

GOVERNMENT OF ZAMBIA

STATUTORY INSTRUMENT NO. 60 OF 2016

The Electoral Process Act, 2016

(Act No. 35 of 2016)

**The Local Government Elections Tribunals
Rules, 2016**

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IN EXERCISE of the powers contained in section *one hundred and two* of the Electoral Process Act, 2016, the following Rules are made:

PART I

PRELIMINARY PROVISIONS

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| 1. These Rules may be cited as the Local Government Elections Tribunals Rules, 2016. | Title |
| 2. In these Rules, unless the context otherwise requires—
“election petition” has the meaning assigned to it in the Act;
“Emoluments Commission” has the meaning assigned to it in the Constitution;
“member” means a member of a tribunal;
“practitioner” has the meaning assigned to it in the Legal Practitioners Act;
“register” means the register kept pursuant to rule 7;
“secretary” means the secretary to a tribunal; and
“tribunal” has the meaning assigned to it in the Act. | Interpretation

Cap. 1

Cap. 30 |

PART II

LOCAL GOVERNMENT ELECTIONS TRIBUNALS

- | | |
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| 3. A tribunal has power to hear a local government election petition within the province for which the tribunal is constituted. | Jurisdiction |
| 4. A tribunal shall, in addition to the functions set out in Article 159 of the Constitution, hear and determine whether a person has been validly nominated as a candidate for election as a councillor. | Functions of tribunal
Cap. 1 |
| 5. (1) Members shall be appointed by the Chief Justice on such terms and conditions as may be specified in their letters of appointment.

(2) A person shall not be appointed as a member if that person—
(a) is an undischarged bankrupt;
(b) has a mental or physical disability that makes the person incapable of exercising the functions of a member; or
(c) has been convicted of an offence under any law and sentenced to a term of imprisonment exceeding six months, without the option of a fine. | Members of tribunal |
| 6. (1) Subject to sub-rule (2), a member shall hold office for the period for which a tribunal is established and is eligible for re-appointment as a member. | Tenure of office and vacancy |

- (2) The office of a member becomes vacant if the member—
- (a) dies;
 - (b) resigns by notice, in writing, to the Chief Justice;
 - (c) is absent, without reasonable excuse, from three consecutive sittings of a tribunal of which the member had notice;
 - (e) is adjudged bankrupt;
 - (f) becomes mentally or physically incapable of performing the duties of a member;
 - (g) is convicted of an offence under any written law and sentenced to imprisonment for a period exceeding six months, without the option of a fine;
 - (h) in the case of a magistrate, ceases to be a magistrate;
 - (i) in the case of a member who is a practitioner is—
 - (i) suspended from practising as a practitioner; or
 - (ii) struck off the Roll of Practitioners.

(3) Where the office of a member becomes vacant before the expiry of the term for which a tribunal was constituted, the Chief Justice may appoint another member in place of the member who vacates office, but that member shall hold office only for the unexpired term of the tribunal.

PART III

PROCEEDINGS OF TRIBUNALS

Secretary

7. (1) There shall be a secretary of a tribunal who shall be appointed by the Chief Justice.
- (2) The secretary of a tribunal shall—
- (a) issue summonses to witnesses;
 - (b) keep a record of the proceedings of a tribunal;
 - (c) keep, or cause to be kept and maintained, a register of the orders and judgments of a tribunal;
 - (d) have custody and keep an account of the fees and other monies payable or paid to the tribunal;
 - (e) keep or cause to be kept proper accounts of the tribunal; and
 - (f) perform such other functions and exercise such powers as may be conferred under any other written law.
- (3) The Chief Justice may appoint such other staff as may be necessary for the performance of the functions of a tribunal.

8. (1) An election petition may be presented to a tribunal by—
- (a) a person who lawfully voted or had a right to vote at the election to which the election petition relates;
 - (b) a person claiming to have had a right to be nominated as a candidate or elected as councillor at the election to which the election petition relates; or
 - (c) a person who was a candidate at the election to which the election petition relates; or
 - (d) the Attorney-General.
- (2) A person may file an election petition within seven days of the date on which the result of an election is declared.
9. An election petition filed under these Rules shall be—
- (a) in the Form set out in the First Schedule; and
 - (b) filed in the office of the secretary.
- (2) Evidence shall not be stated in an election petition.
- (3) A tribunal may order that such particulars as may be necessary be provided, or unnecessary be excluded to ensure a fair hearing.
10. (1) The petitioner shall, within two days of filing an election petition, serve or cause to be served a copy of the election petition on the respondent.
- (2) Subject to sub-rule (3), service of an election petition shall be effected on the respondent personally.
- (3) Where the petitioner is unable to effect personal service under sub-rule (2), the petitioner may apply to the tribunal for an order to effect substituted service.
- (4) The tribunal may, on application made under sub-rule (3), order that service be effected by registered letter addressed to the respondent at the postal address declared in the nomination paper, or by publication in a daily newspaper of wide circulation in Zambia.
11. The respondent shall file an answer within seven days of receipt of an election petition.
12. If an election petitioner does not have an address for service of notices and other proceedings, the petitioner shall, by notice, not later than two days after service of the election petition, give the secretary the address for service.

