



REPUBLIC OF NAURU

ELECTION PETITION RULES 2019

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In exercise of the powers conferred by section 107 of the *Electoral Act 2016*, the Chief Justice makes the following Rules:

PART 1 – PRELIMINARY

1 Citation

These Rules may be cited as the *Election Petition Rules 2019*.

2 Commencement

These Rules come into effect on the day they are notified in the Gazette.

3 Interpretation

(1) In these Rules:

‘Act’ means the *Electoral Act 2016*;

‘agent’ may include a legal practitioner in proceedings under these Rules;

‘Court’ means the Supreme Court sitting as the Court of Disputed Returns established under Part 8 of the Act;

‘date of presentation’ in relation to presentation of petition shall be the date and time endorsed by the seal of the Court on a petition;

‘election’ means a:

(a) general election;

(b) by-election; or

(c) supplementary election;

‘Electoral Commissioner’ means the person appointed under section 14 of the Act;

‘Judge’ means any Judge of the Court and includes the Chief Justice;

‘legal practitioner’ means a barrister and solicitor or pleader duly admitted to practice law and has a current practicing certificate;

‘petition’ means an election petition challenging the result of a return of election of a member of Parliament presented to the Court under the Act and these Rules;

‘petitioner’ means a person who presents a petition to the Court under the Act and these Rules;

‘Registrar’ means the Registrar of the Supreme Court who shall also be the Registrar of the Court of Disputed Returns;

'Registry' means the registry of the Supreme Court sitting as the Court of Disputed Returns;

'respondent' means a person against whom a petition is presented to the Court;

'Rules' means these *Election Petition Rules 2019*.

- (2) All documents to be presented, lodged or filed under these Rules shall be intituled as set out in Form 1 of the Schedule.
- (3) The presentation of a petition shall be by filing of the petition at the Registry of the Court.

PART 2 – CONTENTS AND FORM OF PETITION

4 Contents and form of petition

- (1) A petition shall be as set out in Form 2 of the Schedule.
- (2) A petition under subrule (1) shall:
 - (a) state whether the petitioner is a candidate or voter as required under section 93(1) of the Act;
 - (b) state the date and result of the election;
 - (c) state the name, address and occupation of each of the successful candidates as separate respondents;
 - (d) state the names, addresses and occupations of any other persons joined as respondents;
 - (e) state the names, addresses and occupations of the unsuccessful candidates, whether they are joined as a respondent or not;
 - (f) state the capacity in which each party is joined;
 - (g) state the grounds for the prayer for relief;
 - (h) provide a prayer for relief including where applicable, a declaration seeking:
 - (i) a candidate be duly returned or elected;
 - (ii) the election be void; or
 - (iii) a writ of election be returned;
 - (i) be signed by the petitioner or each of the petitioners where there is more than one petitioner; and
 - (j) be divided into paragraphs numbered consecutively and each allegation shall as far as convenient be contained in separate

paragraphs.

5 Parties to the petition

The parties to a petition shall be:

- (a) the petitioner;
- (b) the successful candidate or candidates as respondent or respondents;
- (c) the Electoral Commissioner as a respondent; and
- (d) any other party as a respondent or interested party against whom a relief is sought or whose inclusion is necessary for the purpose of a just and fair hearing of the petition.

6 Affidavit verifying the petition

A signed copy of the petition shall be verified by an affidavit in Form 3 of the Schedule at the time of the presentation of the petition.

7 Evidence not to be pleaded or exhibited

- (1) The petition shall contain a summary of material facts on which the petitioner seeks relief, but not the evidence by which those facts are to be proven, which shall be filed under Part 7.
- (2) Where an allegation is made against a person for the alleged or actual commission of an offence prescribed under the Act, the following particulars of such offence shall be stated in the petition:
 - (a) nature of the offence;
 - (b) the name, address and occupation of the person who is alleged to have or has committed the offence;
 - (c) the name, address and occupation of the person against whom the offence is alleged to have been or was committed;
 - (d) when and where such offence is alleged to have been or was committed;
 - (e) whether a complaint of the alleged offence was made to the Electoral Commission, Nauru Police Force or any other person of authority; and
 - (f) the outcome of any complaint made under subrule (e).
- (3) The Court may, on an application of a party, order such particulars for the purposes of subrule (2) to be provided as may be necessary to ensure a fair hearing or trial of the petition.
- (4) Where the Court orders under subrule (3) that particulars of any allegation made in a petition be served on a party, it shall be filed and served to all the parties in accordance with the order of the Court.

- (5) Where a party fails to comply with an order under subrule (4), the Court may:
 - (a) dismiss or summarily strike out the relevant parts of the petition or any reply to the petition relating to such particulars;
 - (b) summarily dismiss the petition or any reply to the petition where substantial injustice will be caused to the other party or parties; or
 - (c) exclude the admission of such particulars or evidence at the hearing or trial of the petition where the Court deems appropriate.

8 Petitioner to provide address for service

A petitioner shall provide an address for service in the petition:

- (a) in case where he or she engages a legal practitioner, the address of such legal practitioner; or
- (b) in any other case, the residential address of the petitioner.

PART 3 – PRESENTATION OF PETITION

9 Presentation of petition

- (1) A petition shall be presented within 21 days of the publication in the Gazette of the results of the election.
- (2) The petition shall be presented with such number of copies as required for service on each of the respondents.
- (3) The Registrar shall endorse the date and time of the presentation of the petition and the deposit of the security for costs.
- (4) The Registrar shall not accept or process a petition for presentation:
 - (a) on the expiry of 21 days from the publication in the Gazette of the results of the election; and
 - (b) without the deposit of the security for costs at the time of the presentation of the petition or where the security for costs was deposited after the expiry of the time for the presentation of the petition.

10 Security for costs

- (1) The deposit of \$500 for security for costs shall be made with the Registrar at the time of the presentation of the petition.
- (2) Where the security for costs is not deposited as required by the Act and these Rules, the petition is deemed not to be presented.
- (3) The Registrar shall on the receipt of the deposit of security for costs under subrule (1), issue a Notice of Payment of Security for Costs in

Form 4 of the Schedule.

