



REPUBLIC OF KENYA

THE JUDICIARY



PRESIDENTIAL ELECTION PETITIONS CHECKLIST



Filing and determination of a Presidential petition is governed by the following legal framework:

- Constitution (Articles)
- Supreme Court Act (Section)
- Supreme Court (Presidential Election Petition) Rules, 2017 (Rules)

Filing the Petition

A Petition maybe filed under Article 140 of the Constitution, in the Supreme Court to challenge the election of the President Elect.

Checklist

1.	<ul style="list-style-type: none"> • Petition challenging the election of the President-Elect to be filed within seven days after the date of declaration of the results of the presidential election. (Article 140 (1). • Section 12 – Such an application challenging the results of the presidential election shall be by Petition • The Court shall hear and determine the Petition within fourteen (14) days and such decision shall be final. (Article 140 (2)) • Section 12(2) – IEBC shall within 48 hours from the date of service of a presidential election submit to the Supreme Court certified copies of documents used to declare the results, including forms used to declare results at the polling station and constituency tallying centre and to declare the result at the national tallying centre
2.	<ul style="list-style-type: none"> • Petition to be filed within seven (7) days after declaration of results of the presidential petition. (Rule 6(1)): • Petitioner shall: <ul style="list-style-type: none"> ➤ deposit of one million shillings (Ksh.1,000,000) as security of costs before filing the Petition and pay the prescribed Court fee (Rule 7 (2)) ➤ Where Petition is filed on last available day, it shall be filed before 1400hrs of that day. (Rule 7 (3)). ➤ Petitioner shall ensure electronic version of Petition and supporting documents are similar to the paper version presented (Rule 7(4)) • Petition to be received in the Prescribed Form A (Second Schedule of Supreme Court (Presidential Election Petition) Rules)(Rule 7(1)).
	<ul style="list-style-type: none"> • Petition may be filed by several persons who may be joined together as co-petitioners (Rule 8 (1)) • Shall be signed by Petitioner (s) or by the duly authorized advocate (Rule 8(2)) • Shall be supported by an Affidavit sworn personally by Petitioner (s) (Rule 8(5)) • Affidavits by Witnesses- To be filed at the point of filing the petition and should set out the substance of the evidence relied on. (Rule 9)
3.	8 Hard Copies of the Petition and all documents that accompany it. (Rule 8(4))
4.	Soft Copy on the E-Filing Platform
5.	<p>Assessment of applicable fees</p> <p>Kshs. 1,000,000 for security for costs</p> <p>Kshs. 500,000 lodging of the Petition</p> <p>Kshs. 20,000 lodging a Notice of Motion</p> <p>Kshs. 30,000 lodging a Notice of Motion under Certificate of Urgency</p> <p>Kshs. 6,000 lodging an affidavit other than an affidavit annexed to a notice of motion</p> <p>Kshs. 200 Filing annexures (per Folio)</p> <p>Kshs. 200 Filing Written Submissions (per Folio)</p>
6.	Receipt of payment in file
7.	Advocates Contacts Details

