

LEGAL NOTICE NO. 114

THE APPELLATE JURISDICTION ACT

(Cap. 9)

THE COURT OF APPEAL (ELECTION PETITION) RULES, 2017

ARRANGEMENT OF RULES

Rule

PART I—PRELIMINARY

- 1—Citation.
- 2—Interpretation.
- 3—Object.
- 4—Application.
- 5—Non-compliance with Rules.

PART II—INITIATION, SERVICE AND FILING OF APPEALS

- 6—Filing of notice of appeal.
- 7—Service of notice of appeal.
- 8—Contents of record of appeal.
- 9—Filing and service of record of appeal.
- 10—Notice of cross-appeal or notice of grounds for affirming decision.
- 11—Service of notice of cross-appeal or notice of grounds for affirming decision.
- 12—Style of cause in appeal.

PART III—ADMINISTRATION

- 13—Sittings of the Court.
- 14—Hours of lodging documents.
- 15—Acceptance of documents lodged out of time.
- 16—Maintenance of election appeals register.
- 17—Extension or reduction of time.
- 18—Stay of proceedings.

PART IV—HEARING OF APPEALS

- 19— Application to strike out notice of appeal or appeal.
- 20—Pre-hearing conference.
- 21—Entering an appeal for hearing.
- 22—Hearing to be on day to day basis.
- 23—Duration for hearing and determination of election petition appeals.

24—Recess and leave.

25—Prohibition of delayed interlocutory applications.

PART V—GENERAL PROVISIONS

26—Orders of the Court.

27—Security for costs.

28—Review of Rules.

SCHEDULE—FORMS

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

THE COURT OF APPEAL (ELECTION PETITION) RULES, 2017

PART I—PRELIMINARY

1. These Rules may be cited as the Court of Appeal (Election Petition) Rules, 2017.

Citation.

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

Interpretation.

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

L.N.152/2010.

“appeal” means an appeal from the decision of the High Court;

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

“Court” means the Court of Appeal;

“judge” means a judge of the Court;

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

“notice of cross-appeal” means a notice lodged in accordance with rule 10 (4);

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

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

“respondent” includes any person on whom a notice of appeal has been served and any person other than the appellant on whom a notice of cross-appeal has been served.

3. The object of these Rules is to facilitate the just, expeditious and impartial determination of election petition appeals in exercise of the Court’s appellate jurisdiction under Article 164 (3) of the Constitution.

Object.

4. (1) These Rules apply to the conduct of appeals from decisions of the High Court in election petitions and matters relating thereto.

Application.

(2) Where there is no applicable provision in these Rules, the provisions of the Court of Appeal Rules, 2010 relating to civil appeals shall apply to an election petition appeal in so far as they are not inconsistent with these Rules.

(3) Where there is a conflict between these Rules and the Court of Appeal Rules, 2010 on matters relating to election petition appeals, the provisions of these Rules shall prevail.

(4) A decision of the Court that a provision of one set of Rules prevails over another provision does not invalidate the latter provision, but the latter provision shall be inoperative to the extent of the inconsistency.

5. The effect of any failure to comply with these Rules shall be a matter for determination at the Court's discretion subject to the provisions of Article 159 (2) (d) of the Constitution and the need to observe the timelines set by the Constitution or any other electoral law.

Non-compliance with Rules.

PART II—INITIATION, FILING AND SERVICE OF APPEALS

6. (1) A person who desires to appeal to the Court shall file a notice of appeal, which shall be lodged in quadruplicate in the registry.

Filing of notice of appeal.

(2) A notice of appeal shall be filed within seven days of the date of the decision appealed against.

(3) A notice of appeal shall be in separate numbered paragraphs and shall—

- (a) specify whether all or part of the judgment is being appealed and, if part, which part;
- (b) provide the address for service of the appellant and state the names and addresses of all persons intended to be served with copies of the notice; and
- (c) contain a request that the appeal be set down for hearing in the appropriate registry.

(4) It shall not be necessary that the decree or order be extracted before lodging a notice of appeal.

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

7. (1) The appellant shall serve the notice of appeal upon all affected parties within five days from the date of filling the notice.

Service of notice of appeal.

(2) A person served with a notice of appeal shall file and serve upon all the other parties a notice of address for service within five days from the date of service of the notice of appeal.

(3) A notice of appeal shall be served by the appellant on the respondent by—

- (a) direct service; or
 - (b) publication in a newspaper of national circulation.
- (4) Service on the Commission shall be by—
- (a) delivery at the constituency, county or head office of the Commission;
 - (b) delivery at such other office as the Commission may notify; or
 - (c) publication in a newspaper of national circulation.

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

- (a) in Form EPA 3 set out in the Schedule;
- (b) of at least font size twelve; and
- (c) captured in dimensions of not less than ten by ten centimetres.