11 Publication of petition in Gazette

The Registrar shall cause a Notice of Presentation of Petition in Form 5 of the Schedule to be published in the Gazette after the endorsement and issuance of the petition.

PART 4 - SERVICE OF PETITION

12 Service of petition

- (1) The petition and the Notice of Payment of Security for Costs shall be served personally on each of the named respondents in the petition within 5 days from the endorsement and issuance of the petition.
- (2) Before the expiry of the time for service under subrule (1), the Court may, on an application of the petitioner, extend the time for service of the petition and Notice of Payment of Security for Costs on one or more of the respondents for a further period not exceeding 5 days where:
 - (a) personal service was not effected despite all reasonable efforts;
 - (b) the respondent at all material times is outside the jurisdiction; or
 - (c) the respondent evades personal service.
- (3) In considering an application for extension of time for the service of the petition and Notice of Payment of Security for Costs under subrule (2), the Court may order substituted service of the petition and Notice of Payment of Security for Costs:
 - (a) by leaving a copy of the documents at the respective respondent's residence;
 - (b) by serving a copy of the documents to a named adult member of the family residing with the respective respondent; or
 - (c) in any other manner by which the respective respondent is capable of being notified of the petition to the satisfaction of the Court.
- (4) The application under subrule (3) shall be made to the Registrar:
 - (a) by an ex-parte Notice of Motion in Form 6 of the Schedule; and
 - (b) accompanied by an affidavit in Form 7 of the Schedule of the person engaged to serve the petition and Notice of Payment of Security for Costs deposing the efforts made and reasons for not being able to effect personal service.
- (5) The Registrar shall prepare and issue a sealed copy of an order for substituted service in Form 8 of the Schedule.

- (6) The petition and Notice of Payment of Security for Costs shall be served on the respondents by any other person other than the petitioner personally.
- (7) Where a petition and Notice of Payment of Security for Costs is served by the petitioner personally, the petition shall be deemed as not served on the respective respondent.

13 Affidavit of service

- (1) The petitioner shall cause the person serving the petition and Notice of Payment of Security for Costs to make an affidavit of service in Form 9 of the Schedule and file such affidavit in the Court before the petition is listed for a directions hearing.
- (2) The affidavit in subrule (1) shall provide:
 - (a) the name of the person serving the documents;
 - (b) the name of the person to whom the documents were served;
 - (c) the address for the service of the documents;
 - (d) the full particulars of the manner in which service has been effected; and
 - (e) in the case of substituted service, the details and manner in which the order for substituted service was effected in Form 10 of the Schedule.

PART 5 - RESPONDENTS TO ENTER AN APPEARANCE

14 Notice to Appear

- (1) The respondent shall within 5 days of the service of the petition and Notice of Payment of Security for Costs file a Notice to Appear in person or by a legal practitioner in Form 11 of the Schedule and serve a copy at the address of the petitioner contained in the petition and on every other party to the petition.
- (2) Where a respondent fails to file a Notice to Appear in accordance with subrule (1), he or she shall only be permitted to enter an appearance or participate at the hearing or trial of the petition with the leave of the Court.

15 Respondent not intending to oppose

- (1) A respondent who does not intend to oppose or appear for the hearing or trial of the petition:
 - (a) shall file and serve a notice to that effect in Form 12 of the Schedule on the petitioner and every other party to the petition; and

(b) is not required to appear in court for the hearing or trial of the petition.

(2) The filing of the notice under subrule (1) does not prohibit the Court from granting orders other than costs against that respective respondent.

16 Objection to regularity, competency or service of petition

(1) A respondent who objects to the regularity, competency or service of the petition shall within 7 days after the service of the petition file and serve on the petitioner and other parties the grounds of such objection in Form 13 of the Schedule.

(2) Where the petitioner fails to rectify any legitimate objection raised under subrule (1), the respondent may by a summons supported by an affidavit seek appropriate orders including setting aside or the dismissal of the petition.

17 Court to hear the petition on merits where no Notice to Appear

The Court shall hear and determine a petition or interlocutory application on the merits, whether or not, one or more of the respondents:

(a) files a Notice to Appear;

(b) opposes or admits the relief sought in the petition or interlocutory application; or

(c) attends to the hearing of the interlocutory application or petition.

18 Answer to the Petition

(1) Where a respondent wishes to oppose the petition on substantive merits, he or she shall file and serve an Answer to the Petition in Form 14 of the Schedule within 7 days of the service of the petition.

(2) The respondent shall:

(a) admit or deny each allegation contained in the petition and where necessary supported by material particulars;

(b) state any other material facts which may be relevant for the hearing and determination of the petition;

(c) provide a prayer for relief; and

(d) divide his or her Answer to the Petition into paragraphs numbered consecutively and as far as convenient, corresponding with the paragraphs in the petition.

(3) The respondent or his or her legal representative shall sign the Answer to the Petition.

- (4) The Answer to the Petition shall contain a summary of material facts on which the respondent seeks relief, but not the evidence by which those facts are to be proven.

PART 6 - REPLY TO THE ANSWER TO THE PETITION

19 Reply to Answer to the Petition

- (1) The petitioner shall file and serve any Reply in Form 15 of the Schedule to the Answer to the Petition within 5 days of the service of the Answer to the Petition by:
- (a) joining the issues in the Answer to the Petition;
 - (b) admitting the allegations in the Answer to the Petition; or
 - (c) denying the specific allegations in the Answer to the Petition.
- (2) Where no Reply to the Answer to the Petition is filed by the petitioner, save for any admissions made to the allegations in the Answer to the Petition, the respondent is deemed to have joined the issues on such contentious issues or facts.

