

THE PROCESS FOR ELECTION PETITIONS

*(Rules and Procedure for the
Presentation of Election petitions)*

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Paragraph 1

DESCRIPTION

Interpretation Paragraph

BRIEF/COMMENTS

The rules briefly define a number of words and phrases to avoid ambiguity when such words are used in its contents

Paragraph 2

DESCRIPTION

Security for cost

BRIEF/COMMENTS

A petition shall at the time of filing his petition deposit a sum of money with the tribunal as the tribunal shall determine, such sum shall not be less than N5,000 known as security for cost. The money is to be used for expenses of witnesses summoned on his behalf or to the respondent.

The petition shall not proceed in the absence of this deposit.

Paragraph 3

DESCRIPTION

Presentation of an Election Petition

BRIEF/COMMENTS

A petitioner or petitioners shall present their petition personally or through their solicitor and a receipt shall be issued.

The Petitioner shall make available to the tribunal one copy each for the Respondents and 10 copies for the tribunal.

The petitioner shall pay the required fees for certifying all copies and for service of the petition on the Respondents.

DESCRIPTION

Contents of the Election Petition

BRIEF/COMMENTS

The petition shall state the parties interested in the petition, state the right of the petitioner to bring the petition, it shall also state details of the election being challenged, the scores of each candidate and state the person returned as winner, it shall state the facts being relied upon in bringing the petition and the reliefs/prayers being sought from the tribunal.

The petition shall be divided into paragraphs and numbered with each dealing with distinct issues.

The petition shall conclude with the prayers and shall be signed by the petitioner(s) or their solicitor.

The petition shall have to be accompanied by a list of witnesses the petitioner intends to call to testify on his behalf, written depositions on oath of the witnesses, and copies or a list of every document the petitioner shall be relying on at the hearing of the petition.

A petition that fails to comply with these conditions may be struck out by the tribunal.



Paragraph 5

DESCRIPTION

Further particulars

BRIEF/COMMENTS

For the sake of a fair trial the tribunal may order further details from the petitioner(s), and to prevent surprises during the trial.

Paragraph 6

DESCRIPTION

Address for Service

BRIEF/COMMENTS

The petition shall furnish the secretary of the tribunal with the addresses of all those names as respondents in the petition so they can be served copies of the petition.

Paragraph 7

DESCRIPTION

Action by the Secretary

BRIEF/COMMENTS

Upon a successful filing of the petition, the secretary of the tribunal shall cause copies to be served on the Respondents, post a CTC copy on the notice board, and transmit a Copy to the presiding members of the tribunal.

In serving the Respondents, the secretary shall state a date not earlier than 5 days and not later than 7 days for the respondents to enter an appearance for the petition.

Paragraph 8

DESCRIPTION

Personal Service

BRIEF/COMMENTS

The petition with all the accompanying documents to be served on the respondent shall be served personally on each respondent.

Where it proves impossible to serve the Respondent(s) personally, the tribunal shall order a substituted mode of service.

DESCRIPTION

Entry of Appearance

BRIEF/COMMENTS

Where a Respondent intends to challenge the petition, he shall file a memorandum of appearance signed personally or by his solicitor giving the name and address of the solicitor representing him and address for subsequent service of documents on him.

He shall make sufficient copies for each of the petitioners and three copies for the tribunal and pay the prescribed fee.

Where a respondent has a preliminary objection against the hearing of the petition, he shall file a conditional memorandum of appearance.

Failure to file a memorandum of appearance shall not disqualify the respondent from filing a reply to the petition not later than 21 days from the receipt of the petition.

The secretary to the tribunal shall cause the memorandum filed by the Respondent to be served on all other parties.



Paragraphs 12 and 13

DESCRIPTION

Filing of Reply

BRIEF/COMMENTS

A respondent shall file a reply to the petition within 21 days from the service on him of the petition, wherein he shall specify which facts are admitted and those denied and set out the facts he relies upon in opposition to the petition.

The reply which may be signed by the Respondent or his solicitor, shall be accompanied by copies of documentary evidence, a list of witnesses and the written depositions on oath.

The respondent shall deposit copies to be served on other parties and 10 extra copies of the reply for the tribunal secretary and pay the prescribed fees for service.

