



Frequently Asked Questions

On Electoral Disputes
High Court



FREQUENTLY ASKED QUESTIONS (FAQs) ON THE RESOLUTION OF ELECTORAL DISPUTES (PARLIAMENTARY ELECTIONS)

1. What is Electoral Dispute Resolution (EDR)?

EDR refers to the system through which every electoral action, inaction or procedure can be legally challenged.

2. What is an election dispute?

It is a disagreement over the outcome of, or any aspect of an election.

3. What is a pre-election dispute?

A pre-election dispute is a challenge or complaint regarding the electoral process before the election.

4. What are the main categories of pre-election disputes?

- i. Voter registration complaints and objections;
- ii. Complaints on the conduct of the Electoral Commission of Zambia (ECZ);
- iii. Appointment of election officials by ECZ;
- iv. Disputes relating to procurement of election materials by ECZ;
- v. Disputes relating to boundary delimitation by ECZ;
- vi. Disputes on the establishment of polling stations by ECZ;
- vii. Disputes relating to voters' registration by ECZ;
- viii. Disputes relating to compliance with the Electoral Process Act (EPA);
- ix. Eligibility disputes relating to nomination of a candidate;

- x. Disputes relating to the violation of the Electoral Code of Conduct¹; and
- xi. Disputes relating to regulation of campaigns².

5. Which Courts are responsible for resolving parliamentary election disputes?

The High Court for Zambia and the Constitutional Court on appeal.

ELECTION OFFENCES

6. What are election offences?

These are the illegal acts or conduct proscribed under the electoral laws.

7. What are some of the examples of the election offences?

- i) Impersonation;
- ii) Bribery;
- iii) Undue influence;
- iv) Illegal practice of publishing false statements in respect of candidates;
- v) Illegal practice in respect of nomination of candidates;
- vi) Illegal practices in respect of public meetings;
- vii) Illegal practices relating to the poll;
- viii) General offences related to election³;
- ix) Breach of the Electoral Code of Conduct;

¹Section 107 Electoral Process Act (EPA)

²Section 4 Electoral Process Act

³Section 81-91, Electoral Process Act

- a) causing violence or using any language or engaging in any conduct which leads or is likely to lead to violence or intimidation during an election campaign or election;
- b) carrying or displaying arms or weapons, traditional or otherwise, of any kind at a political meeting or in the course of any march, demonstration or other public gathering of a political nature;
- c) making false, defamatory or inflammatory allegations concerning any person or political party in connection with an election;
- d) arranging a public meeting, demonstration, rally or march at the same time and venue as another similar political event organised by another political party or candidate;
- e) preventing the reasonable access to voters of any candidate or political party in any manner for the purposes of conducting voter education, fund raising, canvassing membership or soliciting support;
- f) plagiarising the symbols, colours or acronyms of candidates or other political parties;
- g) defacing, removing or destroying any political campaign materials of any person or political party or publications of the Commission; and
- h) offering any inducement, reward or bribe to any person in consideration of such person—
 - (i) joining or not joining any political party;
 - (ii) attending or not attending any political event;
 - (iii) voting or not voting;
- (iv) accepting, refusing or withdrawing that person's domination as a candidate in an election;

- (v) surrendering that person's voter's card, or national registration card or both; or
- (vi) offering to surrender a voter's card or national registration card, or both⁴.

8. What should one do when they suspect that an election offence has been committed?

Report the incident to the nearest police station or to the ECZ District Conflict Management Committee (DCMC).

9. Can the DCMC resolve election disputes?

Yes, minor election disputes that are administrative in nature.

PARLIAMENTARY NOMINATION PETITION

10. What is a parliamentary nomination petition?

It is one that challenges the nomination of a candidate for election as Member of Parliament (MP).

11. Who can challenge a parliamentary nomination?

Any person can challenge the nomination of a candidate for election as a Member of Parliament.

12. What must be contained in a parliamentary nomination petition?

The following must be stated in the petition:

- a) name and address of the petitioner;
- b) facts relied on;

⁴ Regulation 15 of the Electoral Code of Conduct

- c) provisions of the Constitution or any other law relating to nominations relied on; and
- d) relief sought by the petitioner.