PART 7 – FILING OF OTHER DOCUMENTS

20 Affidavits

- (1) The petitioner shall file and serve within 14 days from the date of the presentation of the petition:
- (a) an affidavit of the petitioner exhibiting all such evidence that he or she intends to adduce or rely on at the hearing or trial of the petition;
 - (b) affidavits of any other persons who he or she intends to rely upon for the hearing or trial of the petition whether or not, such persons may be summoned to appear as witnesses for the hearing or trial of the petition; and
 - (c) a list of witnesses in Form 16 of the Schedule that he or she intends to summon for the hearing or trial of the petition.
- (2) The respondent shall file and serve within 14 days of the filing of the Answer to the Petition:
- (a) one or more affidavits in reply to the petition or the affidavits filed for or on behalf of the petitioner;
 - (b) affidavits of any other persons he or she intends to call as witnesses or rely upon for the hearing or trial of the petition; and
 - (c) a list of witnesses in Form 17 of the Schedule that he or she intends to summon for the hearing or trial of the petition.

Witnesses

- (1) With the leave of the Court, any person having deposed an affidavit under Rule 20 may be cross-examined by the opposing party and re-examined by the party on whose behalf the affidavit is filed.
- (2) The Court may, of its own motion, examine any witness or call and examine or recall any witness where it deems that the evidence of the witness is relevant to the determination of one or more issues of the petition.
- (3) A person summoned as a witness by the Court under subrule (2) may be cross examined by the parties to the petition.
- (4) Any party who seeks to call a witness to testify in Court, may issue a summons to witness, addressed to such person requiring his or her presence for the hearing or trial of the petition.
- (5) The provisions relating to the summons to witness under the *Civil Procedure Rules 1972* apply.
- (6) A person called as a witness for the purposes of the hearing or trial of a petition shall not be excused from answering any question relating to the commission of any alleged offence or on the ground of privilege, relating to the election.
- (7) A person who testifies as a witness in respect of any matters in subrule (6):
 - (a) shall be immune from any criminal prosecution; and
 - (b) the evidence given by the person shall not be admissible as evidence against that person in any civil or criminal cause or matter.

List of votes objected to by unsuccessful candidate as a petitioner

- (1) Where an unsuccessful candidate, who is a party to a petition, alleges that he or she had a majority of lawful votes by objecting to the votes of another candidate, he or she shall file and serve a list of such objections in Form 18 of the Schedule, which shall be exhibited to an affidavit under Rule 20 containing:
 - (a) a list of the votes counted intended to be objected to; and
 - (b) the objections to each such vote.
- (2) The party opposing the allegation in subrule (1) shall file and serve a list of responses to the objections in Form 19 of the Schedule, which shall be exhibited to an affidavit containing:
 - (a) a response admitting or denying the votes objected to; and
 - (b) where the objection is denied, provide the reason for such denial.

- (3) Where a person fails to comply with subrule (1), he or she shall not object to the validity of any votes during any stage of the proceedings without the prior leave of the Court being granted to the person to comply with the requirements of this Rule.

23 List of objections in recriminatory case

- (1) Where the respondent intends to give evidence to prove that that person was not duly elected as a result of:
 - (a) undue election; or
 - (b) election of another person, -he or she shall file and serve under Rule 20 a list of his or her objections to the election of that person on which he or she intends to rely.
- (2) No evidence may be given by a respondent of any objection to the election not specified in the list except with the leave of the Court.

24 Petition seeking return

Where in a petition it is alleged that no return is made, the Court may make an order compelling a return to be made by the Electoral Commissioner.

PART 8 - INTERLOCUTORY APPLICATIONS AND HEARINGS

25 Directions hearing

- (1) The Registrar shall list the petition for a directions hearing within 28 days of the presentation of the petition.
- (2) The Court at the directions hearing may:
 - (a) deal with any application as to the competency of the petition;
 - (b) order that a person be joined as a party;
 - (c) adjourn to another date for a directions hearing and to fix a date for hearing or trial of the petition;
 - (d) make orders for:
 - (i) filing and serving of documents by the parties and their witnesses;
 - (ii) disclosure of information and documents;
 - (iii) filing and serving written submissions and list of statutes, regulations or case authorities;
 - (iv) giving notice to witnesses to attend the hearing; and

- (v) any other matter necessary to assist in the expeditious hearing or trial of the petition.
- (3) Where the petitioner is challenging the result of the election on the ground that the petitioner had a majority of lawful votes, the Court at the directions hearing may order that in the presence of the Registrar:
 - (a) an examination of the counted and void votes; and
 - (b) an examination of the recounting of votes.

26 Interlocutory applications

- (1) All interlocutory questions and matters may be heard and disposed of, where appropriate by a Judge, in the course of the proceedings.
- (2) All interlocutory questions and matters vested to the jurisdiction of the Registrar may be heard and disposed of by the Registrar, who shall have the same jurisdiction over the proceedings as a Judge in the Court.
- (3) An interlocutory application shall be made by a summons in Form 20 of the Schedule and where necessary, supported by an affidavit.

27 Amendment of petition or Answer to Petition

- (1) A petition or Answer to Petition may, with the leave of the Court, be amended at any stage of the proceedings before 7 days of the date fixed for the hearing or trial of the petition.
- (2) An application for leave to amend a petition or Answer to Petition shall be by a summons and be supported by an affidavit.
- (3) The Court:
 - (a) may dismiss the application; or
 - (b) where it grants leave shall give such directions as necessary for filing of any response and the timely determination of the petition.

28 Intervener application

- (1) A person, not joined as a party to a petition or, is eligible but unable to be joined as a party under these Rules, may with the leave of the Court, apply to be joined as an intervening party to the petition.
- (2) An application under subrule (1) shall be made by no later than 28 days from the day the petition is notified in the Gazette by the Registrar.
- (3) An application under this Rule shall be:
 - (a) by a summons;
 - (b) supported by an affidavit stating the:
 - (i) grounds and reasons for such intervention; and

- (ii) the effect of such application on the relief sought by the petitioner; and
 - (c) served to all parties within 3 days of the filing of the intervener application.
- (4) The Court:
- (a) may dismiss the application; or
 - (b) where it grants leave, shall give such directions as necessary for the timely determination of the petition.