An objection to the hearing of the petition shall be filed along with the reply and taken with the substantive trial.

The secretary shall cause the reply to be served on all other parties to the petition.



DESCRIPTION

Amendment Of Election Petition And Reply

BRIEF/COMMENTS

Parties are allowed to amend the petition or the reply but such amendment must be within the time allowed for the filing of the petition.

After the expiration of the 21 days for the presentation of the petition, amendments are not allowed to the petition to introduce a content of a petition not earlier contained therein, or affecting a substantial alteration of the ground for bringing the petition or prayer in the petition.

In the same light, a reply cannot be amended once the 21 days for the filing of the reply has expired, alleging the claim of the seat or office by the petitioner is incorrect or false, or effecting any substantial alteration in or addition to the admission or denials contained in the original reply filed.

Where the petitioner claims he has the highest number of valid votes cast, the Respondent shall in his reply clearly set out the number of votes he objects to, his reason and how he intends to prove the petitioner does not deserve to succeed.

DESCRIPTION

Petitioner's Reply

BRIEF/COMMENTS

Where a respondent raises new issues in his reply, the petitioner shall have the right to within 5 days file a reply to address the new issues raised by the Respondent.

The Petitioner shall not however bring in any new facts, ground or prayers which may add to the contents of the petition filed by him.

DESCRIPTION

Further Particulars

BRIEF/COMMENTS

A respondent may not later than 10 days of filing his reply apply to the court for direction and the motion shall be immediate set down for hearing.

The supply of further particulars by the Petitioner does not give him the leverage to introduce new facts to the petition.



Did You Know?

2

What are the grounds for challenging an election result?

That the person declared winner was not qualified to contest the election in the first place.

That election was invalid due to corrupt practice or non-compliance with the electoral act; or

That the winner did not score the majority of lawful votes

1

What court does a Presidential Election petition matter start from?

Court of Appeal and ends at the Supreme Court where an appeal is filed

3

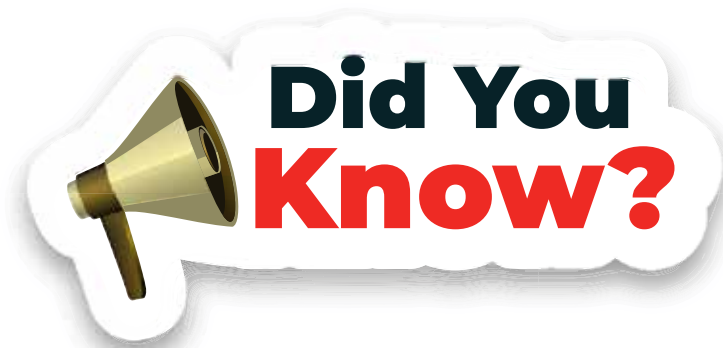
What is the time frame for a matter before an election tribunal?

- 180 days from the filing of the petition
- 60 days for an appeal

4

What is the timeline for a candidate to file a petition from the day the result was announced?

- 21 days



5

What is the number of days to appeal an election tribunal's judgement?

- 14 days for interlocutory appeals
- 21 days for final judgment

6

Who can bring an election petition to court?

The candidate who contested and/or the political party

7

When will an election tribunal order a rerun of an election?

- Where the tribunal finds the person returned was not validly elected, the election shall be nullified and order a rerun.
- When the election is inconclusive following the cancellation of election due to irregularities such as overvoting, and where the votes from such a polling unit(s) can substantially affect the final outcome of the election, a rerun will be ordered in such polling units.

8

When will an election tribunal order the reinstatement of the person with the second-highest votes in an election?

Where a person declared winner by INEC is found not to have been qualified to contest. The person with the second highest number of valid votes will be declared the winner.

Paragraph 18**DESCRIPTION****Pre-hearing Session and Scheduling****BRIEF/COMMENTS**

A petitioner shall within 7 days of the receipt of the Respondents reply or of the service of his reply to the respondents reply apply to the tribunal for issuance of a pre-hearing notice.

The tribunal shall issue the parties a pre-hearing notice accompanied by a prehearing information sheet.

The pre-hearing shall dispose of all interlocutory matters and give general direction for the hearing of the petition such as calling of witnesses, fixing clear dates for hearing, tendering of documents etc.

