



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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Government Notice

MINISTRY OF JUSTICE

No. 118

2015

RULES OF THE SUPREME COURT OF NAMIBIA RELATING TO PRESIDENTIAL ELECTION CHALLENGES: SUPREME COURT ACT, 1990

Under section 37 of the Supreme Court Act, 1990 (Act No. 15 of 1990), read with section 172(3) of the Electoral Act, 2014 (Act No. 5 of 2014), I have, with the approval of the President, made the rules set out in the Schedule.

P. S. SHIVUTE
CHIEF JUSTICE
SUPREME COURT OF NAMIBIA

Windhoek, 1 June 2015

SCHEDULE

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Definitions

1. In these rules, a word or an expression to which a meaning has been given in the Act has that meaning, and unless the context indicates otherwise -

“affidavit” means a written statement signed by the deponent thereof under oath or affirmation administered by a Commissioner of Oaths in terms of the Justices of the Peace and Commissioner of Oaths Act, 1963 (Act No. 16 of 1963);

“Commission” means the Electoral Commission of Namibia referred to in the Electoral Act;

“court” means the Supreme Court of Namibia referred to in the Supreme Court Act, 1990 (Act No. 15 of 1990), and includes judges sitting in chambers;

“court day” means any day which is not a Saturday, Sunday or public holiday, and only court days must be included in the computation of any time expressed in days prescribed by these rules, fixed by any order of court or stipulated in any judicial case management order;

“day” means a court day;

“deliver” has the meaning given to it in rule 1 of the Rules of the High Court;

“document”, includes a handwritten or typed document, a computer print-out, a print-out from any equipment or device capable of generating a print-out, a pleading, photograph, film, recording of sound, plan, record of a permanent or semi-permanent character and information recorded or stored electronically or by means of any equipment or device;

“Electoral Act” means the Electoral Act, 2014 (Act No. 5 of 2014);

“file” has the meaning given to it in rule 1 of the Rules of the High Court;

“flexible radius” in respect of service of any process, means an address within eight kilometres of the office of the registrar;

“Government Attorney” means the Government Attorney referred to in the Government Attorney Proclamation No. R 161 of 1982;

“legal practitioner” means the legal practitioner as defined in section 1 of the Legal Practitioners Act, 1995 (Act No. 15 of 1995);

“notice” means notice in writing;

“process” includes any official court documents and pleadings;

“registrar” means the registrar of the Supreme Court, and includes an assistant registrar;

“rules of the High Court” means the Rules of the High Court of Namibia published under Government Notice No. 4 of 17 January 2014;

“rules of the Supreme Court” means the Rules of the Supreme Court of Namibia published under Government Notice No. 56 of 8 October 1990;

“serve” means to serve in accordance with rule 4;

“sheriff” means the sheriff of the Supreme Court appointed under section 26 of the Act and includes any deputy sheriff appointed under the same Act; and

“the Act” means the Supreme Court Act, 1990 (Act No. 15 of 1990).

Sessions of court

2. For purposes of these rules, the Supreme Court may only sit if there is an application brought before it on issues pertaining to Presidential electoral challenges as contemplated under section 172 of the Electoral Act.

Registrar’s office hours

3. (1) The offices of the registrar must, except on Saturdays, Sundays and public holidays, open from 09h00 to 13h00 and from 14h00 to 15h00 for the purpose of issuing any process or filing any document, but for the purpose of filing a notice of intention to oppose an application, the offices must open from 09h00 to 13h00 and from 14h00 to 16h00.

(2) Despite subrule (1), the registrar -

(a) may in exceptional circumstances issue process or accept documents at any time and in that case he or she must, in writing, record those exceptional circumstances and place such record on the file in question and cause a copy thereof to be served on every party; and

(b) must issue process or accept documents for filing at any time when directed to do so by the Chief Justice or any other judge designated by the Chief Justice.

Service of process

4. (1) Service of any process of the court directed to the deputy-sheriff and any document initiating application proceeding must be effected by the deputy-sheriff of the Supreme Court or by any person designated or appointed as an assistant to a deputy sheriff under section 26 of the Act.

