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Statutory Instrument 74A of 1995.

[ACT 7/90

Electoral (Applications, Appeals and Petitions) Rules, 1995

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IT is hereby notified that the Minister of Justice, Legal and Parliamentary Affairs, in terms of subsection (3) of section 149 of the Electoral Act, 1990, has approved the following rules of court made by the Chief Justice and the Judge President in terms of subsection (1) of that section: —

PART I

PRELIMINARY

Title

1. These rules may be cited as the Electoral (Applications, Appeals and Petitions) Rules, 1995.

Interpretation

2. (1) In these rules—

“High Court Rules” means the High Court of Zimbabwe Rules, 1971, published in Rhodesia Government Notice 1047 of 1971;

“Registrar” means the Registrar of the High Court;

“the Act” means the Electoral Act, 1990 (No. 7 of 1990).

- (2) Subject to subrule (1), any expression to which a meaning has been assigned in the Act or the High Court Rules shall bear the same meaning when used in these rules.

Reckoning of time

3. In calculating any period specified in these rules, a Saturday, Sunday or a public holiday shall be reckoned as part of the period unless the period expires on such a day, in which event the period shall extend to the first following day that is not a Saturday, Sunday or public holiday.

PART II

**STATED CASES REGARDING OBJECTIONS TO
REGISTRATION OF VOTERS**

Interpretation in Part II

4. In this Part—

“stated case” means a case drawn up by a designated magistrate in terms of section 19 of the Act in regard to the registration of a person on a voters roll or the removal of a person’s name therefrom.

Preparation of stated case

5. (1) A designated magistrate shall draw up a stated case in consultation with every party who appeared at the hearing of the objection concerned in terms of section 16 or 17 of the Act.

(2) A stated case shall be legibly written on A4-size paper on one side only, and shall set out in consecutively numbered paragraphs the relevant facts, the question which arises for decision, the parties’ contentions and the designated magistrate’s views on their contentions.

Date of hearing of stated case

6. (1) On receipt of a stated case transmitted to him in terms of subsection (1) of section 19 of the Act, the Registrar shall fix a date for its hearing and shall give the designated magistrate not less than five days’ written notice of the date.

(2) Upon being notified of the date of hearing in terms of subrule (1), the designated magistrate shall forthwith—

- (a) notify the parties of the date; and
- (b) post a notice of the date at his court house.

Appearance of additional parties at hearing of stated case

7. If any person, other than—

- (a) the person who lodged the objection which is the subject of the stated case; or
- (b) the person to whom the objection relates; or
- (c) any other person who appeared at the hearing of the objection in terms of section 16 or 17 of the Act;

wishes to appear at the hearing of a stated case in terms of subsection (2) of section 19 of the Act, he shall give not less than forty-eight hours' notice to the Registrar and the designated magistrate of his intention so to appear.

Hearing of stated case

8. (1) At the hearing of a stated case the judge and the parties may refer to the entire contents of any documents referred to in or annexed to the stated case, and the judge may draw from those documents and from the facts set out in the stated case any inference, whether of fact or law, which might have been drawn from those documents or facts if proved at a trial.

PART III

PETITIONS REGARDING VACANCIES IN PARLIAMENT

Form of petition regarding vacancy in Parliament

9. A petition under subsection (5) of section 30 of the Act shall be in the form of a court application.

PART IV

APPEALS REGARDING NOMINATION OF CANDIDATES

Interpretation in Part IV

10. In this Part—

“appeal” means an appeal by a candidate in terms of subsection (19) of section 38 of the Act, and “appellant” shall be construed accordingly.

Notice of appeal

11. (1) An appeal shall be instituted by means of a written notice stating—

- (a) the date on which, and the place at which, the nomination court concerned sat; and
- (b) the date of the decision which is the subject of the appeal; and
- (c) the terms or nature of the decision which is the subject of the appeal; and
- (d) the grounds of the appeal; and

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- (e) the exact nature of the relief sought; and
 - (f) the address for service of the appellant or his legal representative.
- (2) An appellant shall cause the notice instituting his appeal—
- (a) to be filed with the Registrar within four days after the appellant was notified of the decision which is the subject of the appeal; and
 - (b) as soon as possible after such filing, to be served—
 - (i) on the person presiding at the nomination court concerned; and
 - (ii) on the Registrar-General; and
 - (iii) where practicable, on every person who was declared to have been duly nominated or elected at the close of the sitting of the nomination court.

Reply to notice of appeal

12. A person on whom a notice has been served in terms of rule 11 may, within two days after such service, file with the Registrar a reply to the notice and, if he does so, shall cause a copy of the reply to be served as soon as possible thereafter on the appellant.

Date of hearing of appeal

13. As soon as possible after the expiry of the period within which a reply to a notice of appeal may be filed in terms of rule 12, the Registrar shall fix a date for hearing the appeal and shall give not less than five days' written notice of the date—

- (a) to the appellant; and
- (b) to the person presiding at the nomination court concerned; and
- (c) to the Registrar-General; and
- (d) where practicable, to every person who was declared to have been duly nominated or elected at the close of the sitting of the nomination court.