8.	Lodged by Registrar/ Deputy Registrar
9.	<p>Service</p> <ul style="list-style-type: none"> • A petitioner shall, within 24 hours of filing, serve the petition on the respondent:- <ul style="list-style-type: none"> ➢ Directly on the respondent or; ➢ By advertisement in a newspaper with nationwide circulation. (Rule 10(1)) • Petitioner to serve respondent via electronic means within six hours of filing. (Rule 10(2))
10.	<p>Response to the Petition</p> <ul style="list-style-type: none"> • Respondent intending to oppose the Petition may serve a response within four days of service (Rule 11(1)) <ul style="list-style-type: none"> ➢ Response to be in the format specified under Form B set out in the Second Schedule. (Rule 11(1)(a)) ➢ Must be accompanied by replying affidavits sworn by the respondent and any witnesses with special regard to the substance of the evidence to be relied on. (Rule 11(1)(b))
10.	<ul style="list-style-type: none"> • Where respondent doesn't wish to oppose, they may file a notice of intention not to oppose the petition within three days of service. This must be done in the format of Form C set out in the Second Schedule. Such notice must be served upon the Petitioner. (Rule 11(2)(a))
11.	<ul style="list-style-type: none"> • A respondent who has given notice of intention not to oppose a petition shall not be allowed to appear or act as a party in the Petition or in any subsequent proceedings. (Rule 11(3))
12.	<p>Rejoinder</p> <ul style="list-style-type: none"> • The Petitioner shall file and serve a rejoinder within 24 hours being served with the response. (Rule 11A)
13.	<p>Close of Pleadings</p> <ul style="list-style-type: none"> • The pleadings shall be closed upon filing a response to a petition or a notice of intention not to oppose the petition under Rule 11 (Rule 12) <p>Computation of Time</p> <ul style="list-style-type: none"> • Where there are multiple petitions filed, time for purposes of Article 140(2) of the Constitution, starts to run on the date the last petition is filed. (Rule 13)
14.	<p>Pre-Trial Conference</p> <ul style="list-style-type: none"> • Shall be held on the eighth day after filing of the petition (Rule 14(1)). • Registrar shall issue notice of the Pretrial Conference to the parties in accordance with Form D set out in the Second Schedule (Rule 14(2))
15.	<p>Pre-trial Conference</p> <ul style="list-style-type: none"> • The Court shall, at the pre-trial conference: <ol style="list-style-type: none"> a) Frame contested and uncontested Issues in the Petition b) Consider Consolidation of Petitions in cases where more than one petition is filed c) Determine the number of advocates that the Court shall hear on behalf of each party d) Allocate time for each party to address the Court e) Give directions specifying the place and time of the hearing of the petition. f) Any such orders that may be necessary to ensure a fair determination of the petition. (Rule 15)

16.	<p>Written Submissions</p> <ul style="list-style-type: none"> • Submission shall be lodged in accordance with directions of the Court together with authorities and bundle of authorities and: <ul style="list-style-type: none"> ➤ Shall be divided into paragraphs, numbered consecutively and each paragraph confined to a distinct portion of the subject ➤ Shall be printed; ➤ On one side of the paper ➤ At least font size 12 ➤ With 1½, spacing except for quotations from authorities which shall be indented and single spaced ➤ Margins of no less than 3cm by one and one and half inches ➤ Not exceed 40 pages (Rule 16)
17.	<p>Interlocutory Application</p> <ul style="list-style-type: none"> • When made by any person or other parties to the petition shall be made on the day after the close of pleadings and shall be determined on the basis of written submissions not exceeding 5 pages. • Response shall be done together with written submissions not exceeding 24 hours of service. • There shall be no rejoinder from the applicant in an interlocutory. • The court may deliver the ruling on this application by way of electronic communication to the parties. (Rule 17) <p>Third Party Application</p> <ul style="list-style-type: none"> • A person seeking to be admitted as amicus curiae apply for admission at the close of pleadings. • The applicant shall be set out their expertise and reasons for requesting the admission. • The Court may deliver a ruling by way of electronic communication to the applicant. • No interest party applications shall be allowed. (Rule 17A)
18.	<p>Hearing of Petition</p> <ul style="list-style-type: none"> • The Court shall, immediately after the pre-trial conference commence the hearing of the petition. (Rule 18(1)) • The Petition shall be determined on the basis of affidavit evidence and written submissions. (Rule 18(2)) • A party who lodged their submissions, may with leave of the Court, address the Court at the hearing of the Petition. (Rule 18(3)) • Hearing once commenced shall proceed uninterrupted on a day to day basis until conclusion, save in exceptional circumstances (Rule 19)
19.	<p>Withdrawal</p> <ul style="list-style-type: none"> • A Petitioner may, with leave of Court, withdraw the Petition at any stage of the proceedings (Rule 20(1)) • Such an application shall be by notice of motion in Form E set out in Second Schedule and shall be supported by Affidavit. (Rule 20(2)) • The Court may grant leave on any such terms as it deems fit and just (Rule 20(3))
20.	<p>Abatement</p> <ul style="list-style-type: none"> • A Petition shall NOT abate on the sole ground that a petitioner or respondent has died in the course of the proceedings. (Rule 21(1)) • The Court may make any order as it deems fit and just. (Rule 21(2))
21.	<p>Orders of the Court</p> <ul style="list-style-type: none"> • At the Conclusion the Court may make the following orders: <ol style="list-style-type: none"> (a) dismissing the petition; (b) invalidating the declaration made by the Commission under Article 138(5) of the Constitution; (c) declaring the election of the President-elect to be— <ol style="list-style-type: none"> (i) valid; or (ii) invalid; (d) on payment of costs; (e) or as it may deem fit and just in the circumstances. (Rule 22)

22.

