

S.I. 57 of 2016

ELECTIONS ACT

(Cap 262)

**PRESIDENTIAL ELECTION AND NATIONAL ASSEMBLY
ELECTION (ELECTION PETITION) RULES, 2016**

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**Presidential Election and National Assembly Election
(Election Petition) Rules, 2016**

In exercise of the powers conferred by section 98(1) of the Elections Act the Chief Justice hereby makes the following Rules—

1. These Rules may be cited as the Presidential Election and National Assembly Election (Election Petition) Rules, 2016.

Citation

2. In these Rules—

Interpretation

“Act” means the Elections Act;

“Court” means the Constitutional Court constituted under Article 129 of the Constitution;

“Court day” means any day other than Saturday or dies non;

“Election Petition” means a petition brought in terms of Article 51(3) or Article 82(1) of the Constitution;

“Registrar” means the registrar of the Supreme Court.

3.(1) These Rules shall provide for the practice and procedure of the Court in relation to an election petition.

Practice and procedure of the Court

(2) Where any matter is not provided for in these Rules,

the provisions of the Seychelles Code of Civil Procedure shall apply to the practice and procedure to be observed in connection with the presentation and hearing of an election petition as they apply to civil proceedings before the Supreme Court.

Constitution
of the Court

4.(1) The jurisdiction and powers of the Court in respect of an election petition shall, subject to subrule (2), be exercised by two judges of the Supreme Court sitting together.

(2) The Chief Justice may determine that the jurisdiction and power of the Court in relation to any matter referred to in subrule (1) be exercised by more than two Judges of the Supreme Court sitting together.

Security
for costs

5.(1) Except where an election petition is presented by the Attorney-General, a petitioner shall furnish security in a sum of R50,000 for costs, charges and expenses that may become payable by the petitioner.

(2) The security shall be furnished at the time the petition is presented to Court.

Fees and
costs

6.(1) The provisions of the Court Fees (Supreme Court) and Costs Act shall apply in relation to the fees and taxation of costs of an election petition as they apply to proceedings in the Supreme Court in respect of civil proceedings before the Supreme Court.

(2) For the purpose of subrule (1), the value of the subject matter of an election petition shall be deemed to be SCR50,000.

Particulars
of an
election
petition

7.(1) An election petition shall be made by petition supported by an affidavit and shall contain a concise statement of the material facts on which the petitioner relies and the relief which the petitioner claims.

(2) Where the petitioner alleges that an illegal practice has been committed in relation to the election, the petition shall contain the name and particulars of the person alleged to have committed the illegal practice and the date and place of the commission of the illegal practice.

(3) The Court shall not permit an amendment of an election petition which seeks to include any new matter not pleaded in the petition without first hearing objections, if any, from all respondents.

(4) The Court may permit an amendment of an election petition on such conditions as it considers appropriate, including granting an order giving time for the respondent to answer any new matter sought to be introduced.

(5) Where the petitioner is not the Attorney-General, the Attorney-General shall be made a respondent to the petition.

(6) All persons alleged in the election petition to have committed illegal practices under the Act shall be joined as respondents to the matter.

(7) The petitioner shall file in the registry as many copies of the petition as there are respondents.

Failure to
comply with
the Act and
Rules

8.(1) Where an election petition has not been presented within the time specified in section 44(3) and (4) of the Elections Act or where the petitioner has failed to comply with the provisions of the Act, or these Rules, the registrar shall submit the petition for an order of Court.

(2) The Court shall hear the petitioner before making an order under subrule (1).

(3) In making an order under subrule (1) the Court may consider any matter it deems relevant, including —

- (a) the complexity of the matters averred in the election petition;
- (b) the circumstances of the parties;
- (c) any delays in obtaining access to documents under rule 11.

Procedure
for an
election
petition

9.(1) A respondent who has received notice of an election petition shall enter a response to the petition within 14 Court days after receiving notice of the petition.

(2) Where a respondent fail to comply with subrule (1) the Court may proceed to hear the matter in the absence of that respondent unless the non-compliance has been sufficiently explained in Court.