Where a petitioner fails to apply for issuance of pre-hearing notice, the Respondent may either apply for same or **apply that the petition be dismissed.**

Where non of the parties apply for a pre-hearing notice, **the tribunal shall dismiss the petition as abandoned.**

At the pre-hearing the tribunal shall enter a scheduling

order for the joinder of parties, amending processes, order of witnesses and tendering of documents, and other matter to promote speedy disposal of the petition, admission of facts and documents by consent, settlement of issues hearing and determination of objections on points of law, narrowing the points of dispute between witnesses, order for hearing cross petition, direct parties to streamline number of witnesses and objections to documents.

The pre-hearing session shall be completed within 14 days of its commencement and hearing is from day to day after which a report shall be issued by he tribunal to guide whole proceedings.

If the petitioner fails to participate in the prehearing session **the tribunal shall dismiss the petition.** Where the respondent fails to attend and participate, **the tribunal may enter judgment against him** (which may be set aside on application brought within 7 days).

DESCRIPTION

Hearing of Petition

BRIEF/COMMENTS

All election matters must be heard and determined in an open tribunal.

The tribunal shall set the time and place for the hearing, having regard to the proximity of where the election was held and the parties shall be notified by hearing notice not less than 5 days to the hearing date. Including posting a copy of the notice on the tribunal notice board.

The Tribunal shall in addition, post a copy of the notice in the place where nomination papers were delivered within the constituency prior to the election. However, failure to do this is not detrimental to the petition.

DESCRIPTION

Postponement of Hearing

BRIEF/COMMENTS

The hearing of the petition may be postponed to a different date upon application by a party or at the instance of the tribunal. In such a situation a notice to that effect shall be issued and the Secretary shall cause the notice to be served on all the parties including sending a copy to the Resident Electoral Commission who shall post a copy at the constituency.



Paragraphs 24 , 25, and 26**DESCRIPTION****Non arrival of Chairman of Tribunal****BRIEF/COMMENTS**

Where at the time fixed for the hearing the chairman or presiding judge has not arrived, the hearing shall stand adjourned to the next day and from day to day.

Except the tribunal directs otherwise, the hearing of the petition shall be on a daily basis from day to day.

If the Chairman of the tribunal who begins the hearing becomes disabled by illness or otherwise, the hearing may be concluded by another chairman appointed by the appropriate authority.

Upon commencement of the hearing, if the hearing cannot continue on the next day being a Saturday, or public holiday, the tribunal shall adjourn to a definite day and the Secretary shall immediately post the notice of same on the notice board.

The hearing may continue on Saturday or public holiday if circumstances dictate.

Paragraph 27**DESCRIPTION****Power of the Chairman to Dispose of Interlocutory Matters****BRIEF/COMMENTS**

The chairman shall have control over the proceedings and have the power to dispose of all interlocutory applications and issues.

At the conclusion of the hearing and after the judgment is prepared, any of the members of the tribunal may deliver it in the absence of the Chairman due to ill health or otherwise.

The tribunal shall at the end of the hearing determine if the candidate returned was validly returned or if the election was void or invalid, and if it was, order a re-election.

Paragraph 29

DESCRIPTION

Withdrawal and abatement of petition

BRIEF/COMMENTS

A petition may be withdrawn by an application to the tribunal with the consent of all petitioners. Copies shall be served on all the respondents.

The petition(s) shall also accompany their application with an affidavit stating no agreement has been reached for the withdrawal and if any lawful agreement was reached, they are to state the same.

The Tribunal shall set a date for the hearing of the application to withdraw and where a withdrawal is granted, the petition shall be liable to pay cost to the Respondent as the tribunal may direct.

The proceedings shall immediately terminate when the sole petitioner dies and the tribunal may strike out the petition.

Paragraphs 34 and 35

DESCRIPTION

Notice of no Opposition to a Petition

BRIEF/COMMENTS

A respondent who does not intend to challenge the petition may file a notice signed by him or his solicitor stating he does not intend to oppose the election petition. This right does not avail INEC.

The respondent shall then be excused from appearing or acting as a party against the election petition in any proceedings.

Where the petitioner applies to withdraw a petition or the sole petitioner dies, or there is a notice from the respondent of his intention not to oppose the petition, one such notice is received by the secretary to the tribunal shall cancel the notice of hearing and served on all parties.

