



Frequently Asked Questions

On Electoral Disputes
Constitutional Court



FREQUENTLY ASKED QUESTIONS (FAQs) ON THE RESOLUTION OF ELECTORAL DISPUTES (PRESIDENTIAL ELECTION)

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 an election.

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

- Voter registration complaints and objections;
- Complaints on the conduct of the Electoral Commission of Zambia (ECZ) in managing the electoral process;
- Disputes relating to boundary delimitation by ECZ;
- Appointment of election officials by ECZ;
- Disputes relating to procurement of election materials by ECZ;
- Disputes on the establishment of polling stations by ECZ;
- Disputes relating to voters' registration by ECZ;
- Eligibility of a presidential candidate; and
- Disputes relating to regulation of campaigns.¹

¹ Section 4 Electoral Process Act

5. Which body is responsible for resolving presidential election disputes?

The Constitutional Court.

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 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 election²;
- 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,

² Section 81-91, Electoral Process Act

- 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 both.

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.

NOMINATION PETITION

10. What is a nomination petition?

It is one that challenges the nomination of a candidate for election as Republican President.

11. Who can challenge a nomination?

Any person can challenge the nomination of a candidate for election as Republican President.

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 law relating to nominations allegedly not complied with; and
- d) Relief sought by the Petitioner.

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

It can be challenged if the nominated candidate –

- a) is not a citizen by birth or descent;
- b) has not been ordinarily resident in Zambia;
- c) is not at least thirty-five years old;
- d) is not a registered voter;
- e) has not obtained, as a minimum academic qualification, a grade twelve certificate or its equivalent;
- f) is not fluent in the official language;
- g) has not paid that person's taxes nor has made arrangements, satisfactory to the appropriate tax authority, for the payment of the taxes;
- h) has not declared that person's assets and liabilities;
- i) is not supported by at least one hundred registered voters from each Province;
- j) is a public officer;
- k) has dual citizenship;
- l) is holding or acting in a constitutional office or other public office;
- m) is a judge or judicial officer;
- n) was removed from public office on grounds of gross misconduct in the immediate preceding five years;
- o) has a mental or physical disability that would make the person incapable of performing the executive functions;
- p) is an undischarged bankrupt;
- q) is serving a sentence of imprisonment; or

- r) has, in the immediately preceding five years, served a term of imprisonment of at least three years.³

14. Who signs a nomination petition?

A petitioner or the petitioner's legal practitioner may sign the petition.

15. Where is a nomination petition filed?

A petition challenging the nomination of a candidate for election as Republican President is filed in the Constitutional Court Registry in Lusaka.⁴

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

The petition must be filed within seven (7) days of the close of nomination.⁵

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.

³ Article 100 of the Constitution

⁴ Section 8(1)(c) Constitutional Court Act

⁵ Article 52 (4) of the Constitution

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

A petitioner must file an affidavit verifying the facts in the petition, skeleton arguments and list of authorities.

19. What does a respondent do after receiving a nomination petition?

A respondent must file an answer responding to the allegations contained in the petition, supported by an opposing affidavit and responding skeleton arguments.

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

The petitioner may file a reply, if any. It may be accompanied by an affidavit, skeleton arguments and list of authorities.

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

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

22. Can the Constitutional Court extend the twenty-one (21) days within which to hear and determine a 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.

⁶ Article 52 (4) of the Constitution

23. What relief can the Court grant after hearing a nomination petition?

The Court can either uphold the nomination of the candidate or declare the nomination void. The decision of the Court is final and cannot be appealed against.

ELECTION PETITION

24. What is a presidential election petition?

It is one that challenges the election of a person as presidential candidate who took part in an election.

25. On what grounds can the election of a President-elect be challenged?

A person may petition the Constitutional Court to nullify the election of a President-elect on the following grounds:

- (a) the person was not validly elected; or
- (b) a provision of the Constitution or other law relating to presidential election was not complied with⁷.

26. Who can file a presidential election petition?

Any person who seeks to challenge the election of a Presidential candidate after an election.⁸

⁷ Article 101 of the Constitution

⁸ Article 101 (4) of the Constitution

27. When must a presidential election petition be filed?

Within seven (7) days after the date on which the result of the election was duly declared. There is no time extension.

28. How many types of presidential election petitions are there?

(a) The first presidential election petition is provided for under Article 101 of the Constitution

This petition is against a candidate who received more than 50% plus one (1) of the valid votes cast and was declared President-elect by the Returning Officer.

(b) The second presidential election petition is provided for under Article 103(1) of the Constitution

This petition is filed after a declaration of a President-elect. It comes after a run off ballot or post nullification ballot.

29. What must be contained in an election petition?

A petition challenging the election of the President-elect in accordance with Article 101 or 103 of the Constitution must state the following details:

- (a) name and address of the petitioner;
- (b) facts relied on;
- (c) provisions of the Constitution or any other law relating to elections allegedly not complied with; and
- (d) relief sought by the petitioner.

30. Who signs the election petition?

It may be signed by the petitioner or the petitioner's legal practitioner.

31. Where can one file the election petition?

It should be filed at the Constitutional Court Registry in Lusaka.

32. What documents must be filed with the election petition?

- a) An affidavit verifying facts;
- b) Skeleton arguments; and
- c) A list of authorities and copies of the authorities cited.

33. Within what time-frame should the election petition be served?

A petition shall be served on the respondent within 24 hours of filing.

34. How does the petitioner prove service of the petition?

By filing an affidavit of service stating the mode of service that was used.

