-General advises the court in writing that he has no interest in the petition, the court may, if it is satisfied that no misconduct on the part of any election officer is alleged, direct that the Attorney-General shall cease to be a party and the petition shall be proceeded with between the petitioner and the remaining respondent or respondents as the case may be.

Presenta-
tion of
petition

8.-(1) A petition shall be presented by lodging it with the Registrar by paying the prescribed fee.

(2) Where the constituency to which the petition relates lies wholly within the jurisdiction of a District Registry of the High Court, the petition shall be presented to the Registrar of such District Registry.

(3) A petition may be presented under this rule either by the petitioner himself or by his advocate.

(4) The petitioner shall supply the Registrar with three copies of the petition and with such additional number of copies as there may be respondents.

Rejection
or amend-
ment of
petition
during
admission

9.-(1) Where a petition is not drawn up in the manner hereinbefore prescribed, it may be rejected or be returned to the petitioner for the purpose of being amended within the time to be fixed by the Registrar.

(2) Where the Registrar rejects any petition, it shall record the reasons for such rejection.

Service
of
petition

10.-(1) Where a petition has been presented and has not been rejected or returned to the Petitioner, the Registrar shall-

(a) send a copy of the petition to the election officer together with a notice in the prescribed Form B as specified in the First Schedule to these Rules;

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GN. No. 447 (contd.)

- (b) cause to be served upon each of the respondents a copy of the petition together with a notice in the prescribed Form C as specified in the First Schedule to these Rules.
- (c) post on the court notice board a certified copy of the petition.
- (2) Service of the documents referred to in paragraph (b) of sub-rule (1) of this rule, shall be effected by personal service: Provided that where the court is satisfied
 - (a) that the respondent cannot be found; or
 - (b) that the respondent has refused to accept service of the documents; or
 - (c) that personal service cannot be effected without considerable delay or expense; or
 - (d) that it is otherwise desirable so to do, the court may direct that the documents be served by substituted service in such manner as the court may direct.

Security
for costs
s. 111
Cap 343.

11.-(1) The procedure for deposit of security for costs shall be regulated by section of the National Elections Act.

(2) Notwithstanding sub-rule (1), no security for costs shall be payable by a petitioner who has been granted legal aid under the Legal Aid Scheme of either the Faculty of Law, University of Dar es Salaam, the Tanganyika Law Society, the Tanzania Women Lawyer's Association or the Legal and Human Rights Centre or the Commission for Human Rights and Good Governance, the National Organization for Legal Assistance or the Women Legal Aid Centre or the ENVIROCARI.

PART III

LIST OF OBJECTED VOTES AND COMPLAINTS ON POLLING
STATION ELECTION RESULTS

List of
objected
votes
section

12.-(1) Where scrutiny under the provisions of paragraph (d) of section 116 of the Act is sought either by the petitioner or a respondent, the party seeking such scrutiny shall, not less than six days before the day fixed for the hearing of the petition, lodge with the Registrar a list of votes intended to be objected to by him and of the objections to each vote; and no evidence shall be adduced at the trial against the validity of any vote or in support of any head of

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objection not specified in the list, save with the leave of the court and upon such terms as the court may order.

(2) The party lodging a list in accordance with the provisions of sub-rule (1) of this rule shall at the same time deliver to the Registrar two copies of the list and such additional number of copies as there may be parties to the petition.

(3) The Registrar shall cause a copy of the list to be sent to the Returning Officer and to every other party to the petition.

Compl-
aints on
polling
station
election
results
s. 112 (c)
Cap.
343.

13.-(1) Where the petitioner intends to allege that, any candidate other than the respondent was elected, he shall, not less than six days before the day fixed for the hearing of the petition, lodge with the Registrar a list of the polling station election results upon which he intends to rely.

(2) Where a petitioner lodges with the Registrar a list in accordance with the provisions of sub-rule (1) of this rule, he shall supply the Registrar with two copies of such list and such additional number of copies as there may be parties to the petition.

(3) The Registrar shall cause a copy of the list to be sent to the Returning Officer and to every other party to the petition.

(4) No petitioner shall be heard in support of any ground of complaint not set in the list required to be lodged by this rule, save by leave of the court and upon such terms as the court may order.

Fixing of
hearing
date

14.-(1) Subject to the rules, upon presentation of a petition the Registrar shall, as soon as may be practicable, arrange for the parties or their advocates to appear before him for the purpose of fixing a date for the hearing of the petition.

(2) Where any party fails to appear before the Registrar upon being required by him so to do, he shall proceed to fix a hearing date in the absence of such party and shall advise the party in writing of the date of hearing so fixed.

PART IV

TRIAL AND ELECTION PETITIONS PROCEDURE

Place
and
Time of
Trial

15.-(1) Subject to the provisions of section 110(1) of the Act, the trial of a petition shall be held at such time and place as the Registrar may determine.

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(2) The Registrar shall, if so directed by the court, give notice of the day, time and place of the trial to each of the parties, and post such notice court notice board or in such newspapers as he may think fit or, as the case may be, the court may direct.