(2) Service of any process referred to in subrule (1) may be effected in any one of the following ways -

- (a) by handing a copy of the process to -
 - (i) the person concerned, or to a representative authorised by that person to accept service on behalf of that person; or
 - (ii) a person who appears to be at least 16 years old and in charge of the residence or place of business or employment of that person referred to in paragraph (i);
 - (b) by leaving a copy of the process at -
 - (i) an address chosen by the person to receive service; or
 - (ii) any premises in accordance with subrule (4);
 - (c) if the person to be served is represented by a legal practitioner of record, by delivery thereof -
 - (i) at the address appointed in the notice of representation of such legal practitioner; or
 - (ii) to a person apparently not less than 16 years of age and employed at the office of the legal practitioner; or
 - (d) by faxing a copy of the process to the fax number of the person or a fax number chosen by the person to receive service.
- (3) Process may also be served -
- (a) on a registered political party by handing a copy of the process to a responsible employee at the registered office of the political party;
 - (b) if the political party to be served is represented by a legal practitioner of record, by delivery thereof at the address appointed in the notice of representation of such legal practitioner or to a person apparently not less than 16 years of age and employed by such legal practitioner;
 - (c) on the Commission, by handing a copy to a responsible employee at the offices of the Government Attorney.
- (4) If a person identified in subrules (2) and (3) is not willing to accept service, service may be effected by affixing a copy of the process to the main gate or door of the premises or registered office concerned.
- (5) The Chief Justice or a judge designated by him or her may in chambers direct that service be effected in any other manner other than the manner prescribed in this rule.
- (6) A party must prove that a process was served in terms of these rules by providing the court or the registrar with a duly completed Form 1, and if the process was faxed with a copy of the telefax report indicating the successful transmission to the other party of the whole process.
- (7) If proof of service in accordance with subrule (6) is provided, it is presumed, until the contrary is proved, that the party on whom the process was served has knowledge of the contents of the process.

(8) The court may, on good cause shown, accept as sufficient proof of service in a manner other than prescribed in this rule.

(9) Service may be effected at any time between 07h00 and 19h00 on any day, including Saturday, Sunday and a public holiday, unless the Chief Justice, or in his or her absence a judge designated by the Chief Justice or the most senior judge available, directs otherwise.

Petition to review electoral materials

5. (1) A request to review electoral materials under section 172 of the Electoral Act must be made by way of a petition on Form 2 to the Chief Justice under section 15 of the Act, supported by an affidavit as to the facts on which the applicant relies for relief.

(2) The petition referred to in subrule (1) must be delivered to the Commission, any registered political party which took part in the relevant election and any other effected person.

(3) Rule 3(1) of the Rules of the Supreme Court dealing with time limits and the number of copies required to be lodged apply with necessary modifications in respect of a petition referred to in subrule (1).

(4) A person who desires to petition to the Chief Justice under subrule (1) must submit his or her petition under that subrule within 10 days after the announcement of the Presidential results under section 109 of the Electoral Act.

(5) In an affidavit referred to in subrule (1), the applicant must set out a *prima facie* case of irregularity justifying a challenge of a return or outcome of the presidential election and must clearly identify the electoral materials that he or she intends to review and the reasons why he or she desires to review those materials.

(6) A request made under subrule (1) may not contain extraneous or irrelevant matter and must deal with the merits of the case in so far as is necessary for the purpose of explaining and supporting the particular grounds on which the request is sought.

(7) A person to whom a petition is delivered under subrule (2) and who desires to oppose the grant of an order sought in a petition must -

(a) within five days of service on him or her of a copy of the petition give notice of his or her intention to oppose the petition on Form 4, and in that notice appoint an address within a flexible radius at which he or she will accept notice and service of all process; and

(b) within five days of filling his or her intention to oppose the petition under paragraph (a), deliver his or her answering affidavit.

(8) The petitioner may, within five days of the service on him or her of the affidavit under subrule (7), deliver a replying affidavit.

(9) A petition must be considered in chambers by three judges of the Supreme Court and a decision taken by the majority constitutes the decision of the court as contemplated in section 17 of the Act.

Powers of court in respect of petition

6. (1) The court may grant or refuse a petition, and where the court grants a petition it may impose such conditions as it considers necessary and reasonable in order to ensure that the electoral materials are not lost, destroyed or tampered with.

(2) The registrar must inform the petitioner, the Commission and any other person to whom a petition is delivered under rule 5(2) about the decision of the court made under subrule (2).