(6) The Court may direct that the notice of appeal be served on any person who is not a party and may make such interim orders as the Court considers just.

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

Contents of record of appeal.

- (a) an index of all the documents in the record with the numbers of the pages at which they appear;
- (b) a statement showing the address for service of the appellant and the address for service of the respondent being his last known address and proof of service on the respondent of the notice of appeal;
- (c) the pleadings;
- (d) the trial judge's notes of the hearing;
- (e) the transcript of any shorthand notes taken at the trial;
- (f) the affidavits read and all documents put in evidence at the hearing, or, if such documents are not in the English language, certified translations thereof;
- (g) the judgment;
- (h) certified copy of the decree or order;
- (i) the notice of appeal; and
- (j) such other documents, if any, as may be necessary for the proper determination of the appeal, including any interlocutory proceedings which may be directly relevant:

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

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

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

Provided that an affidavit filed in support of an application shall be bound immediately following the application.

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

(5) Where the High Court does not avail any of the documents required under sub rule (1), the appellant may proceed to file the record of appeal and a supplementary record of appeal within seven days thereafter.

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

Filing and service of record of appeal.

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

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

Notice of cross-appeal or notice of grounds for affirming decision.

(2) A respondent who desires to contend on an appeal that the decision of the High Court should be affirmed on grounds other than or additional to those relied upon by that court shall give notice to that effect, specifying the grounds of his contention.

(3) A notice given by a respondent under this rule shall state the names and addresses of any persons intended to be served with copies of the notice and shall be lodged in quadruplicate with the Registrar within seven days after service on the respondent of the record of appeal.

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

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

(5) A notice of grounds for affirming a decision shall be substantially in the Form EPA 2A in the Schedule and shall be signed by or on behalf of the respondent.

11. A notice of cross-appeal or notice of grounds for affirming a decision on grounds other than those relied on by the High Court shall be served within five days after being lodged in the registry.

Service of notice of cross-appeal or notice of grounds for affirming decision.

12. The style of the cause in an appeal shall set out without abbreviation—

Style of cause in appeal.

- (a) the name of the appellant together with the designation “Appellant; and
- (b) the name of each party against whose interest the appeal is taken, together with the designation “Respondent”.

PART III—ADMINISTRATION

13. The sittings of the Court and the matters to be disposed of at such sittings shall be determined by the President of the Court in consultation with the Chief Justice and shall be notified to the public in such manner as the Chief Justice may direct but nothing in this Rule shall preclude the Court from disposing of any business that has not been so notified.

Sittings of the Court.

14. The President of the Court may adjust and direct the hours during which the registry shall be open for the receipt of documents concerning election appeals to cater for increased or anticipated increase in the number of cases.

Hours of lodging documents.

15. The Registrar shall not refuse to accept any document on the ground that it is lodged out of time but shall stamp on the document, the date on which it is presented, mark on it “LODGED OUT OF TIME” and inform the person lodging it.

Acceptance of documents lodged out of time.

16. (1) The Registrar shall maintain an Election Appeals Register, in which shall be entered particulars of every election petition appeal to the Court.

Maintenance of election appeals register.

(2) The register under sub rule (1) shall show the number of the election petition appeal, the number of the petition in the High Court, the names of the parties and the dates when the essential steps in the proceedings were taken.

(3) The register shall also contain, against the entry relating to each appeal, a reference to every application made in relation to that appeal, whether made before or after the institution of the appeal.

17. (1) The Court may, for sufficient reason, extend or reduce the timelines prescribed by these Rules upon such terms and conditions it may deem just and expedient, and a reference in these Rules to any time shall be construed as a reference to that time as extended or reduced.

Extension or reduction of time.

(2) Sub-rule (1) does not apply to timelines set by the Constitution and the Elections Act, 2011.

18. (1) The filing and service of a notice of appeal stays the execution of any judgment, decree, order or direction from the High Court pending the determination of the appeal.

Stay of execution.

(2) Sub rule (1) shall cease to apply if no record of appeal is filed within thirty days from the date of the judgment of the High Court.

PART IV—HEARING OF APPEALS

19. (1) A person affected by an election petition appeal may, within seven days from the date of service of the notice of appeal or record of appeal, as the case may be, apply to the Court to strike out the notice or the record of appeal on the ground that no appeal lies or that some essential step in the proceedings has not been taken within the time prescribed by these Rules.

Application to strike out notice of appeal or appeal.

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

20. (1) Within twenty-one days of the filing of the record of appeal, the Court shall schedule a pre-hearing conference.

Pre-hearing conference.