Institution
of
proceedings

Contents of
election
petition

Service of
election
petition

Answer

Address for
service

Security for costs

13. (1) The secretary shall, as soon as practicable, after receiving an election petition, place the election petition before the tribunal.

(2) Subject to sub-rule (3), the tribunal shall order the petitioner to pay security for costs.

(3) The costs referred to in sub-rule (2) shall not be less than five hundred kwacha.

(4) A tribunal shall direct whether the security for costs shall be made in cash or by recognisance with or without sureties or shared by the petitioners, if they are more than one.

(5) The secretary shall notify the petitioner of the—

(a) amount of the costs determined by the tribunal; and

(b) manner in which the costs shall be paid.

(6) Subject to sub-rule (4), the petitioner shall pay the costs not later than five days of the notification referred to in sub-rule (5).

(7) A person who acts as a recognisance shall prepare an affidavit stating that that person owns real or personal property to satisfy the debt amounting to the value of the sum for which that person is bound by that recognisance.

(8) The affidavit shall be lodged with the secretary.

Time and place of hearing

14. (1) The time and place of hearing of an election petition shall be determined by the tribunal.

(2) The secretary shall give four days' notice to the petitioner and the respondent before the day appointed for the hearing.

Notice of intention to withdraw election petition

15. (1) A notice of intention to withdraw an election petition shall be lodged with the secretary.

(2) The notice referred to in sub-rule (1) shall—

(a) state the grounds on which the application is intended to be withdrawn;

(b) be in writing, signed by the petitioner, or by all the petitioners if they are more than one; and

(c) state the name and address of the petitioner and respondent.

(3) A copy of the notice of intention to withdraw the election petition shall be served on the respondent.

16. (1) A notice of the date of hearing of an application to withdraw an election petition shall be given to the petitioner and the respondent by the secretary. Date of hearing of application to withdraw election petition
- (2) The notice of the date of hearing of an application to withdraw an election petition shall state that any person who has an interest in the hearing may apply to the tribunal to be substituted as the petitioner.
- (3) An application by a person who has an interest referred to in sub-rule (2) shall be supported by an affidavit stating that the applicant is qualified to be a petitioner.
17. (1) A person appearing as a party before a tribunal may appear in person or be represented by a practitioner. Appearance before tribunal
- (2) The respondent shall be afforded an opportunity to be heard in answer to the election petition.
18. (1) Where the petitioner does not appear at the time and place appointed for the hearing of the election petition, a tribunal may strike off or dismiss the election petition. Default of appearance
- (2) Where the respondent does not appear at the time and place appointed for the hearing of the election petition, the tribunal may—
- (a) proceed to hear the election petition; or
 - (b) adjourn the hearing on such terms as the tribunal considers appropriate.
- (3) Where an election petition is struck-off under sub-rule (1), the petitioner may, within three days of the petition being struck off, apply to the tribunal to restore the election petition, failing which the election petition shall stand dismissed.
- (4) The tribunal shall restore an election petition where a tribunal is satisfied that the application under sub-rule (3) has merit.
19. At the hearing— Tribunal hearing
- (a) the petitioner shall present the evidence on which the election petition is based;
 - (b) the respondent may adduce evidence to rebut the evidence of the petitioner; and
 - (c) the parties may, at the conclusion of the hearing, present oral or written submissions to a tribunal within such period as the tribunal may direct.

Evidence
before
tribunal

20. (1) A tribunal may receive, as evidence, a statement, document, information or other matter that may assist it to deal effectively with an election petition.

(2) A tribunal may take judicial notice of any fact.

(3) Evidence before a tribunal may be given orally or, if the parties to the proceedings consent or the tribunal so orders, by affidavit.

(4) A tribunal may, at any stage of the proceedings, make an order requiring the personal attendance of a deponent for examination and cross-examination.

Interlocutory
applications

21. (1) An interlocutory application may be made to a tribunal.

(2) An interlocutory application shall be made in writing and shall state the title of the proceedings and the grounds upon which the application is made.

(3) A party who objects to an interlocutory application may, within two days after the service of a copy of the application on the party, send written notice of the objection to the secretary and a copy to the applicant.

(4) A tribunal shall hear the parties to the application before making an order on an interlocutory application.