Application to challenge return or outcome of Presidential election

7. (1) An application to challenge the return or outcome of a Presidential election under the Electoral Act must be brought on notice of motion, supported by such affidavit or affidavits as to the facts upon which the applicant relies for relief, and such affidavit must also disclose clearly and specifically the nature of the grievance the applicant has, the reason for the grievance and the material facts relied on as basis for the grievance.

(2) When relief is claimed against any person, or where it is necessary or proper to give any person notice of such application, the notice of motion must be delivered to both the registrar, the Commission and such person, otherwise it must be addressed to the registrar only.

(3) The notice of motion must be on Form 3.

(4) The original notice of motion, together with all annexures, must be filed with the registrar after service of a true copy thereof upon every party to whom notice of the application is to be given.

(5) In the notice of motion the applicant must -

(a) appoint an address within a flexible radius at which he or she will accept service of all process in the proceedings; and

(b) inform the respondent that if he or she intends to oppose the application, he or she must, within five days after service of the notice of motion, deliver to the registrar and to the applicant a notice of intention to oppose the application on Form 4.

(6) Any respondent opposing the grant of the relief sought in the notice of motion must -

(a) within five days of service of the notice of motion, give the applicant notice on Form 4 that he or she intends to oppose the application and, in that notice, appoint an address within a flexible radius at which he or she will accept notice and service of all documents in the proceedings; and

(b) within seven days of notifying the applicant of his or her intention to oppose the application -

(i) deliver an answering affidavit together with any relevant documents; or

(ii) if he or she intends to raise a point of law only, deliver notice of such intention stating concisely the point of law.

(7) A respondent who does not deliver a notice of his or her intention to oppose within the period of time referred to in subrule (5)(b) is not entitled to take part in the proceedings except to -

(a) apply under rule 14 for an extension of time to deliver such a notice; or

(b) be called as a witness by another party.

(8) If a notice of intention to oppose the application is not delivered as contemplated in subrule (6)(a), the applicant may in writing apply to the registrar to assign a date for the hearing of the application.

(9) On receipt of an application contemplated in subrule (8), the registrar, after consultation with the Chief Justice or any other judge designated by the Chief Justice, must assign a date for the hearing of the application and may, without notice to the respondent, set the matter down for hearing on that date.

(10) The applicant may, within three days after the service upon him or her of the answering affidavit under subrule (6)(b)(i), deliver a replying affidavit.

(11) After service of the replying affidavit contemplated in subrule (10) no further affidavit may, without the leave of the court, be filed with the court and if such affidavit is filed, without the leave of the court, such affidavit must not be considered when the application is heard and determined.

(12) After the expiration of the three day period referred to in subrule (10), the applicant may apply to the registrar, on three days' notice to all other parties, to assign a date for the hearing of the application and the registrar must, after consultation with the Chief Justice or any other judge designated by him or her and subject to rule 11(2), assign such a date and set the matter down for hearing on that date.

(13) If the applicant fails to apply to the registrar for a date of hearing within 15 days of receiving the respondent's notice of intention to oppose, the application is considered to have lapsed.

(14) The applicant or the respondent, as the case may be, must give notice in writing of the date of hearing assigned by the registrar to all other parties to the application, except that a notice is not required to be given to a person who did not oppose the application as contemplated in subrule (7).

(15) Where an application cannot properly be decided on affidavits the court may make such order as it considers fit with a view to arriving at a just and expeditious decision.

(16) In particular, but without affecting the generality of the provisions of subrule (15), the court may direct that oral evidence be heard on specified issues with a view to resolving any dispute of fact, and to that end may order any deponent to appear personally or grant leave for him or her or any other person to be subpoenaed to appear and be examined and cross-examined as a witness.

(17) A party to an application may bring a counter-application on Form 5 and these rules do, subject to necessary modifications, apply to a counter-application, except that -

- (a) a counter-application must be delivered together with the respondent's answering affidavit, unless on good cause shown, the court allows it to be delivered at a later stage; and
- (b) it is not necessary to repeat in a counter-application the addresses of the parties to the proceedings in question.

(18) Any period prescribed with regard to an application does apply, with necessary modifications, to a counter-application.

(19) A counter-application may be heard either together with, or separately from, the application as the court may consider appropriate under the circumstances.