Appearance of persons at hearing of appeal

14. At the hearing of an appeal—

- (a) the appellant; and
- (b) the person presiding at the nomination court concerned; and
- (c) the Registrar-General; and
- (d) any other person who filed a reply to the notice of appeal in terms of rule 12;

shall be entitled to be heard in person or represented by a legal practitioner.

PART V

INSPECTION OF BALLOT-PAPERS, ETC.

Application for order for inspection of ballot-papers, etc.

15. (1) An application for an order in terms of subsection (5) of section 70 of the Act permitting the opening of any packet of papers referred to in subsection (2) of that section shall be in the form of a court application:

Provided that—

- (i) if satisfied as to the urgency of the matter, a judge may direct that such an application be made by way of a chamber application;
- (ii) such an application may be made orally during the hearing of an election petition.

(2) An application referred to in subrule (1), other than an oral application, shall be served—

- (a) on the Registrar-General; and
- (b) on the constituency registrar, if any, who has custody of the packet concerned; and
- (c) where the application is made for the purposes of an election petition, on all the parties to the petition; and
- (d) where the application is made for the purpose of instituting or maintaining a prosecution, on the person against whom the prosecution is contemplated or brought, as the case may be.

PART VI

PAYMENT OF DISPUTED CLAIMS AND ELECTION
EXPENSES

Application for leave to pay disputed claim or election expense

16. (1) An application under subsection (7) of section 82 of the Act for leave to pay a claim shall be in the form of a court application.

(2) Where an application referred to in subrule (1) is made by a candidate or his election agent, a copy of the application shall be served—

- (a) on the Attorney-General; and
- (b) on the Registrar-General; and
- (c) on the constituency registrar concerned; and
- (d) on the person making the claim against the applicant; and
- (e) where the application is made by a candidate who has been declared or who claims to have been duly elected, or by an election agent of such a candidate—
 - (i) on every other candidate who stood for election in the constituency concerned; and
 - (ii) on every person who has filed an election petition disputing the election in the constituency concerned.

PART VII

APPLICATIONS FOR EXEMPTION OR RELIEF FROM
PROVISIONS OF ACT

Interpretation in Part VII

17. In this Part—

“application” means an application under subsection (1) of section 119 of the Act.

Form of application

18. An application shall be made in the form of a court application:

Provided that—

- (i) if satisfied that the matter is urgent, a judge may direct that an application be made by way of a chamber application;
- (ii) an application may be made orally during the hearing of an election petition.

Service of application

19. An application shall be served—

- (a) on the Attorney-General; and
- (b) on the Registrar-General; and
- (c) on the constituency registrar within whose constituency the election concerned took place; and
- (d) where the application is made by a candidate who has been declared or who claims to have been duly elected, or by an election agent of such a candidate—
 - (i) on every other candidate who stood for election in the constituency concerned; and
 - (ii) on every person who has filed an election petition disputing the election in the constituency concerned.

Notice of application in constituency

20. (1) Before filing an application the applicant shall cause notice of the application, in a form approved by the Registrar, to be published in not less than three consecutive issues of such newspaper circulating in the constituency or area concerned as the Registrar may approve.

(2) The High Court may require an applicant, in terms of subsection (2) of section 119 of the Act, to give further notice of his application in the constituency or area in which the election concerned was held, in addition to publishing a notice in terms of subrule (1).

PART VIII

ELECTION PETITIONS

Form of election petition

21. An election petition shall be generally in the form of a court application and shall state—

- (a) the petitioner's right to present the petition in terms of section 125 of the Act; and
- (b) the date on which polling took place in the election concerned; and
- (c) the date on which the result of the election was announced in terms of section 66 of the Act; and
- (d) where the petition relates to—
 - (i) an election of chiefs, the electoral college by which the election was held;
 - (ii) an election of any other member of Parliament, the constituency in which the election was held;and
- (e) the grounds relied on to sustain the petition; and
- (f) where the petitioner relies on a corrupt or illegal practice, the full name and address, if known, of every person whom the petitioner alleges was guilty of such a practice; and
- (g) the exact relief sought by the petitioner.

Objection to recognizance

22. (1) A notice in terms of section 128 of the Act objecting to a recognizance given by a petitioner shall state each ground of objection on which the respondent relies.

(2) A notice referred to in subrule (1) shall be served on the petitioner within four days after the amount of the recognizance was fixed in terms of subsection (3) of section 126 of the Act, and a copy of the notice shall be filed with the Registrar as soon as possible thereafter.

(3) Either the petitioner or the respondent may set down an objection under section 128 of the Act for hearing as if it were an opposed application:

Provided that—

- (i) not less than seven days' written notice of set-down shall be given to the other party;
- (ii) if an objection is not set down for hearing within fourteen days after service of the notice on respondent in terms of subrule (2), the objection shall be deemed to have been dismissed with costs unless the High Court, on application, otherwise orders.

