

THE ELECTIONS ACT

(No. 24 of 2011)

THE ELECTIONS (PARLIAMENTARY AND COUNTY  
ELECTIONS) PETITION RULES, 2013

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## THE ELECTIONS ACT

(No. 24 of 2011)

IN EXERCISE of the powers conferred by section 96 of the Elections Act, 2011, the Rules Committee makes the following Rules:—

## THE ELECTIONS (PARLIAMENTARY AND COUNTY ELECTIONS) PETITION RULES, 2013.

## PART I—PRELIMINARY

1. These Rules may be cited as the Elections (Parliamentary and County Elections) Petition Rules, 2013.

Citation.

2. In these Rules, unless the context otherwise requires—

Interpretation.

“Act” means the Elections Act, 2011;

No.24 of 2011.

“Commission” means the Independent Electoral and Boundaries Commission established under Article 88 of the Constitution;

“direct service” includes personal service on the Respondent or on a duly authorized agent appointed by the Respondent;

“Petitioner” means a person who files an election petition to the election court under the Constitution or under the Act in accordance with these Rules;

“Registrar” means—

- (a) the Registrar of the High Court, and includes a deputy registrar; and
- (b) an executive officer, where the petition is filed in a magistrate’s court;

“Respondent” in relation to an election petition, means—

- (a) the person whose election is complained of;
- (b) the returning officer;
- (c) the Commission; and
- (d) any other person whose conduct is complained of in relation to an election.

## PART II—APPLICATION, OBJECTIVES OF RULES, ETC

3. These Rules apply to election petitions in respect of—

Application of the rules.

- (a) parliamentary elections; and
- (b) county elections.

4. (1) The overriding objective of these Rules is to facilitate the just, expeditious, proportionate and affordable resolution of election petitions under the Constitution and the Act.

Objective of Rules.

(2) The court shall, in the exercise of its powers under the Constitution and the Act or in the interpretation of any of the provisions in these Rules, seek to give effect to the overriding objective specified in sub-rule (1).

(3) A party to an election petition or an advocate for the party shall have an obligation to assist the court to further the overriding objective and, to that effect, to participate in the processes of the court and to comply with the directions and orders of the court.

5. (1) For the purpose of furthering the overriding objective provided in rule 4, the court and all the parties before it shall conduct the proceedings for the purpose of attaining the following aims—

Duty of court and parties.

- (a) the just determination of the election petition; and
- (b) the efficient and expeditious disposal of an election petition within the timelines provided in the Constitution and the Act.

(2) The court may, where a party has breached any requirement of these Rules, issue orders, or impose penalties, as the court may consider just and fit including an order for payment of costs.

### PART III—CONSTITUTION OF AN ELECTION COURT AND APPOINTMENT OF ADVOCATES

6. (1) A court shall be properly constituted, for purposes of hearing—

Constitution of an election court.

- (a) an election petition in respect of an election to Parliament or to the office of governor, if it is composed of one High Court Judge; or
- (b) an election petition in respect of an election to a county assembly, if it is composed of a Resident Magistrate designated by the Chief Justice under section 75 of the Act.

(2) The Chief Justice may—

- (a) in consultation with the Principal Judge of the High Court, designate such judges; and
- (b) designate such magistrates,

as are necessary for expeditious disposal of election petitions.

(3) The Chief Justice shall publish the name of the Judge or Magistrate designated under sub-rule (2), in the Gazette and in at least one newspaper of national circulation.

(4) A Judge or a Magistrate designated under sub-rule (2) may not, for the duration of the election petition, be engaged in any other court matter except a matter for which a ruling or judgment was pending and the date of which ruling or judgment is within the period before the Judge or Magistrate concludes the election petition.

7. (1) A person elected may, at any time after the election, file at the office of the Registrar a notice, in writing, signed by the person or on the person's behalf—

Appointment of advocate by Respondent.

- (a) appointing an advocate to act, in case there should be a

petition against the person; or

(b) stating the intention to act in person.

(2) The person giving notice under sub-rule (1) shall give an address in Kenya at which notices addressed to the person may be served.