29 Substitution of a petitioner

- (1) A person, who was eligible to be a petitioner in respect of a petition where the petitioner has given a Notice of Application to Withdraw the Petition, may apply to the Court within 7 days of the publication of such Notice for leave to be substituted as the petitioner.
- (2) An application for leave to be substituted as a petitioner under this Rule shall be made by a summons and be supported by an affidavit.
- (3) On the hearing of the application for leave to withdraw, the Court may concurrently hear an application under subrule (1) for substitution as a petitioner and the Court may if it deems fit substitute such person accordingly.
- (4) Where the proposed withdrawal is induced by any ulterior or illegitimate purpose, the Court may, by order, direct that the security deposited on behalf of the original petitioner:
 - (a) remain as security for the substituted petitioner; and
 - (b) the original petitioner be liable to pay the costs of the substituted petitioner.
- (5) Subject to subrule (4), the substituted petitioner shall within 3 days of the order for substitution deposit the security for costs of \$500 before he or she proceeds with his or petition.
- (6) A substituted petitioner shall be in the same position and subject to the same liabilities as the original petitioner.
- (7) No application for substitution as a petitioner may be granted after the expiry of the 21 days within which a petition is to be filed under section 96 of the Act.

30 Substitution of a respondent

- (1) Where at any stage before the hearing or trial of a petition, a respondent other than the Electoral Commissioner files a Notice not to Oppose the Petition or dies, any person who may have been a

respondent in respect of the election, may with the leave of the Court be substituted as a respondent to the petition.

- (2) For the purposes of subrule (1), the maximum number of persons who may be granted leave to be substituted as a respondent to the petition shall not exceed 2.

PART 9 – LISTING AND HEARING OF PETITION

31 Elections Petition List

- (1) The Registrar shall prepare an Elections Petition List in Form 21 of the Schedule containing:
 - (a) the names of the petitioners, legal representatives or agents and address for service; and
 - (b) the names of the respondents, legal representatives or agents and address for service.
- (2) A current Elections Petition List shall be posted on the Notice Board of the Court accessible to the public.
- (3) The Registrar shall maintain a record of all addresses of the parties to a petition given under this Rule which shall be available for inspection during business hours.

32 Hearing or trial of more than one petition in a constituency

Where more than one petition is presented in relation to the same election in a constituency, all petitions shall be heard or tried together in the manner and terms the Court may deem fit.

33 Hearing or trial to be in open court

The hearing or trial of a petition shall be in open court.

34 Date and time of hearing or trial of petition

- (1) The date and time of the hearing or trial of each petition shall be fixed by the Court.
- (2) The Registrar shall notify the public of the hearing or trial date of the petition by:
 - (a) posting a notice on the Notice Board of the Court; and
 - (b) gazetting the hearing or trial date.
- (3) The notice of the hearing or trial shall be in Form 22 of the Schedule.

35 Order of hearing or trial

- (1) All parties shall adduce evidence-in-chief of witnesses by affidavit as required under Rule 20, unless the Court orders otherwise.

- (2) Subject to the directions of the Court, the hearing or trial of the petition shall proceed as follows:
- (a) the petitioner makes an opening address of his or her case;
 - (b) where witnesses are to testify in addition to the affidavits filed under Rule 20, the petitioner shall adduce all such evidence in support of his or her case;
 - (c) the respondent cross-examines the petitioner's witnesses;
 - (d) the petitioner re-examines his or her witnesses;
 - (e) the respondent makes an opening address of his or her case;
 - (f) where witnesses are to testify in addition to the affidavits filed under Rule 20, the respondent shall adduce all such evidence in support of his or her case;
 - (g) the petitioner cross-examines the respondent's witnesses;
 - (h) the respondent re-examines his or her witnesses;
 - (i) the petitioner makes a closing address;
 - (j) the respondent makes a closing address; and
 - (k) the petitioner makes submissions in reply to the respondent's closing address.

36 Adjournment of hearing or trial

- (1) A Judge may adjourn a hearing or trial of a petition on its own motion or by an application of a party to the petition.
- (2) A Judge shall in hearing and determining the petition, comply with the requirements of section 102(1) of the Act.

37 Attendance of Registrar

The Registrar shall attend at the hearing or trial of a petition and perform such functions and duties under the Act or these Rules or as may be directed by the Judge.

38 Amicus curiae

Where the Secretary for Justice or a person appointed by him or her is not representing the Electoral Commission, he or she, where required by the Court may act as *amicus curiae*.

PART 10 - WITHDRAWAL OF PETITION

39 Withdrawal of petition

- (1) A petition shall not be withdrawn without the leave of the Court.
- (2) Where a petition is withdrawn, the petitioner may be liable to pay the costs of the respondents and forfeit all or part of his or her security for costs.
- (3) Where there is more than one petitioner, an application for withdrawal of a petition shall only be made with the consent of all the petitioners.
- (4) Subject to subrule (5), before leave for withdrawal of a petition is granted, all parties to the petition must produce affidavits.
- (5) The affidavit under subrule (4) shall state that:
 - (a) no agreement or terms of any kind whatsoever has been entered into in the withdrawal of the petition; or
 - (b) a lawful agreement has been made with respect to the withdrawal of the petition in writing and a copy of such agreement shall be annexed as an exhibit in the affidavit.

40 Application for leave to withdraw petition

- (1) An application for leave to withdraw a petition shall be by a summons and filed and served on all the parties to the petition.
- (2) The application shall be supplemented by an affidavit of the applicant deposing the grounds for withdrawal.

41 Date and time of hearing of application

The date and time of hearing of the application to withdraw a petition shall be published on the notice board of the Court.

PART 11 – ABATEMENT BY DEATH

42 Abatement of petition by death

- (1) A petition shall abate on the death of a sole petitioner or the survivor of several petitioners.
- (2) Where a petition abates under subrule (1), the Registrar shall:
 - (a) serve a notice of the abatement on each respondent; and
 - (b) publish the notice of the abatement in the Gazette.
- (3) The notice of the abatement shall be in Form 23 of the Schedule.
- (4) The abatement of a petition shall not affect the liability of the petitioner or of any other person for the payment of costs incurred to the date of the abatement.
- (5) A person may, within 7 days of the publication of the notice under subrule (2), apply to be substituted for the deceased petitioner provided

the application for substitution is made within the time required for presentation of the petition under the Act.

