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Nauru

G. N. No. 530 / 2016

ELECTION PETITION RULES 2016

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In exercise of the powers conferred by section 107 of the Electoral Act 2016, the Chief Justice makes the following Rules:

PART 1 – PRELIMINARY MATTERS

1 Citation

These Rules may be cited as the Election Petition Rules 2016.

2 Commencement

These Rules commence on the day they are notified in the Gazette.

3 Interpretation

(1) In these Rules, unless the context otherwise requires:

‘*Act*’ means the Electoral Act 2016;

‘*Agent*’ may include a barrister and solicitor or pleader in proceedings under these Rules;

‘*Court*’ means the Supreme Court sitting as the Court of Disputed Returns under Part 8 of the Act;

‘*Electoral Commissioner*’ means the person appointed under section 14 of the Act;

‘*Judge*’ means any Judge of the Court and includes the Chief Justice;

‘*Registrar*’ means the Registrar of the Supreme Court;

‘*Registry*’ means the registry of the Supreme Court.

PART 2 – FILING, PUBLICATION AND SERVICE OF PETITION AND COSTS

4 Filing petitions

An election petition must be filed at the registry by the petitioner or his or her agent named in the petition.

5 Publication of petition

(1) The Registrar, upon the filing of the petition must send a copy of the petition to the Electoral Commissioner.

(2) The Electoral Commissioner must immediately publish the petition by posting it up in a prominent place in the constituency of the elected member against whose election the petition is presented.

6 Elections petition list

(1) The Registrar must prepare an election petition list containing:

- (a) the names of the petitioners and their agents;
- (b) the names of the respondents and their agents; and
- (c) the addresses to which notices may be sent and documents served.

(2) The election petition list may be inspected at the office of the Registrar at any time during official office hours and will be posted on the notice board of the Court for that purpose.

7 Security for costs

At the time of filing, the petitioner must deposit \$500 in the registry as security for costs and no petition may be processed until payment has been made.

8 Time for giving notice

The petition and notice of payment of security of costs must be served on the respondent by the petitioner within seven days exclusive of the day of presentation.

9 Service of documents

(1) Service of the petition and notice of security of costs on the respondent, and on the parties in general, must be personal.

(2) Despite sub-rule (1), if the Judge is satisfied on receipt on an application no later than 3 days after filing petition that all reasonable efforts have been made at service, the Judge may:

- (a) order what has been done constituted substituted service subject to conditions as he or she thinks reasonable; or
- (b) make an order for substituted service as authorised by the Supreme Court Rules.

(3) Upon filing, the petitioner must:

- (a) leave at the registry a written address within the jurisdiction at which documents addressed to him or her may be left; and
- (b) where none is given, then subject to sub-rules (1) and (2), all other notices of objections to the recognisances and all other notices and proceedings may be given by posting them up on the notice board of the Court.

- (4) In case of evasion of service, the posting up of a notice of petition having been filed, stating the petitioner, the prayer and the notice of security for costs is equivalent to personal service if so ordered by the Court.
- (5) The Registrar must keep a book at his or her office in which all addresses given under this rule must be entered and which must be open to inspection during office hours.

PART 3 – FORM OF PETITION

10 Contents and form of petition

- (1) An election petition must comply with the following requirements:
 - (a) set out the facts relied on to invalidate the election or the declaration of the election which must be divided into paragraphs each of which concerns a distinct part of the subject and be numbered consecutively;
 - (b) a prayer seeking the relief to which the petitioner claims to be entitled;
 - (c) be signed by a candidate at the election or by a person who was qualified to vote at the election;
 - (d) be attested to by two witnesses; and
 - (e) filed with the registry within 30 days after publication in the Gazette of the notice in relation to the election in accordance with section 88 of the Act.
- (2) The form of the petition may be as in Forms 1, 2 and 3 in the Schedule with amendments, additions or omissions as the facts and grounds upon which the petitioner relies may require.
- (3) Costs may be awarded if a petition is not in substantial compliance with sub-rule (1).

11 Evidence not to be presented but particulars may be ordered

Evidence need not be presented in the petition but the Court may order particulars to prevent surprise and unnecessary expense upon the terms as to costs and otherwise as may be appropriate.

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12 List of voters objected to where seat claimed by unsuccessful candidate

- (1) Where a petition claims the seat for an unsuccessful candidate alleging that he/she had a majority of lawful votes, the party complaining of and the party defending the election must, 7 days before trial, deliver to the Registrar, and to the address, if any, of the petitioners or the respondent as applicable;
 - (a) a list of the votes intended to be objected to; and
 - (b) the objections to each vote.
- (2) The Registrar must allow inspection of the copies of the lists delivered in sub-rule (1) to all parties concerned.
- (3) No evidence may be given against the validity of any vote nor upon any objection not specified in a list except with leave of the Court upon terms as to amendment of the list, postponement of the inquiry and costs as may be ordered.