(3) Where no notice is given by the person elected in accordance with sub-rule (1), all notices and proceedings may be served by leaving them at the office of the Registrar.

(4) The Registrar shall cause to be kept a record of all addresses and the names of advocates given under sub-rule (1) and (2), which record shall be open for inspection by any person during official working hours.

#### PART IV—PRESENTATION AND COMMENCEMENT OF ELECTION PETITIONS

8. (1) An election petition shall —

- (a) be filed by presenting the petition to the office of the Registrar or to a designated officer of the court upon payment of the filing fees specified in the Second Schedule; and
- (b) be in Form EP 1 set out in the First Schedule.

Manner of filing of petition.

(2) The Registrar or a designated officer of the court to whom the petition is delivered shall acknowledge receipt of the petition in Form EP 2 set out in the First Schedule.

9. The Commission shall—

- (a) be a Respondent in an election petition filed under the Act; and
- (b) be served with an election petition filed pursuant to these Rules in the manner provided under rule 13 (2).

Commission to be Respondent in every petition.

10. (1) An election petition filed under rule 8, 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 the manner in which it has been 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.

Contents and form of an election petition.

(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) An election petition shall—
- (a) be signed by the Petitioner or by a person duly authorized by the Petitioner;
  - (b) be supported by an affidavit made by the Petitioner containing the grounds on which relief is sought and setting out the facts relied on by the Petitioner; and
  - (c) be in number of copies as are sufficient for the court and all Respondents named in the petition.
- (4) The petition shall conclude with a prayer, requesting the court to make the appropriate relief which may include—
- (a) a declaration on whether or not the candidate whose election is questioned was validly elected;
  - (b) a declaration of which candidate was validly elected; or
  - (c) an order as to whether a fresh election should be held or not.

11. (1) Within ten days of the filing of an election petition under these Rules, a Petitioner shall deposit security for the payment of costs that may become payable by the Petitioner as provided under sections 78 (2) (b) and 78 (2) (c) of the Act.

Security by deposit of money.

- (2) The security of costs under sub-rule (1) shall—
- (a) be paid to the Registrar;
  - (b) be for payment of costs, charges or expenses payable by the Petitioner; and
  - (c) be vested in, and drawn upon from time to time by, the Registrar for the purposes for which security is required by these Rules.
- (3) The Registrar shall—
- (a) issue a receipt for any such deposit;
  - (b) shall file the duplicate of the receipt in a record kept by him; and
  - (c) keep the record, open for inspection by any party concerned, in which shall be entered from time to time the amount and the petition to which it relates.

12. (1) A Petitioner shall, at the time of filing the petition, file an affidavit sworn by each witness whom the Petitioner intends to call at the trial.

Affidavits by witnesses.

- (2) The affidavit under sub-rule (1) shall—
- (a) state the substance of the evidence;
  - (b) be served on all parties to the election petition with sufficient copies filed in court; and
  - (c) form part of the record of the trial and a deponent may be cross-examined by the Respondents and re-examined by the Petitioner on any contested issue.

(3) Subject to sub-rule (4), a witness shall not give evidence on behalf of the Petitioner unless an affidavit is filed in accordance with this rule.

(4) A witness for the Petitioner who fails to file an affidavit as required by this rule shall not be allowed to give evidence without the leave of the court.

(5) The court shall not grant leave under subrule (4), unless sufficient reason is given for the failure to file an affidavit.

(6) The provision of Order 19 of the Civil Procedure Rules, 2010 and the Oaths and Statutory Declarations Act shall apply to affidavits under this rule.

L.N. 151 of 2010.  
Cap. 15.

13. (1) The Petitioner shall serve the Respondent with an election petition filed under these Rules, within fourteen days of filing of the petition.

Service on the  
Respondent.

(2) Service of the petition under sub-rule (1), shall be by—

- (a) direct service; or
- (b) publication in a newspaper of national circulation.

(3) Service on the Commission shall be by—

- (a) delivery at the 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.