- (6) Where the Court allows an application for substitution, the petitioner shall:
 - (a) deposit the security for costs under Rule 10; and
 - (b) comply with such other conditions which the Court may grant.

43 Death or vacation of seat by the respondent

- (1) Where before the hearing or trial of a petition, the successful candidate dies or vacates his or her seat in Parliament, the petition against such person is deemed to have abated.
- (2) Where before the hearing or trial of a petition, the successful candidate gives notice in writing to the Registrar that he or she does not intend to oppose the petition, the petition is not abated but must continue, whether or not any person applies to be substituted as a respondent.
- (3) Where the respondent vacates his or her seat in Parliament or gives a Notice of Intention not to Oppose the Petition, he or she shall file a notice in Form 12 of the Schedule at least 3 clear days before the hearing or trial of the petition.

PART 12 - COMPUTATION OF TIME

44 Computation of time

- (1) This section applies to computation of:
 - (a) a period of time mentioned in these Rules; and
 - (b) things required or allowed to be done on a particular day or within a particular period of time under the rules.
- (2) A period of time described as beginning at, on or with a stated day, act or event includes the stated day or the day of the stated act or event.
- (3) A period of time described as beginning from or after a stated day, act or event does not include the stated day or the day of the stated act or event.
- (4) A period of time described as ending at, by, on or with, or as continuing to or until, a stated day, act or event includes the stated day or the day of the stated act or event.
- (5) A period of time described as ending before a stated day, act or event does not include the stated day or the day of the stated act or event.
- (6) A reference to a number of days within 2 events does not include the days when the events occur.

- (7) Where something shall or may be done on a particular day or within a particular period of time and the day or the last day of the period, is not a working day, the thing shall or may be done on the next day that is a working day.
- (8) Where something must or may be done and no time is provided under these Rules, the Court may at its own discretion or on application of a party to the petition fix such a time as it may deem fit within which the act shall be done with such conditions as may be necessary.
- (9) Subrule (8) shall not apply in relation to the period within which a petition is required to be filed, heard or determined.

PART 13 – COSTS, FEES AND OTHER PROVISIONS

45

Costs

- (1) Except where specifically provided for in these Rules, all costs, charges and expenses of and incidental to the presentation of a petition or of any consequent proceedings shall be at the discretion of the Court and shall be defrayed by the parties in a manner and in proportions as the Court may determine.
- (2) The Court may disallow any costs, charges or expenses which may, in its opinion, have been caused by:
 - (a) vexatious conduct;
 - (b) unfounded allegations; or
 - (c) unfounded objections, -on the part of either the petitioner or the respondent and shall have regard to the discouragement of any needless expense by throwing the burden of defraying the same on the parties by whom it has been caused, whether or not the parties are on the whole successful.
- (3) The rules and regulations of the Court with respect to costs to be allowed in actions, causes and matters in the Court shall, in principle and so far as practicable, apply to the costs of petitions and connected proceedings and the amount of the costs may be fixed by the Judge.
- (4) Where the petitioner is ordered to pay any costs and he or she fails to pay the costs or as ordered by the Court, the Registrar shall pay the costs out of any money deposited with the Court as security under these Rules and execution may be issued against the petitioner and the sureties jointly and severally for any balance not covered by the deposit.
- (5) Where a respondent who is ordered to pay any costs to the petitioner, fails to do so within 14 days from the date of the order directing the payment, the petitioner may enforce the order for the costs in the usual manner.

- (6) Execution shall be levied in accordance with the law governing execution in civil actions in the Court.
- (7) All costs of and incidental to the filing of a petition and to the consequent proceedings are borne by the parties to the petition in the manner and proportion as the Court may determine.
- (8) Any costs which in the opinion of the Court have been caused by vexatious conduct or unfounded allegations on the part of either party and any needless expense incurred or caused on the part of either party, may be ordered to be carried by the party by whom it has been incurred or caused, whether or not they are on the whole successful.
- (9) Costs may be taxed in the same manner as they are taxed in the Supreme Court and may be recovered in the same manner as costs in civil proceedings.
- (10) The Court may direct that the whole or any part of security for costs be applied in the payment of taxed costs.

46 Fees

The Chief Justice shall prescribe the fees payable for the purposes of the Act or these Rules.

47 Forms

The forms in these Rules must be used as far as practicable and used with the necessary modifications where no forms are prescribed.

48 Court may enlarge time

The Court may where appropriate enlarge any period of time provided under these Rules unless such time is mandatory.

49 Civil Procedure Rules apply

- (1) Where these Rules do not make provision for a matter relating to a petition, the *Civil Procedure Rules 1972* apply.
- (2) Where there is an inconsistency between the *Civil Procedure Rules 1972* and these Rules, these Rules shall prevail to the extent of the inconsistency.

50 Repeal of Rules

The *Election Petition Rules 2016* are repealed.

Dated this 30th day of July 2019.

.....
Chief Justice Filimone Jitoko

SCHEDULE

FORM 1

(Rule 3(2))

INTITULE

IN THE COURT OF DISPUTED RETURNS
AT YAREN DISTRICT

Election Petition No:...../20.....

IN THE MATTER of section 93 and Part 8 of the *Electoral Act 2016*;

AND IN THE MATTER of a [*nature of election*¹] election in the constituency of [*Name of constituency*] held on [*date of election*]

AND IN THE MATTER of a petition by [*name of petitioner*]

BETWEEN: Name of Petitioner, address, occupation

Petitioner(s)

AND: [*Name of Winning candidate No. 1*], address, occupation

1st Respondent

AND: [*Winning candidate No. 2*], address, occupation

2nd Respondent²

AND: ELECTORAL COMMISSION³ a statutory body established under the *Electoral Act 2016* and joined as a party under section 99 of the *Electoral Act 2016*

3rd Respondent

AND⁴: [*Other respondent*], address, occupation

4th Respondent or 1st Interested Party

¹ State whether it is general, by or supplementary election

² If there are more than 1 winning candidate, list the winning candidates as separate respondents before the Electoral Commissioner as respondent.