(20) Despite the provisions of subrules (1) to (19), an interlocutory application and any other application incidental to pending proceedings may be brought on notice on Form 3 supported by such affidavits as the case may require and may be set down for hearing at a time assigned by the registrar or as directed by the Chief Justice or a judge designated by the Chief Justice.

(21) The court may, on application made to it at any stage of the proceedings, order to be struck out from any affidavit any matter which -

- (a) is scandalous, vexatious or irrelevant; or
- (b) is otherwise an abuse of the process of the court,

but the court may not make such order unless it is satisfied that the party making the application will be prejudiced in his or her case if such order is not made.

(22) The court may, on such application, make such order as to costs as it considers fit.

(23) Subject to the discretion of the court to disregard any statement in an affidavit if it considers it proper to do so, an affidavit may contain statements of information or belief so long as the sources and grounds of such statements are identified.

(24) Not less than five days before the hearing date of an application, the applicant must deliver a copy of the heads of argument which he or she intends to argue at the hearing, as well as a list of authorities to be relied on in support of each point to the other parties to the application, and the other parties must deliver to the applicant similar heads of argument and list of authorities not less than three days before the hearing date.

(25) The original and two copies of all heads of argument and lists of authorities must be filed with the registrar before 12h00 on any day within the time limits referred to in rule 3.

Joint applications

8. (1) An application (in this rule referred to as a “joint application”) may be brought on behalf of a group of applicants named in such joint application against the same respondent and for a similar claim.

(2) A joint application referred to in subrule (1) may be brought in the name of any one of the applicants as a representative of some or all of the other applicants, if such other applicants agree thereto in writing and file the agreement on Form 6 simultaneously with the lodging of the application.

(3) In the agreement referred to in subrule (2), each person represented authorises the representative applicant on his or her behalf to -

- (a) file affidavits, statements or any other documents;
- (b) amend the application or abandon it;
- (c) call witnesses and give evidence and make submissions to the court on any matter arising during the hearing of the application; and
- (d) take any other necessary step incidental to the prosecution of the application.

(4) The court may, of its own motion or upon application, at any stage of the proceedings, if it considers that the bringing of a joint application may prejudice the respondent, order that the applications of all or any of the persons represented be heard separately.

(5) The court may, on application of an individual applicant in a joint application at any stage of the proceedings and on good cause shown, order that that applicant’s authorisation to the representative applicant be rescinded and that that applicant be permitted to pursue the application separately.

Consolidation of applications

- 9.** (1) If two or more applications are filed and it appears to the court that -
- (a) common questions of law or fact arise in both or all of them;
 - (b) the applications arise out of the same cause of action; or
 - (c) it would be in the interest of justice,

the court may of its own accord or upon application by one or more of the parties order that such applications be consolidated.

(2) The power conferred by this rule may be exercised despite the fact that the hearing of one or more of the applications has already commenced.

Joinder of parties

10. (1) The court may at any time on notice on Form 7 to all parties, or on application by any party on notice to all other parties, make an order joining a person in the proceedings and give such directions including the manner of service of process on the person joined as it considers necessary.

(2) An order to join may only be made where the party to be joined has a direct and substantial interest in the matter before the court.

(3) The court may likewise on notice on Form 7 to all parties or on application by any party on notice to all other parties, order that any respondent named in the original application or subsequently joined, who does not have a direct and substantial interest in the dispute, be released from the proceedings.

Hearing of applications

11. (1) The hearing of an application must be conducted in such manner as the court considers most suitable for the clarification of the issues before it and generally to the just handling of proceedings, and the court must, as far as it is appropriate, seek to avoid formality in the proceedings in order to ensure a speedy and fair disposal of the proceedings.

(2) An application under this rule must be heard within 15 days after the conclusion of the -

- (a) case management conference, where only one case management conference is held; or
 - (b) last case management conference, where more than one case management conference is held.
- (3) If a respondent who has -
- (a) been duly served with the notice of motion as provided for in rule 7(4); or
 - (b) delivered notice of intention to oppose the application has been duly served with notice of the date of the hearing as provided for in the rule 7(14),

fails to appear at the hearing of the application the court may, if it is of the opinion that the facts relating to the application are sufficiently established, determine the application and make such order as it considers fit, despite the respondent's failure to appear.

(4) If the applicant fails to appear at the hearing the court must dismiss the application or make such other order as to costs as it considers fit.