13. On what ground can a parliamentary candidate's nomination be challenged?

A petitioner can challenge the nomination of a candidate as Member of Parliament on grounds that the nominated candidate:

- (a) is not a citizen;
- (b) is not at least twenty-one years old;
- (c) is not a registered voter;
- (d) has not obtained, as a minimum academic qualification, a grade twelve certificate or its equivalent;
- (e) is validly nominated as a candidate in a presidential election;
- (f) is a public officer or constitutional office holder;
- (g) is a judge or judicial officer;
- (h) has a mental or physical disability that would make the person incapable of performing the legislative function;
- (i) is an undischarged bankrupt;
- (j) is serving a sentence of imprisonment for an offence under a written law;
- (k) has, in the immediate preceding five years, served a term of imprisonment of at least three years;
- (l) has, in the immediate preceding five years, been removed from public office on grounds of gross misconduct;

- (m) holds or is acting in an office, as prescribed, the functions of which involve or are connected with the conduct of elections⁵;
- (n) has not paid a prescribed election fee to the ECZ⁶; and
- (o) is not supported by at least fifteen persons registered as voters in the constituency in which the candidate is standing for election.⁷

14. Who signs a parliamentary nomination petition?

A petitioner shall personally sign the petition. It must be noted that a petitioner's legal practitioner cannot sign the petition on behalf of the petitioner.

15. Where is a parliamentary nomination petition filed?

Before the High Court in any province in Zambia.

16. Within which time period should a parliamentary nomination petition be filed?

The petition must be filed within seven (7) days of the close of nomination⁸.

17. What happens if a parliamentary nomination petition is not filed within the seven (7) day period?

The seven (7) day period is mandatory and a nomination petition filed outside that time frame shall be rejected and

⁵ Article 70 of the Constitution

⁶ Article 71 of the Constitution

⁷ Article 70 of the Constitution

⁸ Article 52 (4) of the Constitution

not heard by the Court because the time set for filing is prescribed by the Constitution and cannot be extended.

18. What documents must be filed with a parliamentary nomination petition?

A petitioner must file an affidavit verifying the facts in the petition, skeleton arguments, list of authorities, copies of authorities cited, list and description of documents to be relied on and bundle of documents.

19. What should the petitioner do after filing the parliamentary nomination petition into court?

The petitioner must serve the petition, affidavit in support and accompanying documents on the respondent within 24 hours. If the petitioner fails to personally serve the respondent, the petitioner must, within 24 hours, apply to the Court for an order for substituted service such as by way of registered letter, public advertisement or electronic mail.

20. What does a respondent do after receiving a parliamentary nomination petition?

A respondent must file an answer within 2 days responding to the allegations contained in the petition, supported by an affidavit in opposition, skeleton arguments, list of authorities, copies of authorities cited, list and description of documents and bundle of documents.

21. What happens if an answer is not filed by the respondent?

A respondent who does not file an answer to a nomination petition will not participate in the proceedings of the nomination petition.

22. What should a petitioner do after receiving an answer?

The petitioner may, within 2 days, file a reply accompanied by an affidavit, skeleton arguments, list of authorities and copies of authorities cited, if any.

23. Within what period must a parliamentary nomination petition be heard and determined?

The High Court shall hear and determine the petition within twenty-one (21) days of its lodgement⁹.

24. Can the High Court extend the twenty-one (21) days within which to hear and determine a parliamentary nomination petition?

The twenty-one (21) days is provided by the Constitution and cannot be extended. This means that the Court and the parties must ensure that the matter is heard and determined within the prescribed time frame.

25. What relief can the High Court grant after hearing a parliamentary nomination petition?

The Court can either uphold the nomination of the candidate or declare the nomination void.

⁹ Article 52 (4) of the Constitution

26. Can one appeal against the High Court's decision in a parliamentary nomination petition?

No. The decision of the High Court is final and not subject to appeal.

PARLIAMENTARY ELECTION PETITION

27. What is a parliamentary election petition?

It is one that challenges the election of a person as Member of Parliament in a constituency.