(3) Every petition shall be tried in open court.

Conso-
lidation
of
petitions

16. Where two or more petitions are presented in relation to the same election, the court may direct that some or all of such petitions be consolidated and tried as one petition.

Chief
Justice
may
order
petition
to be
tried by
more
than one
Judge

17.-(1) Where, a petition is likely to raise complicated questions of law or of fact, the Chief Justice, may direct that the petition shall be tried by three or by five judges.

(2) Where a petition is tried by three or by five judges, the petition shall be determined in accordance with the decision of the majority of the judges.

Docume-
ntary
evidence
to be
produced
at first
Hearing

18.-(1) The parties or their advocates shall produce, at the first hearing of the suit, all the documentary evidence of every description in their possession or power, on which they intend to rely and which has not already been filed in court, and all documents which the court has ordered to be produced.

(2) The court shall receive the document so produced, provided that they are accompanied by an accurate list thereof prepared in such form as the High Court directs.

(3) The procedure for production of documents shall be regulated, as nearly as possible, in accordance with Order XIII of the Civil Procedure Code.

Prelimi-
nary
hearing

19.-(1) As soon as the pleadings are complete, the court shall conduct a preliminary hearing in the presence of the parties or their advocates to consider such matters as are not in dispute between the parties and which will promote a fair and expeditious trial.

(2) The court shall ascertain from the parties and pleadings, as to which legal or factual material propositions that are not in dispute.

(3) At the conclusion of the Preliminary hearing held under this rule, the court shall prepare a memorandum of matters agreed and such memorandum shall be read over and explained to the parties or their advocates.

(4) The memorandum made under sub-rule (3) shall be signed by the parties or their advocates and the Judge.

(5) Any fact or document admitted or agreed in a memorandum filed under this rule shall be deemed to have been duly proved; save that if, during the course of the trial, where the court is of the opinion that the interests of justice so demand, the court may direct that any fact or document admitted or agreed in the memorandum be formally proved.

Framing
of issues

20.- (1) After the conclusion of preliminary hearing, the court shall further ascertain matters of which the parties are at variance and shall thereupon proceed to frame and record issues on which the right decision of the petition appears to depend.

(2) The framing of issues shall be regulated, as nearly as possible, in accordance with Order XIV of the Civil Procedure Code.

Witnesses

21. Witnesses shall be ^asummoned and ^bsworn in the same manner as nearly as circumstances admit, as in a trial by the court in the exercise of its original civil jurisdiction and shall, without prejudice to the provisions of any other law, be subject to the same penalties for giving false evidence ^cor for non-attendance

Applic-
ation of the
Civil
Proce-
dure Code

22.- (1) Subject to the provisions of the Act and of these Rules, the hearing, practice and procedure in respect of a petition shall be regulated, by the rules regulating the practice and procedure in a civil suit.

(2) Without prejudice to the generality of the provisions of sub-rule (1) of this rule, the provisions of section 80 and of the First Schedule to the Civil Procedure Code, which relate to the discovery and inspection of documents, admissions, production, impounding and returning of documents, transfer of proceedings, settlement of issues and determination of suits, summoning of witnesses, admissibility of affidavits, awarding of costs, judgements and execution of a decree, shall apply mutatis mutandis to the

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proceedings on a trial of a petition and to the enforcement of an order for costs made by the court:

Grounds which may be taken at hearing

23. The petitioner shall not, save with the leave of the court, argue or be heard in support of any ground not set in the petition:

Provided that the court shall not, in determining a petition, be confined to the grounds set in the petition.

Postponement of trial

24.-(1) The court may, from time to time, by order made on the application of a party to a petition and supported by an affidavit, and after notice to the other parties or of its own motion by notice in such form as the court may direct, postpone the beginning of the trial of the petition to such day as the court may specify.

(2) A copy of the notice and of the order issued under the provisions of sub-rule (1) of this rule shall be sent by the Registrar to each of the parties to the petition and another copy shall be posted on the court notice board.

(3) Where by reason of the absence of the judge, the trial cannot commence on the day appointed for the trial, the trial shall stand adjourned to the following day, and so on from day to day, until a judge is available to try the petition.

Adjournments

25.-(1) The court may in its discretion adjourn the trial of a petition from time to time.

(2) Subject to the provisions of sub-rule (1) of this rule, the trial shall be continued until its conclusion.

Illness, etc of Judge

26. Where the judge who has begun the trial of a petition, is prevented by reason of illness, death or other reasonable cause from concluding the trial, his successor may deal with any evidence or memorandum taken down as if such evidence or memorandum has been taken down or made by him and may proceed with the suit from the stage at which his predecessor left it.

Provided that, a Judge may pronounce a judgment written but not pronounced by his predecessor.

Failure of petitioner to appear

27.-(1) Where a petitioner fails to appear before the court on the day on which the petition is to be heard, the court may dismiss the petition.

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GN. No. 447 (contd.)

(2) Where a petition has been dismissed under sub-rule (1) of this rule the court may re-admit the petition if the petitioner satisfies the court that his failure to appear on the day of the hearing was due to a reasonable cause.