13 List of objections in recriminatory case

- (1) Where the respondent to a petition complaining of undue election and claiming the seat for some other person intends to give evidence to prove that that person was not duly elected, he or she must, 7 days before the trial, deliver to the Registrar and also at the address, if any, of the petitioner, a list of his or her objections to the election of that person on which he or she intends to rely.
- (2) The Registrar must allow inspection and copies of all the lists to all parties concerned.
- (3) No evidence may be given by a respondent of any objection to the election not specified in the list except with leave of the Court upon terms as to amendment of the list, postponement of the inquiry and costs as may be ordered.

PART 4 - TRIAL

14 Time and place of trial of petition

- (1) The time and place of trial of each election petition must be fixed by the Judge or Registrar as appropriate.
- (2) Public notice in writing will be given by the Registrar by:
 - (a) posting a notice on the notice board of the Court; and
 - (b) by arranging service of a copy to the address given by the petitioner or his/her agent, if any, and another to the address given by the respondent or his/her agent, if any, 10 days before the trial.
- (3) The notice of the trial may be in the form set out in Form 4 in the Schedule.

15 Postponement of trial and amendment of petition

(1) A Judge may, by order made upon the application of a party to the petition:

(a) postpone the trial before or during the trial; or

(b) upon the application of the petitioner, allow the petition to be amended upon terms and conditions as may be just.

(2) The application must be made by motion on notice to the other party to the petition.

16 Attendance of Registrar

The Registrar must attend at the trial of the election petition and perform functions and duties as may be prescribed to him or her by the Judge.

17 Attendance of Secretary for Justice and Border Control

The Secretary for Justice and Border Control or a person appointed by him or her must attend the trial of every election petition and may if required act as *amicus curiae* to the Court.

18 Attendance of Electoral Commissioner

The Electoral Commissioner may enter an appearance as a respondent in any proceedings before the Court relating to a petition and be represented and heard.

19 Interlocutory matters

All interlocutory questions and matters may be heard and disposed of, where appropriate, before the Registrar who will have the same control over the proceedings as a Judge in the ordinary proceedings of the Supreme Court.

PART 5 - WITHDRAWAL OF PETITION

20 Withdrawal of election petition

(1) An election petition may not be withdrawn without leave of the Judge, and leave may be given upon terms and costs as the Judge may think fit.

(2) If a petition is withdrawn, the petitioner is liable to pay the costs of the respondent and may forfeit security for costs.

(3) Where there is more than one petitioner, application for withdrawal can only be made with the consent of all the petitioners

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- (3) Subject to sub-rule (5), before leave for withdrawal of a petition is granted, all parties to the petition must produce affidavits.
- (4) The Judge may, on cause shown, dispense with the affidavit of any particular person if it seems to the Judge on special grounds to be just to do so.
- (5) Each affidavit must state that, to the best of the deponent's knowledge and belief;
 - (a) no agreement or terms of any kind whatsoever has been entered into in to the withdrawal of the petition; but
 - (b) if any lawful agreement has been made with respect to the withdrawal of the petition; then
 - (c) the affidavit must set forth that agreement and must make the preceding statement subject to what appears in the affidavit.
- (6) The affidavits of the applicants must further state the ground on which the petition is sought to be withdrawn.

21 Application to withdraw petition

- (1) An application for leave to withdraw a petition must be filed at the registry.
- (2) The application must be in duplicate and signed by the petitioner or petitioners and it must state the ground on which the application is being supported.
- (3) An application may be in the form set out in Form 5 of the Schedule.

22 Copy of application to be given to respondent

- (1) A copy of the notice of an application to withdraw his or her petition must be given by the petitioner to the respondent and to the Electoral Commissioner.
- (2) The Electoral Commissioner must within 24 hours publish the notice by posting it up in a prominent place in the constituency of the member against whose election the petition is presented.
- (3) The petitioner must arrange for notice to be published in the Government Gazette and the Government of Nauru website.
- (4) The costs of publication, if any, must be paid by the petitioner and the notice may be in the form set out in Form 6 of the Schedule.

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23 Time and place of hearing of application

The time and place of hearing of the application to withdraw may be fixed by the Judge or the Registrar as appropriate but must not be less than 14 days after the notice of application to withdraw.