Paragraphs 36

DESCRIPTION

Discretion of Tribunal or Court if no reply

BRIEF/COMMENTS

Where the Respondent fails to enter an appearance or file a reply to the petition, so long as the petitioner complains of undue return the tribunal may proceed to determine the petition without hearing evidence or continued on only the evidence the tribunal may deem necessary.

DESCRIPTION

Fees / Cost

BRIEF/COMMENTS

Fees payable for a petition are provided for, and fees shall be paid for the daily hearing of the petition.

Fees are not paid by INEC or the attorney General if he is made part of the petition.

The tribunal shall not pay fees for summoning witnesses at its own instance.

All costs and charges associated with the petition shall be paid by the parties to the petition. The tribunal shall determine the amount and the party who shall defray such cost considering cost caused by vexatious conduct, unfunded allegations or objection on the part of the party.

Where the tribunal finds the election to be void and finds that the fault was wholly or partly from the default of the officer responsible for the conduct of the election order that part of the cost awarded to be paid to the successful party be paid by that officer.

Money deposited as security shall, when no longer needed be returned to the party who deposited same.

On the application of a party in whose favour a cost has been awarded the tribunal may order the payment of such cost from the security deposited.



DESCRIPTION

Evidence at Hearing

BRIEF/COMMENTS

Evidence at the tribunal is primarily governed by the Evidence Act, in addition, facts are proved by written depositions and oral examination of witnesses in open court.

Documents agreed by parties shall be tendered from the bar by the counsel and not through any witness. Oral examination of witnesses shall only as to cross-examination. The tribunal may order how evidence of specific fact may be given, either by statement on oath, by the production of documents or entries in books, production of specified newspapers.

The tribunal may direct that the number of witnesses be limited as specified by the order of direction.

Except with the permission of the Tribunal or court giving exceptional circumstances, no document or other real evidence shall be received at the hearing except it had been listed or filed along with the petition.

The petitioner shall have two weeks to prove its case in the case of a councillor, Chairman and State House of Assembly, three weeks for House of Reps, Five weeks for Senate, Six Weeks for the Governor and Seven weeks for the President.

All respondents shall have at most 10 days to present their defence.



Paragraphs 42**DESCRIPTION****Calling witnesses****BRIEF/COMMENTS**

The tribunal may summon a person to testify as a witness and examine the witness though not called by either party and the parties may thereafter cross-examine the summoned witness.

Expenses of the summoned witness shall be paid from the cost of the election petition.

In ordering the production of and inspection of documents used in the election, or examining a witness who produces the same, the way in which a particular vote of a person shall not be disclosed.

Paragraphs 43**DESCRIPTION****Privileges of a Witness****BRIEF/COMMENTS**

A witness called shall not be excused from answering a question on the ground that the answer may incriminate him.

A witness who answers truthfully all questions shall be entitled to a certificate of indemnity stating the witness has so answered. And such a certificate may be used to bar any criminal proceeding against such a truthful witness.

The testimony of a witness shall not be admissible in any court case against such person except a case of perjury.

Paragraphs 44**DESCRIPTION****Evidence of Respondent****BRIEF/COMMENTS**

The Respondent shall in a petition complaining of undue return, may give evidence to prove the return of the petitioner was also undue as if he were the petitioner.

DESCRIPTION

Enlargement and Abridgment of Time

BRIEF/COMMENTS

The tribunal reserves the power to extend the time for a party to carry out any act he failed to do within the time prescribed.

The party shall apply either ex-parte or on notice as shall be directed by the tribunal supported by an affidavit giving reasons for the failure to act within time.

DESCRIPTION

Hearing in a Petition

BRIEF/COMMENTS

Where a petition comes up for hearing and all the parties fail to be present, the tribunal shall strike out the petition.

When the petitioner appears but the respondent does not appear, the petitioner shall proceed to prove his case and judgment will be entered.

If the respondent is present and the petitioner fails to appear, the respondent shall be entitled to final judgment dismissing the petition.

Documentary evidence shall be accepted by the tribunal and considered before judgment.

A party shall close his case when he has concluded evidence. The tribunal may on their own close a party's case who fails to conclude the same within a reasonable time.