Determination of Petition

- The Court shall, within fourteen (14) days determine the Petition but may reserve reasons to a date not later than twenty-one (21) days from the date the Court determines the Petition. **(Rule 23(1))**
- Subject to Article 163(2) of the Constitution, all the Judges of the Court shall, as far as practicable, form the bench for hearing and determining the Petition.
- The decision of the Court shall be final **(Rule 23 (2))**

Deleted by L.N. 7 of 2020, r. 14.

SECOND SCHEDULE

FORM A

[Rule 7.]

IN THE SUPREME COURT OF KENYA AT NAIROBI

Petition No. of 20

Between

..... **Petitioner**

AND

..... **Respondent**

1. The humble petition of AB is as follows (set out, in consecutive paragraphs the specific issues contended by (each of the) petitioner(s) referring where necessary to the section of the Constitution or any Act of Parliament or decided cases relied upon.)
2. (briefly set out the point of law raised).
3. (briefly set out the facts necessary to enable the Court to properly decide the point of law raised).
4. (set out in summary the grounds for the petition).
5. (set out the arguments supporting each of the grounds of the petition).
6. The question or issue for the determination by the Court is (state the question).
7. The relief sought by the petitioner is

DATED this day of 20

Signed

Petitioner

..... Advocate for the petitioner

To:

The Supreme Court of Kenya

Copies to be served on

.....

Lodged in the Registry at on the day of

.....

Registrar

FORM B

[Rule 11(1)(a).]

IN THE SUPREME COURT OF KENYA AT NAIROBI

Petition No. of 20

Between

..... Petitioner

AND

..... Respondent

RESPONSE TO PETITION

In response to the petition, the respondents state that (state the facts and grounds on which the respondents rely).

Wherefore your respondents pray that it be determined that the said was duly elected and the election was valid or invalid.

Dated 20 (Signed) A.

Dated 20 (Signed) B

FORM C

[Rule 11(2)(a).]

IN THE SUPREME COURT OF KENYA AT NAIROBI

Petition No. of 20

Between

..... Petitioner

AND

..... Respondent

NOTICE OF INTENTION NOT TO OPPOSE THE PETITION

TAKE NOTICE that the respondent in this petition intends not to oppose the petition.

Dated this day of 20

Signed Respondent

Advocate for the respondent

To:

The Registrar/Deputy registrar of the Supreme Court of Kenya

Copies to be served on lodged in the registry/sub-registry at of, 20

Registrar

FORM D

[Rule 14(2).]

IN THE SUPREME COURT OF KENYA AT NAIROBI

Petition No. of 20

Between

..... Petitioner

AND

..... Respondent

NOTICE BY REGISTRAR OF PRE-TRIAL CONFERENCE

TAKE NOTICE that the date of the pre-trial conference has been fixed on this day of 20

Signed

.....
Registrar

FORM E

[Rule 20(2).]

IN THE SUPREME COURT OF KENYA AT NAIROBI

Petition No. of 20

Between

..... Petitioner

AND

..... Respondent

NOTICE OF MOTION

TAKE NOTICE that on the day of, 20, at o'clock in the morning/afternoon or as soon thereafter as he can be heard,, Advocate for the above-named applicant, will move the Court for an order that

on the grounds that

And for an order that the costs of and incidental to this application abide the result of the said appeal

The application will be supported by the affidavit of sworn on the day of, 20..... The address for service of the applicant is

Dated this day of, 20

Signed Applicant

Advocate for the applicant

Lodged in the Registry on the day of, 20

.....
Registrar

CONTACTS

**You may also contact
the Supreme Court Registry
via Email. supremeregistry@court.go.ke
you can also access important information on the
Judiciary website www.judiciary.go.ke**