(4) Where a petition is served by publication in a newspaper as provided under sub- rules (2)(b) and (3) (c), the advertisement shall be sufficient if it —

- (a) is in Form EP 3 set out in the First Schedule and contains, as a minimum, the details required in that Form;
- (b) is of, at least, font size twelve; and
- (c) is captured in dimensions of not less than ten by ten centimetres.

14. (1) Upon being served with an election petition under rule 13, the Respondent may oppose the petition by filing and serving a response within a period of not more than fourteen days upon service of the petition.

Response to petition.

(2) The response to an election petition shall be in form of an answer to the petition and shall be in Form EP 4 set out in the First Schedule.

(3) A Respondent who has not filed a response as provided under this rule shall not be allowed to appear or act as a party against the petition in any proceedings.

15. (1) A Respondent shall, at the time of filing a response to the petition, file an affidavit sworn by a witness whom the Respondent

Affidavits by  
Respondent.

intends to call at the trial, which affidavit shall set out the substance of the evidence.

(2) Each affidavit shall be served on all parties to the petition including all Petitioners in the same petition and the Respondents.

(3) The affidavit shall form part of the record of the trial and a deponent may be cross-examined by the Petitioners and re-examined by the Respondent.

(4) Subject to sub-rule (5), a witness shall not give evidence for the Respondent unless an affidavit sworn by the witness, setting out the substance of the evidence, in sufficient copies for the use of the court and the Petitioner, is filed with the response as required by this rule.

(5) A witness for the Respondent who fails to file an affidavit under sub-rule (2) or (4) shall not be permitted to give evidence without the leave of the court.

(6) The court shall not grant leave under subrule (5), unless sufficient reason is given for the failure to file an affidavit.

(7) The provision of Order 19 of the Civil Procedure Rules, 2010 and the Oaths and Statutory Declarations Act shall apply to affidavits under this rule.

L.N. 151 of 2010.

Cap. 2.

#### PART V—CASE MANAGEMENT

16. (1) The Registrar shall, upon receipt of a petition, enter the name of the Petitioner, Respondents and the advocates of the Petitioners and Respondents and the addresses to which notices may be sent, if any, in a register kept by the Registrar for that purpose.

List of petitions.

(2) The list may be inspected at the office of the Registrar at any time during official working hours, and shall be affixed for that purpose on a notice board designated “The Elections Act-Elections Petitions” and affixed at the office of the Registrar.

17. (1) Within seven days after the receipt of the last response to a petition, the court shall schedule a pre-trial conference with the parties in which it shall—

Pre-trial conferencing and prohibition of delayed interlocutory applications.

- (a) frame contested and uncontested issues in the petition;
- (b) analyse methods of resolving contested issues;
- (c) consider consolidation of petitions in cases where more than one petition is filed with respect to the same election;
- (d) deal with all interlocutory applications and decide on their expeditious disposal;
- (e) confirm the number of witnesses the parties intend to call;
- (f) give an order for furnishing further particulars;
- (g) give directions for the expeditious disposal of the suit or any outstanding issues;
- (h) give directions as to the place and time of hearing the petition;



- (i) give directions as to the filing and serving of any further affidavits or the giving of additional evidence;
- (j) limit the volume or number of pages of any copies of documents that may be required to be filed; or
- (k) make such other orders as may be necessary to prevent unnecessary expenses and to ensure a fair and effectual trial.

(2) The court shall not allow any interlocutory application made 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. Where more than one petition is presented relating to the same election all such petitions shall be heard and determined as one petition, in as far as inquiry into the election is concerned.

Consolidation of election petitions.

19. (1) The court shall, by notice issued by the Registrar, specify the time and place of the trial of an election petition.

Time and place of trial and postponement of commencement of trial.

(2) The notice issued under sub-rule (1) shall be issued, not less than seven days before the date fixed for trial, by delivery at the address left by the Petitioner or Respondent with the Registrar, or if no such address has been left, by notice in the Gazette or by advertisement in a newspaper of national circulation.

(3) The court may, on the application of a party or on its own motion, for sufficient reasons, postpone the commencement of the trial of an election petition to a date specified by the court.