The secretary shall take custody of all documents or objects tendered in evidence and mark them appropriately, make a list of all exhibits to form part of the proceedings.

At the conclusion of the Petitioner's case, if the respondent does not present any witnesses, the petitioner shall have 10 days to file a written address and serve on the Respondent who shall have 7 days to respond by filling his own final address.

Where the Respondent presents a witness or witnesses, he shall within 10 days after closing his case file its final written address, the Petitioner shall have 7 days to file its own final address.

The party who files first shall have a right to reply on points of law only within five days after service of the other party's address.

Paragraphs 47

DESCRIPTION

Motions and Applications

BRIEF/COMMENTS

All motions shall be heard at the pre-hearing session except in extreme circumstances with leave.

All applications must be brought by way of motion accompanied by affidavit and a written address and served on the other party. Where the party intends to challenge the application, he shall within seven days file a counter affidavit and a written address.

The applicant may on receipt of the counter and written address file a reply on points of law within three days.

Paragraphs 48

DESCRIPTION

Service of Notice

BRIEF/COMMENTS

Where any document, except for those treated in Paragraph 7 is to be served on a party, it may be served by delivering it to the person or leaving it at his last known place of abode.

Where a party has given his address for service, it would be sufficient to serve him through the person mentioned therein or his solicitor.

A party may change his address for service but must file notice to that effect else his old address shall continue to be used for service on him.

The tribunal may however on application of a party order that service be effected in any other convenient manner as provided by the rules of the High Court of the State.

Paragraphs 49 and 50

DESCRIPTION

Two or more Candidates as Respondents

BRIEF/COMMENTS

Two or more candidates may be made respondents to the same petition and their case may be heard at the same time.

Where two or more petitions are presented in relation to the same election or return, the petitions shall be consolidated and dealt with as one petition except the tribunal otherwise directs.

DESCRIPTION

Electoral Officers as Respondents

BRIEF/COMMENTS

Where a petition complains of the conduct of electoral officers and they are joined as respondents they cannot decline from opposing the petition except with the consent of the Attorney-General of the Federation.

If the consent is not given the Government shall indemnify the electoral officer against any cost awarded against him by the tribunal.

Where electoral officers are made parties in the tribunal then they may be represented by the same counsel representing the commission or by the office of the attorney general

DESCRIPTION

Duplicate of Documents and Noncompliance with Rules etc

BRIEF/COMMENTS

A party filing any process or document at the tribunal, shall in addition to copies left for each party shall leave at least 3 duplicate copies for use by the tribunal with the Secretary.

Noncompliance with any of the provisions of the rules, shall not render any proceeding void except expressly or impliedly stated. However, the procedure may be set aside as an irregularity or amended.

An application to set aside a petition or process for irregularity shall not be allowed except brought within a reasonable time and before the party bringing it has taken any further step.

An election petition shall not be defeated by an objection as to form, if it is possible remedy the error by amendment or as the tribunal may direct.



Paragraphs 54 and 55**DESCRIPTION****Application of Rules of Court****BRIEF/COMMENTS**

The rules of the Federal High Court may be adopted in resolving any issue which these rules and procedures for election petitions do not cover.

Appeals to the Court of Appeal or the Supreme Court shall be determined in accordance with the practise and procedure relating to civil appeal in the Court of Appeal or the Supreme Court.





ActionAid Nigeria is an affiliate of the ActionAid Federation with footprints in over 70 countries across the globe. As an anti-poverty non-governmental organization, we have been working in Nigeria to combat poverty and promote social justice across the 36 states of the federation and the FCT for over 20 years.

Our strategic objectives include: enhancing people's power in democratic and inclusive governance, working to protect women and girls from violence by creating opportunities for economic independence and decision-making, enhancing women's leadership in accountable humanitarian and resilience systems, and strengthening systems and increasing resource diversification for quality programme delivery.

ActionAid Nigeria believes that poverty can be eradicated if the right redistribution of resources and resilience are prioritized.

The Citizens' Led Engagements on Judicial Accountability in Post-Election Justice Delivery in Nigeria (CLEAP-Justice) is a 12-month citizen-centred and citizen-driven intervention that will contribute to promoting accountability in post-election justice delivery in Nigeria.



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