28. On what grounds can a parliamentary election petition be nullified?

An election of a candidate as Member of Parliament can be nullified if it is proved to the satisfaction of the High Court that:

- a) a corrupt practice, illegal practice or other misconduct has been committed in connection with the election:
 - i. by a candidate; or
 - ii. with the knowledge and consent or approval of a candidate or of that candidate's election agent or polling agent; and
 - iii. the majority of voters in a constituency were or may have been prevented from electing the candidate in that constituency whom they preferred;

- b) there has been non-compliance with the provisions of the EPA relating to the conduct of elections; or
- c) the candidate was at the time of the election a person not qualified or a person disqualified for election¹⁰.

29. Who can file a parliamentary election petition?

- (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 at the election to which the election petition relates;
- (c) A person claiming to have been a candidate at the election to which the election petition relates; and
- (d) The Attorney General¹¹.

30. When must a parliamentary election petition be filed?

It must be filed within fourteen (14) days after the date on which the result of the election to which it relates is duly declared¹².

31. Where must a parliamentary election petition be filed?

It should be filed before the High Court in any province.

32. What must be contained in a parliamentary election petition?

The following must be contained in the petition:

¹⁰ Section 97 of the Electoral Process Act

¹¹ Section 98 of the Electoral Process Act

¹² Section 100 Electoral Process Act

- a) name and address of a petitioner or the petitioner's legal practitioner, if any;
- b) constituency in which an election being challenged was held;
- c) outcome or results of an election being challenged;
- d) date of declaration of the results of an election being challenged;
- e) grounds relied on;
- f) provisions of the Constitution or any other written law relating to the election relied on; and
- g) relief sought by a petitioner;

33. What documents must be filed with a parliamentary election petition?

The following documents must accompany the election petition:

- a) an affidavit verifying facts;
- b) skeleton arguments of not more than fifteen pages, in font size 12 and with double spacing;
- c) a list of authorities and copies of those authorities;
- d) a list and description of documents to be relied on, if any; and
- e) a bundle of documents, if any;

34. Who signs a parliamentary election petition?

An election petition should be signed personally by the petitioner.

35. Can the petitioner state the evidence to be relied on in the parliamentary petition?

No. The petition must not contain any evidence but only the facts of the case. The evidence shall be received, brought or produced at the time of trial.

36. What should the petitioner do after filing the parliamentary election petition into court?

The petitioner must serve the petition, affidavit in support and accompanying documents on the respondent within five (5) days of filing the election petition.

37. What must the respondent do after receiving the parliamentary election petition?

The respondent must file into Court an answer to the petition within five (5) days of receipt of an election petition.

The answer must be accompanied by-

- (a) an affidavit in opposition;
- (b) skeleton arguments of not more than fifteen pages, in font size 12 and with double spacing;
- (c) a list of authorities and copies of those authorities;
- (d) a list and description of documents to be relied on, if any;
- (e) a bundle of documents, if any; and
- (f) a list of witnesses and witness statements, if any.

The answer must be served on the petitioner within two days of filing.

38. What happens if an answer is not filed by the respondent?

A respondent who does not file an answer to an election petition will not participate in the proceedings of the election petition

39. What happens after the Respondent files an answer?

A petitioner may, within five days of being served with an answer, file a reply. The reply may be accompanied by -

- (a) an affidavit in reply;
- (b) skeleton arguments of not more than ten pages, in font size 12 and with double spacing; and
- (c) a list of authorities and copies of those authorities.
- (d) A reply should only respond to the issues raised in the answer.

40. What will the Court do after a parliamentary election petition has been filed?

The Court will-

- (i) summon the parties to a scheduling conference within seven (7) days of filing the election petition;
- (ii) issue a timetable -
 - (a) that the Court considers necessary; and
 - (b) which shall be strictly adhered to by the parties.
- (iii) set a date for -
 - (a) a status conference; and
 - (b) the hearing of a nomination petition or election petition; and
 - (c) determine any outstanding issues.

41. What is an interlocutory application?

This is a request made to the High Court for a temporary or procedural ruling during the course of legal proceedings. It does not determine the final outcome of the case but deals with issues that may arise before the final judgment.