³ The Electoral Commission is to be joined as a party under section 99 of the Act.

⁴ Any other party to be joined as a respondent or interested party under Rule 5(d).

FORM 2

(Rule 4)

[Intitule as in Form 1]

ELECTION PETITION

Your petitioner is [name] of the [constituency] who was a voter/candidate in the [general/by/supplementary] election who states:

Type of election:	The election subject to this petition was a [General election/by-election/supplementary election] delete the ones which are inapplicable
Constituency:	The constituency in which the election was held [State the constituency in which the election was held]
Date of election:	The election was held on [Insert the date in which election was held]
Date election results were published:	The Electoral Commissioner declared all the results and it was published on the ... day of 20.... [Insert the date the results were published and the Gazette No. and the date of publication of the Gazette. For example: Gazette No. XX/20... and Gazette Notice No. GN XX/20...]
Petitioner:	The petitioner was [a voter/candidate]
Successful candidates:	The Electoral Commissioner has returned the following candidates as duly elected: [List the names, addresses and occupation of the successful candidates. For example: (1) John Doe of Topside Constituency, retired schoolteacher (2) Maryann Tee of Topside Constituency, domestic duties]
Unsuccessful candidates:	The unsuccessful candidates are as follows: List the names, addresses and occupation of the unsuccessful candidates. For example: (1) Joe Loser of Topside Constituency, self employed
Other respondents	The other respondents joined as parties to this petition are: [List the names of all other respondents named in the petition and the capacity in which they are joined. For example: (1) Tom Richards of Topside Constituency, campaign manager for X [name the candidate]
Interested parties [if any]	The interested parties to this petition are: [List the interested parties joined in the petition and the capacity in which they are joined. For example:

	<i>(1) Tom Richards of Topside Constituency, campaign manager for X [name the candidate]</i>
Grounds for challenging the election result:	<p>The grounds for contesting the results are as follows: <i>[List the grounds and material facts relied upon on each of them for relief. For example:</i></p> <p><i>(1) Placing of campaign material</i></p> <ul style="list-style-type: none"> - <i>The candidate named as the first respondent breached the campaign requirement rules by placing a digital campaign board within the 200m boundary permitted under section 120 of the Electoral Act 2016.]</i>
Relief sought by the petitioner:	<p>The petitioner prays for the following relief:</p> <p><i>[State all the relief including if the relief is for a declaration seeking:</i></p> <ul style="list-style-type: none"> <i>(a) a candidate be duly returned or elected;</i> <i>(b) the election be void; or</i> <i>(c) a writ of election be returned.]</i>
Address for service of the petitioner:	The address for service for the purposes of this petition is <i>[residential address of the petitioner or of the legal practitioner]</i>
Signature of the petitioner:

FORM 3

(Rule 6)

[Intitule as in Form 1]

AFFIDAVIT VERIFYING THE PETITION

I, [*name of petitioner*] of [*address*], [*occupation*] make oath and say as follows:

1. I am the petitioner in this electoral petition.
2. As the petitioner, I am aware of the facts contained in the petition signed by me on the [*date*].
3. I verify the contents of the petition are true to the best of my knowledge, information and belief.

SWORN / AFFIRMED by [*name of the petitioner*] at
[*place*] on [*date*].

.....
Signature of petitioner

Before me:

.....
[*Signature, name and qualification of witness
administering oath or affirmation*]

FORM 4

(Rule 10(3))

[Intitule as in Form 1]

NOTICE OF DEPOSIT OF SECURITY FOR COSTS

TAKE NOTICE that the petitioner [*name of the petitioner*] deposited a sum of \$500.00 as security for costs with the Registrar on this day of 20.....

This notice is issued pursuant to Rule 10 (3) of the *Electoral Petition Rules 2019*.

DATED this day of 20.....

.....
Registrar

FORM 5

(Rule 11)

[Intitule as in Form 1]

NOTICE OF PRESENTATION OF PETITION

TAKE NOTICE that a petition by [*name of petitioner*] challenging the [*nature of election*] election results of [*name of constituency*] constituency was presented to the Court on this day of 20..... seeking the following relief:

[*State all the relief as set out in the petition*]

The petitioner deposited the security for costs of \$500.00 on the [*date*].

This notice is published pursuant to Rule 11 of the *Electoral Petition Rules 2019*.

DATED this day of 20.....

.....
Registrar

Note: a copy of the petition can be obtained from the Registrar of the Court.

FORM 6

(Rule 12(4)(a))

[Intitule as in Form 1]

EX PARTE NOTICE OF MOTION

TAKE NOTICE that the Court of Disputed Returns will be moved on the day of 20..... by */on behalf of the petitioner for an order that:

- (a) The time for service of the petition to the [*name, address and occupation of the respondent as named in the Intitule*] be extended for a further (xx) days¹.
- (b) The petition be served to (*name, address and occupation of the respondent as named in the Intitule*) by way of substituted service [*select the mode of service under Rule 12(3) of the Election Petition Rules 2019*].

The petitioner intends to read and rely upon the affidavit of [*name the deponents of any affidavits relied upon*] in support of this application.

This application is made pursuant to Rule 12(2) of the *Election Petition Rules 2019* and the inherent jurisdiction of the Court.

DATED this..... day of 20.....

.....
[Signed] [*the petitioner or legal representative*]

¹ The extension cannot be more than 5 days from the date on which the last day of the service of the petition lapses.