35. What happens if the petitioner is unable to personally serve the respondent?

The petitioner shall proceed without leave of Court to effect substituted service as practicable as possible.

36. What must a respondent do after receiving the election petition?

- (i) The respondent shall, within four days of service of the petition, respond to the petition by filing an answer together with –
 - (a) an affidavit in opposition;
 - (b) skeleton arguments; and
 - (c) a list of authorities and copies of the authorities cited.
- (ii) The respondent shall serve the answer and accompanying documents on the petitioner within twenty-four hours of filing the answer.
- (iii) The respondent shall prove service of an answer by filing an affidavit of service stating the mode of service.

37. What must a petitioner do after being served with the respondent's documents?

- a) If a petitioner intends to file a reply, he/she must do so within 24 hours.
- b) Where the petitioner replies to the respondent's answer, the reply shall be filed together with skeleton arguments.

38. What is the Court supposed to do after the documents have been filed by the parties?

- (i) The Court shall, immediately after the filing of a petition, summon the parties to a scheduling conference at which the Court shall issue directions for the expeditious hearing of the petition.

- (ii) The Court may, at the scheduling conference, give directions or orders in relation to any interlocutory matters.
- (iii) An interlocutory application may be raised within the time frame given by the Court before the commencement of the hearing.

39. On what grounds can the election of a President-elect be challenged?

A person may petition the Constitutional Court to nullify the election of a President-elect on the following grounds:

- (a) the person was not validly elected; or
- (b) a provision of the Constitution or other law relating to presidential election was not complied with⁹.

40. What is an interlocutory application?

This is a request made to a 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 the issues that arise before the final judgment.

41. What is the standard of proof required to nullify the presidential election?

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

⁹ Article 101 of the Constitution

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

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

43. What remedies are available in a presidential election petition?

The Constitutional Court may:

- (a) declare the election of the presidential candidate valid;
or
- (b) nullify the election of the presidential candidate; or
- (c) disqualify the presidential candidate from being a candidate in the second ballot.

44. How long does it take for the election petition to be heard?

The Court must hear the election petition within fourteen (14) days from the date of filing.

45. When should the Court deliver judgment after hearing an election petition?

The Court is required to deliver a decision within fourteen (14) days of hearing the election petition. The fourteen (14) days period runs from the date that the election petition was filed. After the conclusion of the hearing, the Court may give reasons for its decision. However, where the reasons for the decision are reserved to a later date, the Court must give a reasoned decision within sixty (60) days from the last date of the hearing.

46. What happens if the election is nullified?

A fresh presidential election shall be held within thirty (30) days from the date that the Constitutional Court nullifies the election.

47. Is there an appeal against a judgment in a presidential election petition?

No, the judgment of the Constitutional Court is final.

GENERAL PROVISIONS

48. How are the hearings for election petitions conducted?

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

49. Can a party appear in person?

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

50. What language can a party use when appearing before Court in a 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.

51. What language does the Court use?

Court proceedings are in English.

52. What are the operating hours of the Registry during the Presidential nomination or election petition period?

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

SERVICE OF PROCESS

53. What are the modes of service?

All documents may be served personally on the affected party or their legal practitioners. Where personal service is not possible, a party can effect service by way of substituted service and does not require leave of Court. Substituted service may take the form of a registered letter, public advertisement or electronic mail.

54. 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.

COSTS

55. 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.

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

The parties to the petition bear their own costs.

FEEES

57. What are fees?

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

58. When are fees payable?

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

59. How are fees paid?

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

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

These are as follows:

APPENDIX

List of fees

S/N	DOCUMENT	AMOUNT (KWACHA)
1.	On filling a Presidential Petition	K834.00
2.	On filing a Presidential Petition record	K501.00
4.	On Commissioning an Affidavit	K33.60
5.	On filling an Affidavit of Service	K9.00
6.	On filling summons for joinder, Addition, substitution and striking out of parties	K83.40
7.	On sealing ex-parte order or any order made in chambers	K18.00
8.	On filling any Notice not specifically provided for	K84.40
9.	(a) On personal general searches in the Judgment section of civil case register for every name (b) On personal general search in the Judgment register unspecified number of names in anyone calendar year in any registry of the Constitutional Court	K9.00 K833.40 K9.00

	(c) On a search for appearance or any other search (including an inspection not provided for	
10.	On filling bundles of supplementary bundles	K144.00
11.	On certification of documents per page	K30.00
12.	On filling an amended petition	K84.00
13.	On filling a consent judgment or consent order	K25.80
14.	On filling an Interlocutory Notice or motion or application not specifically provided	K84.00
15.	On sealing of summons in chambers (including a summon for further direction)	K25.50
16.	Notary public per document	K150.00
17.	Transcript of the record of proceedings per page or part thereof	K3.00
18.	On examination of a witness before an officer of the Court for each half or part thereof away from his/her office, his/her reasonable travelling and other expenses are also payable	K84.00

19.	On filling witness statement	K34.50
20.	On filling depositions	K34.50
21.	On sealing any amendment	K25.50
22.	On filling a notice of taxation	K69.00
23.	On filling application for review of taxation	K25.50
24.	On leave being granted to review taxation	K25.50
25.	On filling consent to costs	5 Percent of The Amount Agreed
26.	On filling a certificate of urgency	K84.00

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 Act No. 8 of 2016
- The Constitutional Court Rules, Statutory Instrument No. 37 of 2016 **(both Statutory Instruments are undergoing review)**
- The Constitutional Court Rules (Amendment), Statutory Instrument No. 29 of 2021 **(both Statutory Instruments are undergoing review)**

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