20. Where any matter is to be done within one time provided for in these Rules or granted by the court, the court may, for purposes of ensuring that no injustice is done to any party, extend the time within which the thing shall be done on such terms or conditions as it may consider fit even though the period initially provided or granted may have expired.

Extension of time.

21. The Commission shall deliver to the Registrar—

- (a) the ballot boxes in respect of that election not less than forty-eight hours before the date fixed by the court for the trial; and
- (b) the results of the relevant election within fourteen days of being served with the petition.

Returning officer to deliver ballot boxes.

22. (1) The court shall conduct trial proceedings, as far as reasonably practicable, on a day to day basis until trial is concluded.

Adjournment and continuation of trial.

(2) Despite sub-rule (1), the court in which the trial proceedings has commenced shall not be adjourned for more than five consecutive days.

(3) If a judge or magistrate hearing a petition is incapacitated by illness or other reasons during a trial under these Rules, the Chief Justice shall appoint another judge or magistrate, as the case may be, to continue and conclude the trial.

(4) Where another judge or magistrate takes over a petition, previously heard by another judge or magistrate, as the case may be, he

shall continue with the proceedings from where the previous judge or magistrate had left.

23. (1) An election petition shall not be withdrawn without leave of the court.

Withdrawal of petition.

(2) The court shall grant leave on such terms as to the payment of costs or as the court may consider fit and just.

(3) An application for leave to withdraw an election petition shall—

- (a) be in the Form EP 5 set out in the First Schedule;
- (b) be signed by the Petitioner and his advocate;
- (c) state the grounds on which the application is supported; and
- (d) be filed at the office of the Registrar.

(4) The parties to the election petition and their advocates shall, before leave for withdrawal of an election petition is granted, produce affidavits stating the ground on which the petition is intended to be withdrawn.

(5) Despite sub-rule (4), a court may, on cause being shown, dispense with the affidavit of a person if it seems to the court on special grounds to be fit and just.

(6) Each affidavit shall state to the best of the deponent's knowledge and belief, "that" no agreement or terms of any kind has been made, and that no undertaking has been entered into, in relation to the withdrawal of the election petition."

(7) Despite sub-rule (6), where a lawful agreement has been made with respect to the withdrawal of an election petition, the affidavit shall set out the terms of the agreement.

24. (1) The Petitioner shall serve the Respondent with a copy of the application to withdraw an election petition.

Copies of and notice of the application for withdrawal of petition.

(2) The Petitioner shall, publish in the Gazette, a notice of withdrawal of the election petition in Form EP 6 set out in the First Schedule at the Petitioner's own expense.

25. (1) The Registrar shall issue a notice in Form EP 6 set out in the First Schedule, to a person who has given notice to the Registrar of their intention to apply to be a substituted Petitioner.

Notice of time and place of hearing of application.

(2) The notice issued under sub-rule (1) shall specifying the time and place for hearing of the application for withdrawal of an election petition as directed by the court.

26. (1) At the hearing of the application for withdrawal of an election petition, a person who is qualified to be a Petitioner in respect of the election to which the petition relates may apply to the court to be substituted, as Petitioner, in place of the Petitioner desirous of withdrawing the petition.

Substitution of a Petitioner.

(2) The court may substitute an applicant under sub-rule (1) as Petitioner; and may further, if the proposed withdrawal is in the opinion

of the court, induced by any corrupt bargain or consideration, by order direct that the security deposited on behalf of the original Petitioner shall remain as security for any costs that may be incurred by the substituted Petitioner, and that to the extent of the sum deposited as security the original Petitioner shall be liable to pay the costs of the substituted Petitioner.

(3) If no order is made under sub-rule (2) in respect of security by the original Petitioner, security of the same amount as would be required in the case of a new Petitioner, subject to the same conditions shall be payable by the substituted Petitioner before he proceeds with the petition and shall be paid by the substituted Petitioner within three days after the order of substitution.

(4) Subject to sub-rules (2) and (3), a substituted Petitioner shall stand in the same position, to the extent possible, and shall be subject to the same liabilities, as the original Petitioner.

(5) Where there is more than one Petitioner, an application to withdraw an election petition shall be made with consent of all the Petitioners.