(3) Extension of time for filing responses may only be granted on good cause being shown.

(4) Where an election petition has been presented and the respondents have complied with the Act and these Rules, the registrar shall issue notice on the respondents fixing the date and time for a preliminary hearing.

Preliminary
hearing

10.(1) At the preliminary hearing the parties shall provide the Court with a statement of agreed facts and each party shall file a list of witnesses and a list of documents on which it seeks to rely during its case.

(2) Any point of law filed before the preliminary hearing shall be argued at the preliminary hearing unless the Court directs that it be heard at the hearing.

(3) The Court may deal with any additional matter at the preliminary hearing in order to ensure that the petition is ready to proceed to be heard as soon as possible.

Access to
records

11.(1) Prior to filing an election petition, any person entitled to bring an election petition in terms of Article 51(4) or Article 82(3) of the Constitution may apply to the Court for an order granting supervised access to and/or official copies of—

- (a) any relevant registers of voters used in the election;
- (b) any relevant official records made with regard to the election.

(2) An application in terms of subrule (1) shall be supported by affidavit evidence showing good cause for the application.

(3) For the purposes of this rule an “official copy” shall refer to any copy of a document referred to in subrule (1) which is certified by the Electoral Commission to be a true copy of the original.

(4) An order of the Court granting an application brought under sub-rule (1) shall be complied with within five Court days of the order.

12.(1) A petitioner shall not withdraw an election petition without leave of the Court, on special application made to the Court.

Withdrawal
of an
election
petition

(2) Where there are more petitioners than one, the application for withdrawal shall not be made except with the consent of all the petitioners.

Evidence
required for
withdrawal
of an
election
petition

13.(1) Before leave for withdrawal of an election petition presented by any person other than the Attorney-General is granted, there shall be produced affidavits by all the parties to the election petition but the Court may on cause shown dispense with the affidavit of any particular person if it seems to the Court upon special ground, to be just so to do.

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

(3) The affidavit of the petitioner shall further state the ground on which the election petition is sought to be withdrawn.

(4) Where the deponent of an affidavit is a registered political party, the affidavit shall be made by the leader of that party.

(5) Copies of the affidavits shall be delivered to the Attorney-General at a reasonable time before the hearing of the application for withdrawal, and the Court may hear the Attorney-General in opposition to the allowance of the withdrawal of the election petition, and shall have power to receive evidence on oath of any person whose evidence the Attorney-General considers material.

(6) For the purposes of these Rules an agreement made with respect to the withdrawal of an election petition shall be deemed to be unlawful, if such agreement is made or entered into for the withdrawal of the election petition in consideration of any payment of any sum to any person, or in consideration of the withdrawal or non-presentation of any other election petition.

14. Where the Court is of opinion that it would be for its convenience and that of all the parties concerned that two or more election petitions be consolidated, the Court may, of its own motion or on application of any party, direct that the petitions be consolidated and treated as one petition.

Consolidation
of election
petitions

15. The hearing of an election petition on any day shall take priority over other business of the Court listed for hearing on that day.

Priority
in
hearing

16.(1) Where the Court finds that there is evidence that an illegal practice was committed by a person who was not a party to the election petition, the Court shall hold a hearing in terms of section 47(2) of the Act.

Hearing to
determine
illegal
practices

(2) The registrar shall issue summons to any person accused of the illegal practices informing that person of a date for the hearing.

(3) For a minimum of ten court days prior to the hearing the Court shall make the court proceedings and all evidence in the petition available to the person accused of the illegal practices.

(4) At the hearing the Court shall read a short statement of the allegations against the person.

(5) The person shall be granted an opportunity to present a case, give a sworn statement and call witnesses.

17. The Presidential Election and National Assembly Election (Election Petition) Rules, 1998 are hereby repealed.

Repeal of
S.I. 10 of 1998

MADE this 5th day of September, 2016.

MATHILDA TWOMEY
CHIEF JUSTICE