(4) Unless the High Court otherwise orders, the costs of an objection under section 128 of the Act shall form part of the general costs of the election petition concerned.

When election petition is at issue

23. An election petition shall be at issue—

- (a) where the respondent has not served a notice of objection to the petitioner's recognizance in terms of section 128 of the Act, on the eighth day after service of the election petition on the respondent; or
- (b) where the respondent has served a notice of objection to the recognizance in terms of section 128 of the Act, when the High Court decides the objection in terms of that section.

List of votes to which objection is taken

24. (1) Either together with his election petition or not later than seven days after the petition is at issue, the petitioner shall file with the Registrar—

- (a) a list of any votes he intends to object to; and
- (b) a statement of his grounds of objection to each such vote.

(2) As soon as possible after filing a list in terms of subrule (1), the petitioner shall serve a copy of it on the respondent.

(3) Except with the leave of the court, no evidence shall be given at the trial of an election petition against the validity of any vote that is not specified in a list filed under subrule (1) or upon a ground of objection that is not so specified.

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(4) The Registrar shall—

- (a) allow any person, during office hours, to inspect a list filed in terms of subrule (1); and
- (b) at the request of any person whose name appears on the list, provide him with a copy of the list, free of charge.

Opposition to election petition

25. (1) If a respondent wishes to oppose an election petition, he shall, within fourteen days after the petition is at issue or within such further time as a judge may allow, file with the Registrar—

- (a) a notice of opposition generally in the same form as a notice of opposition to a court application; and
- (b) any counter-application which he wishes to bring in terms of rule 26;

and as soon as possible thereafter shall serve a copy of the notice and counter-application, if any, on the petitioner.

(2) If a respondent does not wish to oppose an election petition he may at any time—

- (a) serve a notice to that effect on the petitioner; or
- (b) file a notice to that effect with the Registrar.

(3) As soon as possible after receiving a notice under subrule (2), the petitioner shall file a copy with the Registrar.

(4) As soon as possible after receiving a notice or a copy thereof under subrule (2) or (3), the Registrar shall send a copy to the Speaker and, where he received the notice directly from the respondent, to the petitioner.

Counter-application

26. (1) Where the respondent to an election petition claiming the seat for some person contends that the election of that person was undue, he may, within the period prescribed in rule 25, file with the Registrar a counter-application setting out the grounds of his contention.

(2) A counter-application under subrule (1) shall be generally in the form of a counter-application to a court application.

(3) Paragraph (e) of rule 21 and rules 24 and 25 shall apply, *mutatis mutandis*, in relation to a counter-application under this subrule.

Application to withdraw petition

27. (1) An application in terms of section 134 of the Act for leave to withdraw an election petition shall be in the form of a court application, and the applicant shall serve a copy of the application on the respondent and on such other persons as the High Court may direct.

(2) Before filing an application under section 134 of the Act, the petitioner shall cause notice of the application, in a form approved by the Registrar, to be published in not less than three consecutive issues of such newspaper circulating in the constituency or area in which the election was held, as the Registrar may approve.

(3) The High Court may require a petitioner to give further notice of his application to withdraw the petition in the constituency or area in which the election concerned was held, in addition to publishing a notice in terms of subrule (2).

Application to be substituted as petitioner

28. (1) An application under section 134 or 135 of the Act to be substituted as a petitioner on the withdrawal or abatement of a petition shall be in the form of a court application, and the applicant shall serve a copy of the application on the petitioner and on the respondent.

Notice to person before he is found guilty of corrupt or illegal practice

29. (1) Subject to subrule (2), unless the High Court otherwise orders, a notice under section 120 of the Act shall be served on the person liable to be found guilty of a corrupt or illegal practice not later than five days before the hearing of the election petition concerned.

(2) The High Court may direct a notice referred to in subrule (1) to be issued at any time after the election concerned has been presented, either of its own motion or upon the application of a party to the election petition or any other interested person, and may designate the person by whom the notice is to be served.

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PART IX GENERAL

Presidential elections

30. These rules shall apply, *mutatis mutandis*, in relation to elections to the office of President in the same way as they apply to the election of members of Parliament.

Urgency of electoral matters

31. The Registrar and all parties to any stated case, petition, appeal or application referred to in these rules shall take all steps necessary to ensure that the matter is dealt with as quickly as possible.

Fees and charges

32. The fees and charges prescribed in rules and regulations under the High Court of Zimbabwe Act, 1981 (No. 29 of 1981), shall apply, *mutatis mutandis*, in respect of anything done under these rules.

Application of High Court Rules

33. The High Court Rules shall apply, *mutatis mutandis*, in regard to any matter not provided for in these rules.

Repeal

34. The rules governing petitions and applications respecting Parliamentary elections, which were published in Rhodesia Government Notice 211 of 1939, are repealed.