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

- (a) framing contested and uncontested issues in the appeal;
- (b) considering consolidation of appeals in cases where more than one appeal is filed;
- (c) giving directions specifying the place and time of the hearing of the appeal;
- (d) giving directions on the hearing and determination of interlocutory applications, if any;
- (e) directing the Commission on the handling of all relevant election materials and documents relating to the appeal before commencement of the hearing;
- (f) giving directions on whether the appeal shall be heard by oral or written submissions;
- (g) determining the form and period within which written submissions are to be filed and exchanged;
- (h) determining whether or not the written submissions shall be highlighted orally; and
- (i) making such other orders as may be necessary to ensure a fair determination of the appeal.

21. After the conclusion of the pre-hearing conference and any other preliminary matters, including disposing of interlocutory applications, the Court shall commence the hearing of the appeal.

Entering an appeal for hearing.

22. (1) 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 be on day-to-day basis.

(2) Despite sub-rule (1), the Court may, where circumstances demand, adjourn for not more than five consecutive days.

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

Duration for hearing and determination of election petition appeals.

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

Recess and leave.

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

Prohibition of delayed interlocutory applications.

PART V – GENERAL PROVISIONS

26. (1) After the hearing of an election appeal, the Court may make an order—

Orders of the Court.

- (a) dismissing the appeal;
- (b) affirming the decision of the High Court; or
- (c) granting any other appropriate relief as contemplated under section 75 (3) of the Elections Act, 2011.

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

Security for costs.

(2) If no security is given, the Court may, on its own motion or on an application by the respondent, issue an order directing the dismissal of the appeal and for payment of the respondent's costs.

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

(4) The Registrar may pay costs from the sum deposited as security for costs either by consent of the parties or in conformity with the decision of the Court and having regard to the rights of the parties thereunder.

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

Review of Rules.

SCHEDULE

FORMS

FORM EPA 1

(r. 6 (5))

IN THE COURT OF APPEAL AT.....ELECTION PETITION APPEAL NO.OF 20
IN THE MATTER OF.....

IN THE MATTER OFELECTION PETITION NO..... OF 20.....

BETWEEN

.....APPLICANT

AND

..... RESPONDENT

(APPEAL FROM THE.....OF THE HIGH COURT OF AT.....

(HON. JUSTICE)..... DATED, 20.....,

IN..... ELECTION PETITION NO. OF 20))

NOTICE OF APPEAL

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

.....
.....
.....

The address for service of the appellant is.....

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

The applicant requests that the appeal be set down for hearing in the appropriate registry.

Dated thisday of 20.....

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

FORM EPA 2 r. 10 (4)
 IN THE COURT OF APPEAL AT.....ELECTION PETITION APPEAL NO.OF 20
 IN THE MATTER OF.....
 IN THE MATTER OFELECTION PETITION NO..... OF 20....
 BETWEEN

.....APPLICANT

AND

..... RESPONDENT

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

NOTICE OF CROSS-APPEAL

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

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

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

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

Dated thisday of. 20.....

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

FORM EPA 2A (r. 10 (5))
 IN THE COURT OF APPEAL AT.....ELECTION PETITION APPEAL NO.OF 20
 IN THE MATTER OF.....
 IN THE MATTER OFELECTION PETITION NO..... OF 20....
 BETWEEN

.....APPLICANT

AND

..... RESPONDENT

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

NOTICE OF GROUNDS FOR AFFIRMING THE DECISION

TAKE NOTICE that on the hearing of this appeal.....the above-named respondent will contend that the above-mentioned decision ought to be affirmed upon grounds other than those relied upon by the High Court, namely—

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

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

Dated thisday of.20.....

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

To:

The Honorable judges of the Court of Appeal

Lodged in the Registry/sub registry at.....on theday of20.....

.....

Registrar

FORM EPA 3

(r. 7 (5) (a))

IN THE COURT OF APPEAL AT.....ELECTION PETITION APPEAL NO.OF 20

IN THE MATTER OF.....

IN THE MATTER OFELECTION PETITION NO..... OF 20....

BETWEEN

.....APPLICANT

AND

..... RESPONDENT

(APPEAL FROM THE.....OF THE HIGH COURT OF AT.....

(HON. JUSTICE)..... DATED, 20.....,

IN..... ELECTION PETITION NO. OF 20

SERVICE OF NOTICE OF APPEAL BY ADVERTISEMENT

To:of.....

TAKE NOTICE that an appeal in regard to the decision of the Honourable Justice.....in the High Court of..... has been filed in the.....Court of Appeal at..... in EPA No.of 20,in which you are named as Respondent/s.

Service of the summons on you will be by means of this advertisement.

A copy of the summons and the petition may be obtained from the court at (*insert postal address of registry*)

And further take notice that, unless you enter an appearance within days, the petition will be heard in your absence.

Dated thisday of.20.....

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

DAVID K. MARAGA,
Chief Justice/Chairman, Rules Committee.