

LEGAL NOTICE NO. 64

THE LABOUR RELATIONS ACT

(No. 14 of 2007)

IN EXERCISE of the powers conferred by section 83 of the Labour Relations Act, the Cabinet Secretary for Labour, Social Security and Services after consultation with the National Labour Board makes the following Rules:—

THE TRADE UNIONS ELECTIONS (ELECTION PETITION)
RULES, 2014

1. These rules may be cited as the Trade Unions Elections (Election Petition) Rules, 2014.

Citation.

2. In these Regulations, unless the context otherwise requires—

Interpretation.

“Act” means the Labour Relations Act;

“petitioner” in relation to an election petition, means the person who files or lodges an election petition arising from an election process;

“Registrar” means the Registrar of the Industrial Court and includes a deputy registrar;

“respondent” in relation to an election petition, means the person whose election is complained of, or if the petitioner complains of the conduct of a presiding officer.

3. A petition to question the validity of an election under the Act shall be filed within seven days after the date of the declaration of the results of the election.

Filing of petition.

4. (1) The presentation of an election petition shall be made by delivering it at the office of the Registrar, and the Registrar or the officer of that department to whom the petition is delivered shall issue a receipt in Form 1 set out in the Schedule.

Presentation of election petition.

5. (1) An election petition shall—

(a) state whether the petitioner is entitled to petition under section 34(4) of the Act; and

(b) state when the election was held and results of the election, and shall briefly state the facts and grounds relied on in support of the petition.

Contents and form of election petition.

(2) The petition shall be divided into paragraphs, each of which shall be confined, as nearly as is practicable, to a distinct portion of the subject, and every paragraph shall be numbered consecutively, and no costs shall be allowed for drawing or copying any petition not substantially in compliance with these Regulations, unless otherwise ordered by the Industrial Court.

(3) The petition shall conclude with a prayer that a specified person should be declared duly elected or that the election should be declared void, and shall be signed by all the petitioners.

(4) A petition filed under paragraph (1) shall be in Form 2 set out in the Schedule.

(5) Evidence need not be stated in the petition, but the Industrial Court may, upon application in writing by a respondent, order such particulars as may be necessary to prevent surprise and unnecessary expenses and to ensure a fair and effectual trial, upon such terms as to costs and otherwise as may be ordered.

(6) Where more than one petition is presented relating to the same election, all such petitions shall be dealt with as one petition, so far as the inquiry into the election is concerned.

6. (1) Where a petitioner claims the seat for an unsuccessful candidate alleging that he had a majority of lawful votes, the party complaining of or defending the election shall, within fourteen days before the day appointed for trial, deliver to the Registrar, and at the address given by the petitioner and respondent, as the case may be, a list of the votes intended to be objected to, and of the heads of objection to each such vote.

Claim of seat by an unsuccessful candidate.

(2) The Registrar shall allow inspection of copies of the lists to all parties concerned, and no evidence shall be given against the validity of any vote, or upon any head of objection not specified in the list, except by leave of the Industrial Court, granted for special reasons to be recorded, upon such terms as to amendment of the list, postponement of the inquiry and payment of costs as may be ordered.

7. (1) The respondent in a petition complaining of an improper return and claiming the elective position for another person may lead evidence to prove that the election of that person was improper, and in that case the respondent shall, within seven days before the day appointed for trial, deliver to the Registrar, and at the address, if any, given by the petitioner, a list of the objections to the election upon which he intends to rely.

Complaint of improper return.

(2) The Registrar shall allow inspection of copies of the lists to all parties concerned, and no evidence shall be given by a respondent of any objection to the election not specified in the list except by leave of the Industrial Court, granted for special reasons to be recorded, and upon such terms as to amendment of the list, postponement of the inquiry and payment of costs as may be ordered.

8. The petitioner or petitioners shall submit to the office of the Registrar, the petition together with a notice in writing, signed by him or them, giving the name of an advocate whom he or they authorize to appear on his or their behalf or stating that he or they act for himself or themselves, as the case may be and in either case giving an address in Kenya at which notices may be left, and if no such notice is given all notices may be given by submitting them at the office of the Registrar.

Appointment of advocate by petitioner.

9. A person who is elected may, at any time after he is elected, send or submit to the office of the Registrar, a notice in writing signed by him or on his behalf, appointing an advocate to act as his advocate in case there is a petition against him, or stating that he intends to act

Appointment of advocate by respondent.

for himself and in either case giving an address in Kenya at which notices addressed to him may be submitted or if no such notice is given, all notices and proceedings may be given or served by submitting them at the office of the Registrar.

10. (1) A petitioner shall deposit security for the payment of costs that may become payable by the petitioner not more than ten days after the presentation of a petition under these Regulations.

Security for costs.

(2) The security to be deposited under paragraph (1) shall be determined by the Industrial Court.

11. (1) An affidavit which is filed in a petition shall be read by or on behalf of the witness and shall form part of the record of the trial and a deponent may be cross-examined by the respondents and re-examined by the petitioner.