FORM 7

(Rule 12(4))

[Intitule as in Form 1]

AFFIDAVIT IN SUPPORT OF APPLICATION FOR SUBSTITUTED SERVICE

(General form)¹

I, [name, address and occupation of deponent], make [oath / affirm] and say as follows:

1. I was engaged by [name of party/ legal practitioner] to serve the [person on whom the document(s) were to be served] with the true copy of each of the following documents²:
 - (a)
 - (b)
2. The copy of the documents given to me for service was/were duly sealed with the seal of the Court.
3. I attempted to serve the above documents to the [name of person] at his/her [residence/place of contact] but was unsuccessful due to [state reasons in detail with material particulars].
4. I have attempted to serve the documents to the [name of person] on [state number of times service was attempted] at residence/place of contact but was not able to serve due to [state reason].
5. I have made reasonable efforts and used all due means in my power to serve the above documents but I have not been able to and will not be able to serve the same to [name of person] within the 5 days requirement under the *Election Petition Rules 2019*.
6. The [name of person] can be served the documents by:
 - (a) [if adult member of the family, state the name, address, occupation and relationship with the party and why the process server believes it would be served on him/her];
 - (b) [if the recipient is overseas, state how the proposed service will enable the party to acquire information about the existence of these documents to which he/she may be required to respond].
7. I seek an order in terms of the *Ex parte Notice of Motion* filed in this Honourable Court.

SWORN / AFFIRMED by the deponent at
[place] on [date].

.....
Signature of deponent

Before me:

.....
[Signature, Name and qualification of witness
administering oath or affirmation]

¹ This affidavit of service is for general service of documents and not for substituted service.

² List the captions of the documents

FORM 8

(Rule 12(5))

[Intitule as in Form 1]

ORDER FOR SUBSTITUTED SERVICE

ON THIS DAY OF 20.... [*date order was made*] **BEFORE THE HONOURABLE**
[name of the Judge] **OR BEFORE THE REGISTRAR MR** [*name of Registrar*]

UPON READING the affidavit of [*name, address and occupation of deponent*] and **UPON HEARING** the petitioner/counsel for the petitioner, it is ordered that service of a copy of this order and a copy of [*relevant documents*] duly sealed by the Court by [*mode of substituted service*].

DATED this day of 20....

.....
Registrar

Seal of the Court

FORM 9

(Rule 13(1))

[Intitule as in Form 1]

AFFIDAVIT OF SERVICE

(General form – personal service)¹

I, [name of deponent], of [address of deponent],
[occupation] make [oath / affirm] and say as follows:

1. I personally served the [person on whom the documents were served] at [address] on the [date] at or about [time] with the true copy of each of the following documents²:
 - (a).....
 - (b).....
2. The copy of the aforementioned document(s) was/were duly sealed with the seal of the Court out of which it was issued on the [date].

SWORN / AFFIRMED by the deponent at
[place] on [date].

.....
Signature of deponent

Before me:

.....
[Signature, Name and qualification of witness
administering oath or affirmation]

¹ This affidavit of service is for general service of documents and not for substituted service.

² List the captions of the documents

FORM 10

(Rule 13(2)(e))

[Intitule as in Form 1]

AFFIDAVIT OF SUBSTITUTED SERVICE

(General form)¹

I, [name of deponent], of [address of deponent],
[occupation] make [oath / affirm] and say as follows:

1. I did on [day] the [date] served the [person on whom the documents were served] with the true copy of each of the following documents²:
 - (a) a true copy of the order of [date] for substituted service granted by this Honourable Court;
 - (b) ³
2. The service of the documents was in accordance with the order of the Court as follows:
[details of the service]⁴
3. The copy of the aforementioned document(s) was/were duly sealed with the seal of the Court out of which it was issued on the [date].

SWORN / AFFIRMED by the deponent at
[place] on [date].

.....
Signature of deponent

Before me:

.....
[Signature, Name and qualification of witness
administering oath or affirmation]

¹ This affidavit of service is for substituted service.
² List the captions of the documents
³ List documents served in the order of the date of filing in Court.
⁴ This must comply with the order of the Court.

FORM 11

(Rule 14(1))

[Intitule as in Form 1]

NOTICE TO APPEAR
OF THE [1ST, 2ND, 3RD] RESPONDENT
(Contesting the petition)

TAKE NOTICE that the [*name of respondent*]:

- (a) acknowledges service of the [*list the documents*] served on the [*date of service*];
- (b) intends to oppose the petition;
- (c) intends to appear in person or is represented by [*legal practitioner*];
- (d) address for service is [*address of respondent if appearing in person or address of legal practitioner*]

DATED the day of 20....

.....
[*Respondent/legal representative*]

FORM 12

(Rule 15(1)(a))

[Intitule as in Form 1]

**NOTICE NOT TO OPPOSE THE PETITION
OF THE [1ST, 2ND, 3RD] RESPONDENT**

TAKE NOTICE that the [*name of respondent*]:

- (a) acknowledges service of the [*list the documents*] served on the [*date of service*];
- (b) intends not¹ to oppose the petition;
- (c) address for service is [*address of respondent if appearing in person or address of legal practitioner*]

DATED the day of 20.....

.....
[*Respondent/legal representative*]

¹ Where a respondent does not oppose the petition under Rule 15(2), the Court may grant orders which may affect the respondent but the Court cannot make orders for costs against the respondent.

FORM 13

(Rule 16(1))

[Intitule as in Form 1]

NOTICE OF OBJECTION

OF THE [1ST, 2ND, 3RD] RESPONDENT

(Irregularity, incompetency or defective service)¹

TAKE NOTICE that the [*name of respondent*] objects to the:

- (a) irregularity [*state the irregularity with material particulars*];
- (b) incompetency [*state the incompetency with material particulars*];
- (c) service of the petition [*state the issues of service contested with material particulars*].

TAKE NOTICE that if the [*any issues contained in paragraphs a to c*] is not rectified, the respondent may proceed under Rule 16(2) to summarily dismiss or set aside the petition.

DATED the day of 20.....

.....
[*Respondent/legal representative*]

¹ Delete whichever is inapplicable.

