



Frequently Asked Questions

On Electoral Disputes
Local Government Elections Tribunals



FREQUENTLY ASKED QUESTIONS (FAQs) ON THE RESOLUTION OF ELECTORAL DISPUTES (LOCAL GOVERNMENT 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?

- (a) Disputes relating to nomination of a candidate as prescribed in the Constitution; and
- (b) Disputes relating to the violation of the Electoral Code of Conduct, such as the regulation of campaigns.

5. Which body and/court is responsible for resolving local government election disputes?

The *Ad hoc* Local Government Elections Tribunals (LGETs) and the Constitutional Court on appeal.

ELECTION OFFENCES

6. What are election offences?

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

7. What are some of the examples of 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 the election¹;
- (ix) Breach of the Electoral Code of Conduct:
 - (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;

¹ Section 81-91, Electoral Process Act

- (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, fundraising, 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 both².

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.

LGET NOMINATION PETITION

10. What is a nomination petition?

It is one that challenges the nomination of a candidate for election as Mayor, Council Chairperson or Councillor.

11. Who can challenge a nomination?

Any person can challenge the nomination of a candidate for election as Mayor, Council Chairperson or Councillor.³

12. What must be contained in a nomination petition?

The following must be contained in the petition:

- (a) name and address of the petitioner;
- (b) facts relied on;
- (c) provisions of the Constitution or any other written law relating to nominations relied on; and
- (d) relief sought by the petitioner.

² Regulation 15 of the Electoral Code of Conduct

³ Article 52(4) of the Constitution

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

A petitioner can challenge the nomination of candidate as Mayor or Council Chairperson or Councillor on grounds that the nominated candidate:

- (a) is a Member of Parliament;
- (b) is less than nineteen years of age;
- (c) has not obtained, as a minimum academic qualification, a grade twelve certificate or its equivalent;
- (d) is not a citizen or a holder of a resident permit, resident in the district; and
- (e) does not have a certificate of clearance showing the payment of council taxes, where applicable⁴.

14. Who signs a 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 nomination petition filed?

Before the LGET whose secretariat sits with the Clerk of Court of the Subordinate Court nearest to the contested district or ward. It is worth noting that in practice, tribunals are only appointed by the Chief Justice after the nomination petitions have been filed at the nearest Subordinate Court from which the elections are to take place.

⁴ Article 153(4)(a - e) of the Constitution and Ssection 33(3)(c) of the EPA

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

The petition must be filed within seven (7) days of the close of nomination⁵.

17. What happens if a 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 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 an LGET nomination petition?

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

19. What should the petitioner do after filing an LGET nomination petition before a tribunal?

The petitioner must serve the petition, affidavit in support and/or 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 tribunal for an order for substituted service such as by

⁵ Article 52 (4) of the Constitution

way of registered letter, public advertisement or electronic mail.

20. What does a respondent do after receiving an LGET 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. In addition, a respondent is free to file skeleton arguments, list of authorities, copies of authorities cited, list and description of documents and bundle of documents, if any.

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. It may be accompanied by an affidavit, skeleton arguments, list of authorities and copies of authorities cited, if any.

23. Within what period must an LGET nomination petition be heard and determined?

The tribunal shall hear and determine the case within twenty-one (21) days of its lodgement.⁶

⁶ Article 52 (4) of the Constitution

24. Can an LGET extend the twenty-one (21) days within which to hear and determine the nomination petition?

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

25. What relief can the LGET grant after hearing a nomination petition?

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

26. Can one appeal against the LGET's decision in a nomination petition?

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

LGET ELECTION PETITION

27. What is an LGET election petition?

It is one that challenges the election of a person as a Mayor/Council Chairperson or Councillor, district or ward, respectively.

28. On what grounds can an LGET election petition be nullified?

An election of a candidate as a Mayor/Council Chairperson or Councillor can be nullified if it is proved to the satisfaction of an LGET 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 district or ward were or may have been prevented from electing the candidate in that district or ward whom they preferred;
- b) there has been non-compliance with the provisions of the EPA relating to the conduct of elections.
- c) the candidate was at the time of the election a person not qualified or a person disqualified for election.

29. Who can file an LGET 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 General⁷.

⁷ Section 98 Electoral Process Act

30. When must an LGET 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 declared.⁸

31. Where must an LGET election petition be filed?

Before the LGET whose secretariat sits with the Clerk of Court of the Subordinate Court nearest to the contested district or ward. It is worth noting that in practice, tribunals are only appointed by the Chief Justice after the election petitions have been filed at the nearest Subordinate Court from which the elections took place.

32. What must be contained in an LGET election petition?

The following must be contained in the petition:

- (a) name and address of the petitioner;
- (b) name and address of the advocate for the petitioner, if any;
- (c) date of election;
- (d) district or ward in which the election was held;
- (e) outcome of election;
- (f) date of declaration of the results;
- (g) grounds relied upon; and
- (h) relief sought by the petitioner.

33. What documents must be filed with an LGET election petition?

A petitioner must file an affidavit verifying the facts in the petition. In addition, a petitioner is free to file skeleton

⁸ Section 100 Electoral Process Act

arguments, list of authorities, copies of authorities cited, list and description of documents to be relied on and bundle of documents, if any.