27. (1) An election petition shall not abate merely by reason of the death of a sole Petitioner or of the survivor of several Petitioners.

Death of Petitioner.

(2) In case of the death of the sole Petitioner or of the survivor of several Petitioners, substitution of a new Petitioner shall be notified to the court within seven days of the notification of the death under sub-rule (1).

28. (1) A party or person interested to be substituted as a Petitioner shall give a notice of death of the Petitioner or of the survivor of several Petitioners in the manner provided under rule 24.

Application to be substituted as Petitioner.

(2) An application for an order to be substituted as a Petitioner shall be made within seven days from the day of the notice issued under sub-rule (1) or such other time as the court may allow.

(3) A person who may have been a Petitioner in respect of the election to which the petition relates may apply to the court to be substituted as a Petitioner.

(4) The court may substitute as a Petitioner any such applicant who is desirous of being substituted and on whose behalf security, of the same amount is given as is required in the case of a new petition.

29. (1) If before the trial of an election petition, the person whose election is being contested—

Death, resignation of, or notice not to oppose by elected person.

(a) dies or vacates the seat; or

(b) gives notice in writing to the Registrar that he does not intend to oppose the petition,

the petition shall not abate but shall continue, whether or not any person applies to be admitted as a Respondent in the manner provided in this rule.

(2) The Registrar shall publish, in the Gazette, a notice stating that the person whose election is being contested has —

- (a) died or vacated his seat; or
- (b) given notice in writing that he does not intend to oppose the petition.

(3) A person who may have been a Petitioner, in respect of the election to which the petition relates, may apply to the court to be admitted as a Respondent to oppose the petition within ten days after the notice under sub-rule (2) has been published in the Gazette or on such other time as the court may allow.

(4) The notice under sub-rule (1) (b) shall—

- (a) be in writing;
- (b) be signed by the person whose election is being contested;
- (c) be filed at the office of the Registrar; and
- (d) be filed not less than six days before the day appointed for trial and shall exclude the day of leaving the notice.

30. An election petition shall abate if after seven days of the notice of withdrawal or of the death of a sole surviving Petitioner, no person has made an application to be substituted as new Petitioner.

Abatement of petition.

31. (1) The Registrar shall countermand a notice of trial where he receives a notice under rule 29 (1) before the trial commences.

Countermanding notice of trial, etc.

(2) The countermand shall be given in the same manner, with necessary modifications, as the notice of trial.

#### PART VI—SCRUTINY, RECOUNT, ETC.

32. (1) Where the only issue in the election petition is the count or the tallying of the votes received by the candidates, the Petitioner may apply to the court for an order to recount the votes or examine the tallying.

Petitioner may request for recount or examination of tallying.

(2) The Petitioner shall specify in the election petition that he does not require any other determination except a recount of the votes or the examination of the tallies.

33. (1) The parties to the proceedings may, at any stage, apply for scrutiny of the votes for purposes of establishing the validity of the votes cast.

Scrutiny of votes.

(2) Upon an application under sub-rule (1), the court may, if it is satisfied that there is sufficient reason, order for a scrutiny or recount of the votes.

(3) The scrutiny or recount of ballots shall be carried out under the direct supervision of the Registrar and shall be subject to directions as the court may give.

(4) Scrutiny shall be confined to the polling stations in which the results are disputed and shall be limited to the examination of—

- (a) the written statements made by the presiding officers under the provisions of the Act;
- (b) the copy of the register used during the elections;
- (c) the copies of the results of each polling station in which the results of the election are in dispute;
- (d) the written complaints of the candidates and their representatives;
- (e) the packets of spoilt papers;
- (f) the marked copy register;
- (g) the packets of counterfoils of used ballot papers;
- (h) the packets of counted ballot papers;
- (i) the packets of rejected ballot papers; and
- (j) the statements showing the number of rejected ballot papers.

#### PART VII—APPEALS

34. (1) An appeal from a Magistrate's Court under section 75 of the Act shall be in the form of a memorandum of appeal and shall be signed in the same manner as a petition.