FORM 14

(Rule 18(1))

[Intitule as in Form 1]

ANSWER TO PETITION

OF THE [1ST, 2ND, 3RD] RESPONDENT

1. The respondent admits/denies the allegations contained in paragraph 1 of the petition.
2.
3.
4.

[Reply to every paragraph of the petition, paragraph by paragraph]

5. *[Add any other grounds for opposing the petition with material particulars]*

6. The Respondent prays for the following relief:

- (a) The petition be dismissed;
- (b) ¹.....;
- (c) Cost of and incidental to these proceedings; and
- (d) Such further or other relief this Honourable Court may deem fit, just and expedient.

DATED the day of 20.....

Signature:

(*1st/2nd/3rd or other) **Respondent**

(To be signed by the respondent or the respondent's legal representative)

¹ Include any other relief which the respondent may seek

FORM 15

(Rule 19(1))

[Intitule as in Form 1]

**REPLY TO THE ANSWER TO PETITION
OF THE PETITIONER**

1. Save for any admissions contained in this Reply to the Answer to the Petition, the petitioner joins issue with the Answer to the Petition.
2. [*Reply to every paragraph of the Answer to Petition paragraph by paragraph if necessary*]
3. The Petitioners prays for the following relief:
 - (a) The relief sought in the petition;
 - (b) The Answer to the Petition be dismissed;
 - (c) ¹.....
 - (d) Cost of and incidental to these proceedings; and
 - (e) Such further or other relief this Honourable Court may deem fit, just and expedient.

DATED the day of 20.....

.....

(To be signed by the petitioner or the legal representative)

¹ Include any other relief which the petitioner may seek.

FORM 16

(Rule 20(1)(c))

[Intitule as in Form 1]

**PETITIONER'S LIST
OF AFFIDAVITS AND WITNESSES**

1. The petitioner has filed the affidavits of the following persons: [*List full name, address, occupation of witness*]

List	Name of deponent	Date affidavit sworn or affirmed	Date affidavit filed
1.			
2.			

2. The petitioner intends to summon the following witnesses:

List	Name of witness	Address	Occupation
1.			
2.			

DATED this day of 20....

.....

(To be signed by the petitioner or the legal representative)

FORM 17

(Rule 20(2)(c))

[Intitule as in Form 1]

**[1ST, 2ND, 3RD] RESPONDENT'S LIST
OF AFFIDAVITS AND WITNESSES**

1. The [1ST, 2ND, 3RD ...] respondent has filed the affidavits of the following persons:
[List full name, address, occupation of witness]

List	Name of deponent	Date affidavit sworn or affirmed	Date affidavit filed
1.			
2.			

2. The [1ST, 2ND, 3RD ...] respondent intends to summon the following witnesses:

List	Name of witness	Address	Occupation
1.			
2.			

DATED this day of 20....

.....

(To be signed by the 1st, 2nd, 3rd, ... respondent or the legal representative)

FORM 18

(Rule 22(1))

[Intitule as in Form 1]

PETITIONER'S LIST OF OBJECTIONS TO VOTES

Category or group of votes¹	Reasons for objection	Number of votes	Orders sought in respect of those votes

¹ Where individual votes are challenged, list all the votes or ballot papers objected to.

FORM 19

(Rule 22(2))

RESPONDENT'S RESPONSE TO OBJECTIONS TO VOTES

Category or group of votes¹	Response to objection	Number of votes	Orders sought in respect of those votes

¹ The category or group of votes where possible, be categorised or grouped in the same way as it is contained in Form 18.

FORM 20

(Rule 26(3))

[Intitule as in Form 1]

INTERLOCUTORY SUMMONS

(nature of application)

LET ALL PARTIES attend before the Court on [*day of the week – e.g. Monday*] the [*date*] day of [*month*] 20.... on the hearing of an application on the part of the [*party*] in person or by his or her counsel for the following orders:

- (a) ...
- (b) ...
- (c) ...
- (d) Costs of this application to be paid by [*party*] or cost in cause.

The [*party*] intends to read and rely upon the affidavit of [*deponent*] in support of this application.

This application is made pursuant to Rule 26(3) and [*relevant Rule for the specific nature of the application*] of the *Election Petition Rules 2019*, section xx of the *Electoral Act 2016* and the inherent jurisdiction of the Court.

ISSUED this day of 20....

Seal of the Court

NOTE: This summons be used for all interlocutory applications including discovery, striking out, amendment, intervention applications, substitution of petitioner, substitution of a respondent, withdrawal of petition.

FORM 21

(Rule 31)

ELECTION PETITIONS LIST

The Election Petition List is published pursuant to Rule 31 of the *Election Petition Rules 2019*.

1	Court of Disputed Returns Election Petition Number/20...		
Name of Party	Capacity of the Party	Address for service	Legal representative
<i>e.g. John Doe</i>	<i>Petitioner</i>	<i>Meneng District</i>	<i>AB legal practitioners, Buada District</i>

FORM 22

(Rule 34(3))

[Intitule as in Form 1]

NOTICE OF HEARING OF ELECTION PETITION

TAKE NOTICE that this petition will be heard at the Court house on the day of 20..... at o'clock and on such other days as may be necessary.

DATED the day of 20.....

.....
Registrar

FORM 23

(Rule 42(3))

[Intitule as in Form 1]

NOTICE OF ABATEMENT OF PETITION BY DEATH

NOTICE is hereby given that by reason of the death of the petitioner [*name of petitioner*](*or the survivor of the petitioners*) the abovementioned petition has abated.

AND further that any person who might in the first instance have presented the petition may apply to the Court by notice given to the Registrar of the Courts at within 7 days from the date of publication of this notice to be substituted as a petitioner.

DATED this day of 20.....

.....
Registrar

FORM 25

[Intitule as in Form 1]

GENERAL AFFIDAVIT

I, [*name, address and occupation of deponent*] make oath and say as follows:

- 1. I am the [name of person]
- 2. ...
- 3. ...
- ...

10. I seek order in terms of the application filed in this Honourable Court.

SWORN / AFFIRMED by [*name of the deponent*] at
[*place*] on [*date*].

Before me:

.....
[*Signature, name and qualification of witness
administering oath or affirmation*]