34. Who signs an LGET 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 LGET election 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 a petitioner do after filing an LGET election petition?

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

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

A respondent must file an answer within two (2) days responding to the allegations contained in the petition supported by an affidavit in opposition. In addition, a respondent is free to file skeleton arguments, list of authorities, copies of authorities cited, list and description of documents and bundle of documents, if any.

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 will the LGET do after an election petition is filed?

The LGET will -

- (i) (a) summon the parties to a scheduling conference within five (5) days of filing the election petition; and
(b) order the petitioner to pay security for costs of a sum not exceeding 8,000 fee units.
- (ii) issue a timetable -
 - (a) that the LGET 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 an election petition; and
 - (c) determine any outstanding issues.

40. What is an interlocutory application?

This is a request made to an LGET 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.

41. What is the standard of proof required to nullify a Local Government election result?

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

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

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

43. What type of evidence will the LGET receive at the hearing of a local government election petition?

An LGET 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.

44. How is evidence given at the hearing of a LGET election petition?

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

45. Can an election be nullified by reason of any act or omission by an election officer?

Yes. An LGET 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.⁹

46. What remedies are available in an election petition?

An LGET may either nullify or validate an election of a Mayor or Council Chairperson or Councillor¹⁰.

47. How long does it take for an LGET election petition to be heard and for judgment to be delivered?

An LGET must hear and determine an election petition and deliver judgment within thirty (30) days from the date that the petition is filed¹¹.

48. What happens where a local government election is nullified by an LGET?

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

⁹ Section 97 of the Electoral Process

¹⁰ Section 99 Electoral Process Act

¹¹ Section 96(1)(c) of the EPA

GENERAL PROVISIONS

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

The hearings are conducted at public venues such as court rooms and are open to the members of the public.

50. Can a party appear in person? Yes. A person (a party) appearing before an LGET may appear in person (represent themselves without a lawyer) or be represented by a legal practitioner.

51. What language can a party use when appearing before the LGET in a local government nomination or election petition?

A person has a right to use a language of their choice provided that if it is not the English language, the LGET will provide an interpreter.

52. What language does the LGET use?

The LGET's proceedings are in English.

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

The LGET registry opens at 08:30 hours and closes at 18:00 hours.

SERVICE OF PROCESS

54. 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 LGET for an order to serve by substituted service, such as by registered letter, public advertisement or electronic mail.

55. 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

56. What can a party dissatisfied with a judgment of an LGET in an election petition do?

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

57. 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.

58. 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.

59. 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.

60. 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.

61. 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.

62. 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.

63. 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;
- (g) the affidavits and all documents put in evidence at the hearing. If those documents are not in English, certified translations should be included;
- (h) any other documents which may be necessary for the determination of the appeal, such as interlocutory proceedings which may be directly relevant;
- (i) the notes of the LGÉT at the hearing;
- (j) a copy of a certificate after trial, if any;
- (k) 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 LGET; and

- (l) copies of exhibits or part of exhibits including correspondence as are relevant to the matters in controversy on the appeal.

64. 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.

65. 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 LGET, they must file a notice of cross-appeal within seven (7) days of receipt of the record of appeal.

66. 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.

67. 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.

68. 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 takes all reasonable steps to conclude matters within a reasonable period.

COSTS

69. What are costs?

Costs refer to expenses and legal fees incurred in prosecuting a case from the beginning to the end.

70. Who pays the costs in a nomination and election petition?

The parties to the petition bear their own costs.

71. What is security for costs?

This is money deposited into the Subordinate 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.

72. When should security for costs be paid?

Security for costs are a requirement under the Electoral Process Act (EPA). They are paid within the time ordered by the LGET and in the manner and form set out in the LGET Rules.

73. What happens if security for costs are not paid?

No further proceedings shall be heard by an LGET on the election petition.

FEEES

74. What are fees?

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

75. When are fees payable?

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

76. How are fees paid?

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

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

These are as follows:

APPENDIX

List of fees

Process/Document	Amount (fee units)	Documents to be received
On filing a petition	2,780	The Petition
On filing an affidavit of service	30	The affidavit
On commissioning affidavit	100	The filed copy
On filing ex-parte summons for substituted service	85	The ex-parte summons
On filing an affidavit	30	The affidavit
On sealing ex-parte order or any order made by the Tribunal	60	The Order
On filing an answer by the Respondent	230	The filed copy

On filing notice of intention to withdraw	300	The filed copy
On filing notice of cross appeal	835	The filed copy
On filing an application for leave to appeal	230	The filed copy
On every search per case	115	The search form
For transcript of shorthand notes or otherwise recorded proceedings, per page or part of the proceeding.	5	The filed application

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 No. 35 of 2016
- The Constitutional Court Act No. 8 of 2016
- The Constitutional Court Rules, Statutory Instrument No. 37 of 2016(**Statutory Instrument undergoing review**)
- The Local Government Elections Tribunal Rules, Statutory Instrument No. 60 of 2016 (**Statutory Instrument undergoing review**)
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