Appeals from a  
Magistrate's Court.

(2) The memorandum of appeal shall concisely set out under distinct head, the grounds of appeal, without any argument or narrative, from the judgment appealed from and the grounds shall be numbered consecutively.

(3) The memorandum of appeal shall be filed at the nearest High Court registry within fourteen days from the date of the judgment.

(4) The appellant shall, upon filing the memorandum of appeal, pay the fee specified in the Second Schedule.

(5) The appellant shall, within seven days of filing the memorandum of appeal, serve the memorandum of appeal on all parties directly affected by the appeal.

(6) The appellant shall, within twenty one days, upon filing of memorandum of appeal file a record of appeal which shall contain the following documents—

- (a) memorandum of appeal;
- (b) pleadings;
- (c) typed and certified copies of the proceedings;
- (d) all affidavits, evidence and documents put in evidence before the magistrate; and
- (e) signed and certified copy of the judgment appealed from and a certified copy of the decree.

(7) Upon the filing of the memorandum of appeal, the registrar of the court to which the appeal is preferred shall, within seven days, send

a notice of appeal to the court from whose decree the appeal is preferred.

(8) The court shall, on receiving a notice under sub-rule (7), send the proceedings and all relevant documents relating to the petition to the High Court to which the appeal is preferred.

(9) The High Court shall, within thirty days of lodging the memorandum of appeal, fix a date for —

- (a) directions including directions as to the manner in which evidence and exhibits may be presented; and
- (b) hearing of the appeal.

(10) The High Court may confirm, vary or reverse the decision of the court from which the appeal is preferred and shall have the same powers and perform the same duties as are conferred and imposed on the court exercising original jurisdiction.

35. An appeal from the judgment and decree of the High Court shall be governed by the Court of Appeal Rules.

Appeals from the High Court.

#### PART VIII—COSTS AND DEPOSITS

36. (1) The court shall, at the conclusion of an election petition, make an order specifying—

Costs.

- (a) the total amount of costs payable; and
  - (b) the persons by and to whom the costs shall be paid.
- (2) When making an order under subrule (1), the court may —
- (a) disallow any costs which may, in the opinion of the court, have been caused by vexatious conduct, unfounded allegations or unfounded objections, on the part of either the Petitioner or the Respondent; and
  - (b) impose the burden of payment on the party who has caused an unnecessary expense, whether such party is successful or not, in order to discourage any such expense.

(3) The abatement of an election petition shall not affect the liability of the Petitioner or of any other person to the payment of costs previously incurred.

37. (1) The Registrar shall tax costs of an election petition upon an order of the court in the same manner as costs are taxed in civil proceedings and in accordance with the Civil Procedure Act.

Taxation and recovery of costs.

Cap. 21

(2) An order of the Registrar under sub-rule (1) shall be confirmed in the relevant court.

(3) The court may direct that the whole or any part of any moneys' deposited by way of security may be applied in the payment of taxed costs.

(4) There shall be paid in respect of all proceedings under these Rules the same court fees as are payable in respect of civil proceedings

in the High Court or magistrate's court, as the case may be, in so far as the same are applicable.

38. (1) Money deposited under rule 11 shall, if and when it is no longer requested for security, payment of costs, charges or expenses be returned or disposed of as justice may require, by order of the court.

Return of money deposited.

(2) The order may be made upon an application and proof that all just claims have been satisfied or sufficiently provided for as the court may require.

(3) The order may direct payment either to the party in whose name it is deposited or to any person entitled to receive it.

#### PART IX—MISCELLANEOUS

39. The Attorney-General or the Director of Public Prosecutions or a person appointed by the Attorney-General or Director of Public Prosecutions, as the case may be, may attend the trial of an election petition.

Attorney General and Director of Public Prosecutions may attend trial.

40. Despite any provision in these Rules, the court may at any time before or during the trial issue any orders of an administrative nature, including—

Power of court to issue administrative orders.

- (a) an order to require written submissions; or
- (b) prescribing timelines for certain actions.

41. The Chief Justice may issue practice directions for the better carrying out of the provisions of these rules.

Practice directions by the Chief Justice.