24 Application to be substituted as petitioner upon withdrawal

- (1) Any person who might have been a petitioner in respect of the election to which the petition relates may, within 7 days after publication of the petitioner's notice of application for leave to withdraw his/her petition under Rule 20, give notice in writing signed by him/her or on his/her behalf to the Registrar of his or her intention to apply at the hearing to be substituted for the petitioner.
- (2) Failure to comply with sub-rule (1) does not preclude application being made at the hearing.
- (3) On the hearing of the application for leave to withdraw, any person who might have been a petitioner in respect of the election to which the petition relates may apply to the Judge to be substituted as a petitioner, and the Judge may if he or she thinks fit substitute person accordingly.
- (4) If the proposed withdrawal is in the opinion of the Judge induced by any corrupt bargain or consideration, he or she may, by order, direct that the security given on behalf of the original petitioner remain as security for the substituted petitioner and the original petitioner is liable to pay the costs of the substituted petitioner.
- (5) If the Judge does not so direct, then security for costs of \$500 as would be required for a new application under rule 6 will be required of the substituted petitioner before he or she proceeds with his or her petition and within 3 days of the order of substitution.
- (6) Subject to sub-rule (5), a substituted petitioner will be in the same position and subject to the same liabilities as the original petitioner.

PART 6 – ABATEMENT BY DEATH

25 Abatement of petition by death

- (1) An election petition may be abated by the death of a sole petitioner or of the survivor of several petitioners.
- (2) The abatement of a petition will not affect the liability of the petitioner or of any other person for the payment of costs previously incurred.
- (3) Notice of abatement of a petition, by death of the petitioner or surviving petitioner, may be given by any person who might have been a petitioner in respect of the election to which the petition relates in the same manner as notice of an application to withdraw a petition under rules 20 and 21.
- (4) A person may, within 14 days of the publication of notice, apply to be substituted for the deceased petitioner.

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(5) The Judge may, if he or she thinks fit, substitute a petitioner applying to be so substituted under sub-rule (3) subject to security for costs under rule 6 and subject to like conditions being given to the substituted petitioner.

(6) Notice under sub-rule (3) may be in the form set out in Form 7 of the Schedule.

26 Death, resignation or notice to oppose or not to oppose of respondent

(1) If before the trial of an election petition, a respondent dies or vacates his or her seat in Parliament, or gives notice in writing to the Registrar that he or she does not intend to oppose the petition, the petition is not abated but must continue, whether or not any person applies to be admitted as a respondent as hereinafter provided.

(2) The manner and time of the respondent's giving notice to oppose the petition, must be by leaving notice in quadruplicate signed by the respondent at the office of the Registrar, 6 clear days before the hearing.

(3) Notice may be in the form set out in Form 8 of the Schedule.

(4) Upon notice being left at the office of the Registrar, the Registrar must within 24 hours:

(a) send a copy by post to the petitioner and to the Electoral Commissioner; and

(b) arrange to have notice advertised at least on one occasion in the Gazette and on the Government of Nauru website.

(c) The costs of publication, if any, must be paid by the respondent.

(5) The Electoral Commissioner must post the notice in a prominent place in the constituency in which the respondent was elected.

(6) Any person who may have been a petitioner in respect of the election to which the petition relates may, within 14 days of publication of notice, apply to the Judge to be admitted as a respondent to oppose the petition, and may be admitted accordingly.

(7) Despite sub-rule (6), the number of persons admitted as a respondent to oppose a petition must not exceed 3.

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- (8) A respondent who has given notice of his or her intention not to oppose a petition will not be allowed to appear or act as a party against petition in any proceedings thereon.

27 Revoking notice of hearing

- (1) The Registrar must immediately revoke the notice of trial on:
- (a) receiving the petitioner's application for leave to withdraw notice; or
 - (b) receiving notice of the abatement of the petition by death; or
 - (c) receiving of a notice pursuant to rule 26 (1), if notice is received after the notice of trial has been given and before the hearing has begun.
- (2) The revocation notice must be given in the same manner as the notice of hearing under rule 14.

PART 7 – COSTS, FEES AND OTHER PROVISIONS

28 Costs and fees

- (1) All costs of and incidental to the filing of a petition and to the consequent proceedings are borne by the parties to the petition in manner and proportion as the Court may determine.
- (2) Any costs which in the opinion of the Court have been caused by vexatious conduct or unfounded allegations on the part of either party, and any needless expense incurred or caused on the part of either party, may be ordered to be carried by the party by whom it has been incurred or caused, whether or not they are on the whole successful.
- (3) Costs may be taxed in the same manner as they are taxed in the Supreme Court and may be recovered in the same manner as costs in civil proceedings.
- (4) The Court may direct that the whole or any part of security for costs be applied in the payment of taxed costs.
- (5) The same Court fees payable in civil proceedings in the Supreme Court is payable under these Rules where appropriate.