Failure of respondent to appear

28. Where a respondent fails to appear on the day on which the petition is to be heard, the court may proceed to try the petition, his absence notwithstanding, and the decision of the court in every such case shall be binding upon the respondent.

Appearance by Advocate

29. For the purposes of these Rules, where a party is represented by an advocate, appearance by the advocate shall be deemed to be appearance by the party whom he represents.

Withdrawal of petition

30.-(1) The petitioner may at any stage after the petition has been lodged and before the decision has been delivered, by notice in writing addressed to the Registrar, withdraw the petition subject to such terms relating to costs as the court may deem fit to order.

(2) Where a petitioner withdraws a petition he shall not be entitled to file a fresh petition in respect of the same election:

Provided that where the court is satisfied that the petition was withdrawn for the reason that it would have been defeated on the ground of any procedural irregularity, the court may allow the petitioner to lodge a fresh petition in respect of the same election.

(3) Where there are two or more petitioners, the petition shall not be withdrawn save on application in writing by all the petitioners.

Abatement of petition

31.-(1) A petition shall abate upon-

- (a) upon the death of a sole petitioner or of the sole surviving petitioner; or
- (b) the death of the successful candidate.

(2) Where a petition abates by reason of the death of the sole petitioner or the sole surviving petitioner the court may, if it considers it equitable and just so to do, award to the respondent or, where there are two or more respondents, to each of the respondents, such costs as the court may deem proper:

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Provided that the amount of costs awarded to a respondent under this paragraph shall not exceed the amount of costs for which the petitioner had given security in respect of that respondent.

Petition
not to be
dismissed
for reason
of irregu-
larity

32.-(1) Save as is expressly provided for to the contrary in these Rules, no petition shall be dismissed for the reason only of non-compliance with any of the provisions of these Rules or for the reason only of any other procedural irregularity unless the court is of the opinion that such non-compliance or irregularity has resulted or is likely to result in a miscarriage of justice.

(2) Where there has been any non-compliance with any of the provisions of these Rules or any other procedural irregularity, the court may require the petitioner, subject to such terms as to costs or otherwise as the court may direct, to rectify the non-compliance or the irregularity in such manner as the court may order.

(3) Where an order has been made under sub-rule (2) of this rule, and the petitioner fails to comply with such order within such time as the court may specify, the court may dismiss the petition.

Fees

33. The fee prescribed in the Second Schedule to these Rules shall be payable in respect of the matters specified in the Schedule in relation to the fees.

Revoca-
tion of
G.N. No.
66 of 1971

34. The Elections (Election Petitions) Rules, 1971 are hereby revoked.

SCHEDULES

National Elections (Election Petitions)

GN. No. 447 (contd.)

FIRST SCHEDULE

Rule 5(1)

FORM A

IN THE HIGH COURT OF TANZANIA

Registry of
at

MISCELLANEOUS CIVIL CAUSE No. of 20.....

In the matter of Election Petition under the National Elections Act * and the Elections (Election
Petitions) Rules.

..... Petitioner
(Name of Petitioner)

versus

..... Respondent
(Name of Respondent)

FORM B

Rule 10(1)(a)

IN THE HIGH COURT OF TANZANIA

Registry of
at

MISCELLANEOUS CIVIL CAUSE No. of 20.....

In the matter of Election Petition under the National Elections Act * and the Elections (Election
Petitions) Rules

..... Petitioner
(Name of Petitioner)

versus

..... Respondent
(Name of Respondent)

National Elections (Election Petitions)

GN. No. 447 (contd.)

To: The Director of Elections,
The National Electoral Commission,
DAR ES SALAAM.

Take notice that the petition, of which a copy is enclosed herewith, was lodged in the
..... Court at on the
..... day of 20.....
Date:
Registrar.

FORM C

Rule 10(1)(b)

IN THE HIGH COURT OF TANZANIA

Registry of

at
MISCELLANEOUS CIVIL CAUSE No. of 20.....

In the matter of Election Petition under the National Elections Act * and the Elections (Election
Petitions) Rules

..... Petitioner
(Name of Petitioner)

Versus

..... Respondent
(Name of Respondent)

To:
.....
..... (Name and address of the Respondent).

Take notice that the petition, a copy of which is annexed hereto, was lodged in this court
on the day of of 20.....

You are hereby required to appear before me at
Court/Registry on the day of at o'clock in
the forenoon for the purpose of fixing a date for the hearing of the petition.

Date:

Registrar

Copy to: (Name and address of the Petitioner).

SECOND SCHEDULE

(Rule 33)

On the filing of petition	Shs. 200,000.00
On the filing of an amended petition or on amending a petition ...	Shs. 50,000.00
On filing a list under rule 12 (1)	Shs. 50,000.00
On filing a list of objections under rule 13(1)	Shs. 50,000.00
For any other matter	The same fee as payable for a corresponding matter in a civil suit before the High Court.

Dar es Salaam,
19th November, 2010

AUGUSTINO S.L. RAMADHANI,
Chief Justice