42. The Elections (Parliamentary and County Elections) Petition Rules, 2013 are revoked.

Revocation of L.No.44 of 2013.

SCHEDULE

FORM EP I

(r.8)

IN THE HIGH COURT OF KENYA/IN THE MAGISTRATES COURT AT-----  
THE ELECTIONS ACT, 2011

PETITION

Election for the ..... (state whether Governor/Senator/Member of National Assembly/ member of county assembly) of ..... (state the respective county/constituency/ward)

The Petition of ..... (state name of Petitioner(s))

Your Petitioners state that the election was held on the ..... day of .....,

20....., when X,Y and Z were candidates, and the returning officer has returned X as being duly elected.

And your Petitioners say that (state the facts and grounds on which the Petitioners rely).

Wherefore your Petitioners pray that it be determined that the said X was not duly elected and the election was void (or as the case may be).

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

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

FORM EP 2

r.8(2))

ACKNOWLEDGEMENT OF RECEIPT OF AN ELECTION PETITION

Received on the ..... day of ....., 20..... at the Registry of the High/Magistrates Court, a petition concerning the election of ..... for ..... purporting to be signed by..... (insert the names of Petitioners) Registrar (or other officer to whom the petition is delivered)

FORM EP 3

(r.13 (2) (a))

SERVICE OF ELECTION PETITION BY ADVERTISEMENT

To: .....

of.....

Take notice that an Election Petition in regard to ..... county/constituency/county assembly ward has been filed in the .....Court at ..... in EP 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)* .....

FORM EP 4

(r.14 (2))

IN THE HIGH COURT OF KENYA/IN THE MAGISTRATES COURT AT-----

THE ELECTIONS ACT, 2011

**RESPONSE TO AN ELECTION PETITION**

Election for the ..... *(state whether Governor/Senator/Member of National Assembly/ member of county assembly) of*  
..... *(state the respective county/constituency/ward)*

The Response of .....*(state name of Respondent(s))*

In response to the petition, the Respondent states that *(state the facts or grounds on which the Respondent(s) rely)*.

Wherefore your Respondent prays that it be determined that the said ..... *(name of candidate)* was duly elected and the election was valid (or as the case may be).

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

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

FORM EP 5

(r.23 (2))

IN THE HIGH COURT OF KENYA/IN THE MAGISTRATES COURT AT-----

THE ELECTIONS ACT, 2011

**APPLICATION TO WITHDRAW AN ELECTION PETITION**

The petition of ..... presented the .....  
..... day of ....., 20.....

The Petitioner applies for leave to withdraw the petition upon the following grounds *(state grounds)*. And the Petitioner prays that a day may be appointed for hearing the application.

Dated the ..... 20..... *(signed)* .....

FORM EP 6 (r.24)

IN THE HIGH COURT OF KENYA/IN THE MAGISTRATES COURT AT.....

THE ELECTIONS ACT, 2011

**NOTICE OF WITHDRAWAL OF AN ELECTION PETITION**

In the election petition for the .....

Constituency/Ward/ in which ..... is Petitioner and  
..... Respondent.

Notice is hereby given that the above Petitioner did on the .....day of  
....., 20 ..... lodge at the office of the Registrar an  
application for leave to withdraw the election petition, of which application the following  
is a copy- (*attach copy*).

And take notice that under the Elections (Parliamentary and County Elections) Petition  
Rules any person who might have been a Petitioner in respect of the said election may,  
within seven days after the date of publication of this notice, give notice in writing to the  
Registrar of the High Court of the intention on the hearing of the application to be  
substituted as a Petitioner.

SECOND SCHEDULE

(r.8 (1) &amp;34)

<i>Item</i>	<i>Fees</i>
Filing of a Petition in the High Court (rule 8 (1)).	30,000
Filing of a Petition in the Magistrate's Court (rule 8 (1)).	15,000
Lodging a Memorandum of Appeal (rule 33A).	15,000

Dated the 12th January, 2013.

ALNASHIR VISRAM,  
*Chairperson/ Rules Committee.*