42. What is the standard of proof required to nullify a parliamentary election?

The standard of proof the Court will consider is whether the evidence presented by the petitioner before it has been proved to a fairly high degree of convincing clarity.

43. What evidence needs to be presented at the hearing of a parliamentary election petition?

A petitioner must present evidence to prove any electoral malpractices or misconduct complained of.

44. What type of evidence will the High Court receive at the hearing of a parliamentary election petition?

The Court may receive evidence in the form of oral testimonies, a statement, documents or other matter that may assist it in effectively dealing with an election petition.

45. How is evidence given at the hearing of a parliamentary election petition?

Evidence before the Court may be given orally and through documents.

46. Can a parliamentary election petition be nullified by reason of any act or omission by an election officer?

Yes. The High Court can nullify an election on the ground of non-compliance by the ECZ if the petitioner proves that the election was not conducted in substantial compliance with the provisions of the EPA and that such act affected the result of that election.¹³

¹³ Section 97(2)(b) of the Electoral Process Act

47. What remedies are available in a parliamentary election petition?

The High Court will either nullify or validate the election of a Parliamentary candidate.¹⁴

48. How long does it take for a parliamentary election petition to be heard and for judgment to be delivered?

The Court must hear and determine a parliamentary election petition and deliver judgment within ninety (90) days from the date that the petition is filed.

49. What happens if a parliamentary election is nullified by the High Court?

If there is no appeal or where the nullification has been confirmed by the Constitutional Court, a fresh election shall be held within ninety (90) days.

GENERAL PROVISIONS

50. How are the hearings for parliamentary nomination or election petitions conducted?

The hearings are conducted in open court and are open to the members of the public.

51. Can a party appear in person in a parliamentary nomination or election petition?

Yes. A person appearing before the Court (a party) may appear in person (represent themselves without a lawyer) or be represented by a legal practitioner.

¹⁴ Section 99 of the Electoral Process Act

52. What language can a party use when appearing before the High Court in a parliamentary nomination or election petition?

A party has the right to use a language of their choice provided that if it is not the English language, the court shall provide an interpreter.

53. What language does the Court use?

Court proceedings are in English.

54. What are the operating hours of the registry during the parliamentary nomination or election petition period?

The High Court Registry is open from 08:30 hours and closes at 18:00 hours.

SERVICE OF PROCESS

55. What are the modes of service?

All documents must be served personally on the affected party. Where personal service is not possible, an application should be made to the Court for an order to serve by substituted service, such as by registered letter, public advertisement or electronic mail.

56. How can a petitioner or respondent show that they served the other party?

The petitioner or respondent must file an affidavit of service stating the mode of service used to serve the other party.

APPEALS

57. What can a party dissatisfied with a judgment of the High Court in an election petition do?

A dissatisfied party can file an appeal against the decision of the High Court in an election petition to the Constitutional Court within fourteen (14) days from the date of Judgment.

58. What documents should a dissatisfied party use to file an appeal before the Constitutional Court?

An appellant (i.e. a person appealing against the judgment) must file a notice of appeal and memorandum of appeal.

59. What is contained in the notice of appeal?

The notice of appeal shall specify:

- (a) whether it is all or part of the judgment that is being appealed, and if it is part of the judgment, specify which part; and
- (b) the address for service of the appellant and the names and addresses of all the persons intended to be served with copies of the notice.

60. What is contained in a memorandum of appeal?

A memorandum of appeal contains the grounds or objection of the judgment appealed against. It also specifies the points of law or fact which are stated to have been wrongly decided.

61. When must the appellant serve the notice of appeal and memorandum of appeal on the respondent?

The appellant must serve the respondent the notice of appeal and memorandum of appeal within thirty days (30) from the date of filing the notice of appeal.

62. How should the notice of appeal and memorandum of appeal be served on the respondent?

The appellant may either serve the notice of appeal and memorandum of appeal on the respondent(s) by personal service or by publication in a newspaper with nationwide circulation.

63. How is an appellant expected to prepare the appeal for hearing before the Constitutional Court?

Once the notice of appeal and memorandum of appeal have been filed, the next step is for the appellant to prepare and file a record of appeal. The appellant must file twenty-one (21) hard copies of the record of appeal and heads of argument within thirty (30) days upon filing the memorandum of appeal.