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29 Informality of proceedings not fatal

No proceedings under these Rules may be defeated by any formal objections.

30 Court May Enlarge Time

The Court may for good reason enlarge any period of time prescribed by these Rules.

SCHEDULE

FORM 1

PETITION

(Claiming the seat and a scrutiny of the recount)

IN THE SUPREME COURT OF NAURU

AT YAREN

THE ELECTION PETITION RULES 2016

(Rule 4)

Election for the Constituency ofheld on theday of 2016.

The petition of A.B ofwhose name is subscribed.

- Your petitioner claims to have a right to be returned at the above election.
- And you petitioner states that the said election was held on the day of 20....

When C.D. and your petitioner were candidates and the Electoral Commissioner has returned the said C.D. as being duly elected.

- And your petitioner further says that one E.F., a registered voter of, applied for a ballot paper and his/her application was refused by the Electoral Commissioner in his/her capacity as Returning Officer on the alleged ground that a vote had previously been given in his/her name and that the said E.F. thereupon recorded his vote in a tendered ballot paper, and that the said last mentioned vote is valid and ought now to be added to the poll of your petitioner.
- And your petitioner further says that two marked ballot papers being in favour of the said C.D. for the purposes of election as clerks and messengers and voted at the said election were erroneously rejected by the Electoral Commissioner in his/her capacity as Returning Officer and his/her objection was objected to at the time, and are valid and ought now to be added to the poll of your petitioner.
- And your petitioner further says that the said Returning Officer erroneously received certain ballot papers as votes for the said C.D. which are void and ought now to be struck off the poll of the said C.D.
- And your petitioner further says that R.H. , J.K. etc. personated and voted as and for LM., O.P. etc. whose names appeared on the register of voters for the

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said constituency and who did not themselves vote, and that the said votes are void and ought now to be struck off the roll.

- And your petitioner further says that Q.R., S.T. etc. were bribed (or treated or unduly influenced) by U.V. on behalf of the said C.D. and voted at the said election in that (Give particulars of acts alleged to constitute corrupt practices).
- And your petitioner says that W.X., Y.Z. etc. were retained or employed for reward or on behalf of the said C.D. for the purposes of election as clerks and messengers and voted at the said election.
- And your petitioner claims that on a scrutiny or recount there should be struck off from the number of votes appearing to have been given to the said C.D. one vote for every person who voted at the said election and is proved to have been bribed (or treated or unduly influenced) or to have been retained or employed for reward in the last two paragraphs mentioned.
- And your petitioner further says that he/she had a majority of valid and lawful votes at the said election.

Wherefore your Petitioner prays that a scrutiny or recount may be allowed of the votes given and tendered at the said election, and that it may be determined that the said C.D. was not duly elected or returned and that his/her election was void, and that your petitioner was duly elected and ought to have been returned.

(Signed A.B.)

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FORM 2

PETITION

IN THE SUPREME COURT OF NAURU

AT YAREN

THE ELECTION PETITION RULES 2016

(RULE 4)

Election for the Constituency ofheld on theday of 2016.
The petition of A.B ofwhose name is subscribed.

- Your petitioner was a candidate at the above elections.
- And your petitioner states that the election was held on the day of 20....., when C.D. and your petitioner were candidates, and that the said C.D. polled.....votes, and your petitioner polled votes , and that the said C.D. has been in the usual manner declared to be duly elected.
- And your petitioner says that the said C.D. was and is (here set out the disqualifications on which the petitioner relies).
- And your petitioner further says that the votes given for the said C.D. in the circumstances abovementioned were void and of no effect, and that your petitioner had a majority of lawful votes.

Wherefore your Petitioner prays that it may be determined that the election of the said C.D. was void.

(Signed) A.B.

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FORM 3

PETITION

(Alleging corrupt an illegal practice, but not claiming the rest)

IN THE SUPREME COURT OF NAURU
AT YAREN

THE ELECTION PETITION RULES 2016
(RULE 4)

Election for the Constituency ofheld on theday of 2016.
The petition of A.B ofwhose name is subscribed.