Affidavit to form part of the record.

(2) Subject to regulation 4(5), a witness shall not be permitted to give evidence for the respondent unless an affidavit sworn by him, setting out the substance of his evidence, together with sufficient certified true copies of the affidavit are submitted to the Industrial Court and the petitioner during the trial.

(3) An affidavit recorded in a language other than English shall be accompanied by a translation in English, with sufficient copies for the judges and other parties, certified by the person translating it as having been translated to the best of his knowledge and ability.

(4) A witness for the petitioner or the respondent who fails to deliver the affidavit under paragraphs (2) or (3) shall not be permitted to give evidence without the leave of the Industrial Court, and the Industrial Court shall not grant such leave unless sufficient reason is given for the failure.

12. The presiding officer shall deliver the following documents to the Registrar not less than forty-eight hours before the date fixed for the trial—

Presiding officer to deliver documents to the Registrar.

- (a) a written complaint of a candidate and the representatives of the candidate;
- (b) the packets of spoilt papers;
- (c) the marked copy register;
- (d) the packets of counterfoils of used ballot papers;
- (e) the packets of counted ballot papers;
- (f) the packets of rejected ballot papers;
- (g) the statements showing the number of rejected ballot papers;
- (h) the minutes relating to the election process; and
- (i) the election report

13. The Industrial Court may, on application by a party or of its own motion, for sufficient reasons limit the time within which a petitioner or respondent shall complete his case.

Limitation of time within which a case must be completed.

14. The Industrial Court may, on the application of a party or of its own motion for sufficient reasons, postpone the beginning of the trial to a date specified by the Industrial Court and an order under this regulation shall forthwith be issued by the Registrar to that effect.

Postponement of trial of a case.

15. (1) No formal adjournment of the Industrial Court during the trial of an election petition shall be necessary, but the trial shall stand adjourned, and may be continued from day to day until it is concluded.

Adjournment of a case.

(2) If one judge of the judges of Industrial Court is disabled by illness or otherwise during the trial, the trial may be continued and concluded by any of the other judges.

16. (1) An election petition shall not be withdrawn without the leave of the Industrial Court, and leave may be given upon terms as to the payment of costs and otherwise as the Industrial Court may think fit.

Withdrawal of petition.

(2) Before leave for the withdrawal of an election petition is granted, there shall be produced affidavits, as required by this regulation by all the parties to the petition and their advocates:

Provided that the Industrial Court may, on cause shown, dispense with the affidavit of any particular person if it seems to the Industrial Court on special grounds to be just so to do.

(3) An affidavit shall state that, to the best of the deponent's knowledge and belief, no agreement or terms of any kind whatsoever has or have been made, and no undertaking has been entered into, in relation to the withdrawal of the petition; but if any lawful agreement has been made with respect to the withdrawal of the petition, the affidavit shall set forth that agreement, and shall make the foregoing statement subject to what appears from the affidavit.

(4) The affidavits of the applicant and his advocate shall further state the ground on which the petition is sought to be withdrawn.

17. (1) An application for leave to withdraw a petition shall be in writing signed by the petitioner or petitioners, his or their advocate or advocates, and shall state the grounds on which the application is supported.

Application for leave to withdraw.

18. (1) The costs of and incidental to the presentation of a petition shall be taxed by the Registrar upon the order of the Industrial Court in the same manner as costs are taxed in the High Court, but subject to such express directions whether general or specific, as the Industrial Court may give, and costs when taxed may be recovered in the same manner as the costs in civil proceedings.

Costs to be taxed by the Registrar.

(2) The Industrial Court may direct that the whole or any part of any money deposited as of security under regulation 9 may be applied in the payment of taxed costs.

(3) There shall be paid in respect of all proceedings under these Regulations the same court fees as are payable in respect of civil proceedings in the High Court in so far as the same are applicable.

SCHEDULE

(r.3)

FORM 1

Received on the.....day of.....20..... at the Registry of the Industrial Court, a petition touching the election..... of.....for.....purporting to be signed by.....(insert the names of petitioners)

Registrar (or other officer to whom the petition is delivered)

(2) Two copies of the petition shall be delivered with the petition

FORM 2

(r. 5 (4))

IN THE INDUSTRIAL COURT OF KENYA THE LABOUR RELATIONS ACT

The petition of.....

Your petitioner A is a person who voted (or had a right to vote) at the above election (or who claims to have had a right to be elected at the above election) or who was a candidate at the above election) and your petitioner B (state in the same manner the right of B)

And your petitioner/s state that the election was held on the.....day of.....20....., when X, Y and Z were candidates, and the returning officer has returned X as being duly elected.

And your petitioners say that (state the facts and ground on which the petitioners rely)

Wherefore your petitioners pray that it be determined that the said X was not duly elected and the election was void.

Date.....20..... Signed: A..... Signed: B.....

Made on the 5th May, 2014.

SAMWEL KAZUNGU KAMBI, Cabinet Secretary for Labour, Social Security and Services.