64. What are the contents of the record of appeal?

- (a) an index of all the documents in the record;
- (b) a certificate of record signed by the Registrar;
- (c) a notice of appeal and memorandum of appeal;
- (d) statement showing the address for service of the appellant and the address for service of the respondent, together with proof of service of the notice of appeal on the respondent;
- (e) a copy of the judgment appealed against;
- (f) the pleadings;
- (h) the affidavits and all documents put in evidence at the hearing. If those documents are not in English, certified translations should be included;
- (i) any other documents which may be necessary for the determination of the appeal, such as

interlocutory proceedings which may be directly relevant;

- (j) the notes of the High Court at the hearing;
- (k) a copy of a certificate after trial, if any;
- (l) a list of exhibits or schedule of evidence, as the case may be, indicating those items which are being forwarded to the Master and those which are being retained by the High Court; and
- (m) copies of exhibits or part of exhibits including correspondence as are relevant to the matters in controversy on the appeal.

65. When must the appellant serve the record of appeal on the respondent?

The record of appeal shall be served on all parties to the appeal immediately after filing the record of appeal.

66. What steps should a respondent take after receiving the record of appeal?

- (a) The respondent must file heads of argument within seven (7) days before the date fixed for hearing.
- (b) Where a respondent intends to challenge any part of/or the entire decision of the High Court, they must file a notice of cross-appeal within seven (7) days of receipt of the record of appeal.

67. What is contained in a notice of cross-appeal filed by the respondent?

It contains the grounds of appeal or dissatisfaction and the nature of orders sought.

68. When does the hearing of the appeal take place?

All matters (including appeals) before the Constitutional Court are cause listed for hearing. In addition, the Court may issue notices of hearing where need arises.

69. How long does it take for an appeal to be concluded from the time of filing?

There is no timeframe for concluding an appeal but the Court will conclude matters within a reasonable period.

COSTS

70. What are costs?

Costs refer to expenses and legal fees incurred in prosecuting a case from the beginning to the end. These include filing fees for documents, legal fees, fees for serving summons and other court process and related expenses.

71. Who pays the costs in a nomination or election petition?

The parties to the petition bear their own costs.

72. What is security for costs?

This is money deposited into the High Court by a petitioner in order to secure the payment of court costs (while the case is ongoing) and to protect the respondent if the petitioner loses.

73. When should security for costs be paid?

Security for costs is a requirement under the EPA. It is paid within five(5) days from the filing of an election petition

74. What happens if security for costs is not paid?

No further proceedings shall be heard by the High Court on the election petition.

FEEES

75. What are fees?

This is money paid when filing documents at the High Court Registry. These include filing fees for documents such as the petition, answer, other court documents and related expenses.

76. When are fees payable?

Fees are payable when filing different documents into the High Court Registry.

77. How are fees paid?

Fees can be deposited into the Judiciary's bank accounts. The details of the bank accounts are available at the High Court Registry. One can also use an Automated Teller Machine (ATM) card on a point of sale (POS) machine within the Judiciary.

78. What are the fees associated with filing petitions, answers, affidavits or other documents?

These are as follows:

APPENDIX

List of fees

Process/Document	Amount (K)
Filing election petition	1,111
Commissioning affidavit	33
Filing summons in chambers	34
Application of the notes of the Judge (per page)	22
Filing commissioned affidavit	11
Filing certificate of service	11
Personal general search for every time	11

Filing certificate of urgency	56
Filing an order made in chambers	22
Filing any notice not provided for	111
For copies of documents or proceedings (per page or part thereof)	22
Commissioning or certification	33

NB: The fees payable in the General List High Court Registry

Reference materials

The information provided above has been compiled in line with the following statutes:

- The Constitution of Zambia, Chapter 1 of the Laws of Zambia (as amended by The Constitution of Zambia Act No. 2 of 2016 Amendment)
- The Electoral Process Act, Chapter 13 of the Laws of Zambia.
- The Constitutional Court Rules, Statutory Instrument No. 37 of 2016 (**Statutory Instrument undergoing review**)

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