(5) A tribunal shall, where the tribunal determines that an interlocutory application is frivolous or vexatious, dismiss the application and may order the applicant to pay the costs of the other party.

(6) An appeal shall not lie against a decision of the tribunal on an interlocutory application.

Postponement
of hearing

22. (1) The tribunal may postpone the commencement of the hearing of an election petition or an application to withdraw an election petition.

(2) A hearing of an election petition may be adjourned.

Decision of
tribunal

23. (1) An election petition shall be heard within thirty days of the filing of the election petition.

(2) An election petition challenging the validity of the nomination of a person as a candidate for election as councillor shall be heard within twenty-one days of its lodgment, except that the process shall be completed at least thirty days before a general election.

24. A person who is dissatisfied with the decision of a tribunal may, within fourteen days of the decision, appeal to the Constitutional Court. Appeal to Constitutional Court

PART IV

GENERAL PROVISIONS

25. There shall be paid to the members and the secretary of a tribunal such allowances as the Chief Justice may determine with the approval of the Emoluments Commission. Allowances of members and secretary

26. A tribunal may make orders for costs as it may consider necessary. Costs

27. The fees set out in the Second Schedule shall be paid in respect of the matters set out therein. Prescribed fees

28. The Local Government Electoral Petition Rules, 1993, are revoked. Revocation of S.I. No. 184 of 1993

FIRST SCHEDULE
(Rule 8)

ELECTION PETITION

ELECTION FOR (here state ward) HELD ON THE DAY OF.....
The Petition of, whose address for service is, shows that:

1. Your petitioner is (insert which of the following is appropriate)
 - (a) a person who lawfully voted;
 - (b) a person who lawfully had a right to vote;
 - (c) a person who had a right to be nominated as a candidate at the aforesaid election;
 - (d) a person who had a right to be elected as a Councillor at the aforesaid election;
 - (e) a person who was a candidate at the aforesaid election;
 - (f) the Attorney-General.

2. And your petitioner/s state/s that the election was held on the day of when and were candidates and the returning officer has returned as being duly elected.

3. And your petitioner/s say/s that (here state the facts and grounds on which the petitioner/s relies/rely/ WHEREOF your petitioner/s pray/s that it may be determined that the said was not duly nominated, elected or returned and that the nomination or election was void (or that the said was duly nominated, elected or ought to have been returned).

4. And your petitioner/s prays/pray that—
 - (a) the nomination or election of the respondent be declared void; or
 - (b) the petition or a specified person be declared duly nominated or elected.

.....
Signed

SECOND SCHEDULE
(Rule 27)

PRESCRIBED FEES

No.	Item	Fees Units	Documents to be receipted
PART I			
1.	On filing a petition	2,780	The petition
2.	On filing an affidavit of service	30	The affidavit
3.	On commissioning affidavit	100	The filed copy
4.	On filing <i>ex-parte</i> summons for application for substituted service	85	The <i>ex-parte</i> summons
5.	On filing an affidavit	30	The affidavit
6.	On sealing <i>ex-parte</i> order or any order made by the tribunal	60	The order
7.	On filing an answer by the respondent	230	The filed copy
8.	On filing notice of intention to withdraw	300	The filed copy

<i>No.</i>	<i>Item</i>	<i>Fees Units</i>	<i>Documents to be receipted</i>
9.	On filing an application for restoration of a matter which has been struck out for non-attendance or any other reason	500	The filed application
10.	On filing an interlocutory notice or motion or application not specifically provided for	300	The filed copy
11.	On filing response to the interlocutory application	115	The filed copy
12.	On filing a notice of appeal to the Constitutional Court	835	The filed copy
13.	On filing a notice of cross appeal	835	The filed copy
14.	On filing an application for leave to appeal	230	The filed copy
15.	On every search per case	115	The search form
16.	On personal general searches in the register for unspecified number of names in any one calendar year, in any register of the tribunal	2, 780	In case payable to the secretary of the tribunal
17.	For transcript of shorthand notes or otherwise recorded proceeding, per page or part of the proceeding	5	The filed application

PART II

1.	On filing any notice not specifically provided for	100	The filed copy
2.	On filing bundles or supplementary bundles	280	The filed copy
3.	On filing a consent judgement or order	90	
4.	On filing a notice of taxation of costs	115	The filed notice
5.	On filing a bill of costs for taxation	10 percent of the taxed bill	The bill of costs
6.	On filing consent on agreed costs	5 percent of the agreed costs	The consent order
7.	On filing a certificate of taxation	230	The certificate
8.	On filing any certificate not specifically provided for	278	The filed copy

LUSAKA

3rd August, 2016

JUSTICE I. C. MAMBILIMA,
Chief Justice