- Your petitioner is a person who voted at the above election.
- And your petitioner states that the said election was held on the day of 2016, when C.D. and E.F. were candidates and the Electoral Commissioner in his capacity as Returning Officer returned the said C.D. as being duly elected.
- And your petitioner states that before , during and after the said election the said C.D. was by himself and by his agent guilty of the corrupt practices of (aiding, abetting, counselling or procuring the commission of the offence of personation or bribery or treating or undue influence or as the case may be) contrary to the provisions of section 123 to 130 of the Electoral Act 2016, in that (Give particulars of the acts alleged to constitute the corrupt practices-e.g. the said C.D. sided, abetted, counselled or procured certain persons namely E.F. and G.H., to personate and vote at the said election as and for certain other persons, namely I.J and K.L whose names appeared on the register of voters for the said constituency but who (were fictitious persons/were dead/did not themselves vote) and that the said votes so recorded are void and ought now to be struck off the poll).
- And your petitioner further states that general intimidation prevailed during the said election as would render the said election void in that (Give particulars of acts of intimidation alleged).
- And your petitioner further states that during the said election the said C.D. was guilty of illegal practices by inducing certain persons, namely M.N., O.P and Q.R., to vote at the said election well knowing that persons were prohibited from so voting by the law in force in that regard.
- By reason of the foregoing, the said C.D. was and is incapacitated from serving in Parliament, and the said election and return of C.D. were and are void.
- Wherefore your Petitioner prays that it may be determined that the said C.d. was not duly elected or returned and that his election was void.

(Signed A.B.)

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FORM 4

NOTICE OF TRIAL OF PETITION

IN THE SUPREME COURT OF NAURU
AT YAREN

THE ELECTORAL PETITION RULES 2016
(RULE 14)

Election for the Constituency of held on day of 20.....

Petition of..... (name of Petitioner)

TAKE NOTICE that the abovenamed Petitioner's petition will be tried at on the day of 20.... at o'clock in thenoon and on other days as may be necessary.

Dated the day of20.....

(Signed) (Registrar)

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FORM 5

NOTICE OF APPLICATION TO WITHDRAW PETITION

**IN THE SUPREME COURT OF NAURU
AT YAREN**

**THE ELECTION PETITION RULES 2016
(RULE 21)**

Election for the Constituency of held on the day of2016.

Petition of(state names of Petitioner(s)) filed on the day of
..... 20.....

The Petitioner(s)applies to withdraw his/her petition upon the following
grounds: (here set out the grounds)

and prays that a day may be appointed for hearing his/her application.

Dated this.....day of20...

(Signed) (Petitioner)

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FORM 6

NOTICE TO RESPONDENT OF APPLICATION TO WITHDRAW PETITION

**IN THE SUPREME COURT OF NAURU
AT YAREN**

**THE ELECTION PETITION RULES 2016
(RULE 22)**

Election for the Constituency of held on the day of2016.

Petition of (name of Petitioner)

Notice is hereby given that the abovenamed Petitioner did on the day of 2016 lodge at the office of the Registrar of the Supreme Court application for leave to withdraw the petition of which application a copy is attached hereto;

AND TAKE NOTICE that under the Election Petition Rules 2016, any person who might have been a petitioner in respect of the said election, may within 7 days after the date of publication of this notice, give notice in writing to the Registrar of the Supreme Court of his/her intention on the hearing of the application to be substituted as a petitioner.

(Signed) (Petitioner)

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FORM 7

NOTICE OF ABATEMENT OF PETITION BY DEATH

IN THE SUPREME COURT OF NAURU

AT YAREN

THE ELECTION PETITION RULES 2016

(RULE 25)

Election for the Constituency of held on the day of2016.

Petition of (name of Petitioner(s))

NOTICE is hereby given thatthe sole/surviving *Petitioner died on theday of 2016;

AND TAKE NOTICE that under the Election Petition Rules 2016 any person who might have been a petitioner in respect of the abovementioned election may, within 14 days after the publication of this notice, apply to the Supreme Court to be substituted as a petitioner.

Dated this day of 2016.

(Signed)

FORM 8

NOTICE OF OPPOSITION/NON-OPPOSITION TO PETITION

THE ELECTION PETITION RULES 2016

(RULE 26)

Election for the Constituency of held on the day of2016.

Petition of (name of Petitioner(s))

TAKE NOTICE that(name of Respondent) being the Respondent to the abovementioned Petition:*

- died on the day of 20...;
- vacated his/her seat in Parliament on the day of 20....
- hereby gives notice that he/she does intend to oppose/not oppose the said Petition.

*Delete as appropriate

AND FURTHER TAKE NOTICE that under the Election Petition Rules 2016 any person who might have been a petitioner in respect of the abovementioned election may, within 14 days after publication of this notice, apply to the Supreme Court to be admitted as a respondent to oppose the Petition.

Dated this day of 2016.

(Signed) (Respondent or his/her representative)

Issued this.....day of.....20...