(5) Where an application is referred for oral evidence -

(a) the Chief Justice or a judge designated by him or her must order the parties on Form 8 to serve on the other party witness statements of the oral evidence which the party serving the statement intends to adduce during the hearing of the oral evidence in relation to any issues of fact to be decided at the hearing;

(b) the witness who makes a statement referred to in paragraph (a) must indicate at the end of his or her statement that he or she believes that the facts stated in the statement are true to the best of his or her knowledge; and

(c) the court may give directions as to the order in which witness statements are to be served.

(6) Where the court has directed that a witness statement in a language other than English is to be filed with the court -

(a) the party wishing to rely on it must have it translated into English by a sworn translator and must file with the court both the sworn translated statement and the witness statement that is in the other language; and

(b) the sworn translator referred to in paragraph (a) must depose to and file with the registrar an affidavit verifying the translation and exhibiting both the translation and a copy of the witness statement that is in the other language;

(7) A witness statement referred to in subrule (5)(a) may be used only for the purpose of the proceedings in which it is served.

(8) If a party has served a witness statement and he or she wishes to rely at the trial on the evidence of that witness he or she must call the witness to give oral evidence and at the hearing that -

(a) witness's statement will stand as his or her oral evidence-in-chief unless the court orders otherwise; and

(b) witness when giving oral evidence may, with the leave of the court, amplify his or her witness statement and give evidence in relation to new matters which have arisen since the witness statement was served on the other parties, except that the court may give such leave only if it considers that there is good reason not to confine the evidence of the witness to the contents of his or her witness statement.

(9) Before the witness reads his or her witness statement into the record, the presiding judge must, in terms of section 18 of the Act, admonish the witness in the following terms -

'The oath you have just taken or the affirmation you have just made requires you to tell the truth, the whole truth and nothing but the truth.'

Do you confirm that your legal practitioner has prepared a witness statement to constitute your evidence-in-chief in this case?

Do you also confirm that the information contained in the statement was provided by you to your legal practitioner and that it is information of which you bear personal knowledge?

Because of the oath you have taken or the affirmation you have made, I want you to understand that once you have read the statement into the record that statement is your evidence given under oath or affirmation in the proceedings and that if anything in it is not true and you are aware of such fact, you may be liable for perjury. Do you understand?"

Therefore, if anything in the statement is not true or is inaccurate, it is your duty to tell me so and to state the true or correct facts. Do you understand?"

(10) If a witness statement for use at the hearing is not served within the time specified by the court, the witness may not be called to give oral evidence unless the court on good cause shown permits such witness to give oral evidence.

(11) Where a witness is called to give evidence at a hearing he or she may be cross-examined on his or her witness statement only and not on the statement of any other witness who has been called to testify for the party who called him or her to testify.

(12) In these rules, witness includes a witness who is subpoenaed in terms of rule 12.

Subpoenaing of witnesses

12. (1) Where the court has directed that oral evidence be heard before an application can be determined -

- (a) the court; or
- (b) a party to such application,

may require the registrar to subpoena any witness to give evidence or to produce any document, record or other exhibit relevant to any issue relating to such application.

(2) Where a party to an application referred to in subrule (1)(b) requires a witness to be subpoenaed he or she must make a request to the registrar for subpoenaing of the witness on Part A of Form 9.

(3) A party to an application referred to in subrule (1)(b) may, after commencement of the hearing, require the subpoenaing of a witness only with the consent of the court.

(4) Where a witness is to be subpoenaed, the subpoena must be on Part B of Form 9 and service of the subpoena may be effected in the same manner as provided in rule 4, subject to necessary modifications.

(5) The court may set aside service of any subpoena referred to in subrule (1) if it appears that the witness in question was not given reasonable time to enable him or her to appear in response to the subpoena.

(6) The manner of securing attendance of witnesses and the penalty for non-attendance of court proceeding by a witness, the manner in which recalcitrant witnesses may be dealt with and fees and allowances to be paid to witnesses is as provided for by section 21, 22 and 31 of the Act, respectively.

(7) The fees and allowances referred to in subrule (6) must be paid by the party who requires the attendance of the witness concerned.

Judicial case management of applications under Electoral Act

13. (1) The responsibilities and duties of parties regarding the case management of an application under the Electoral Act are the following -

- (a) once an application is filed with the court, the management of that application lies with the court and not the litigants or their legal practitioners;
- (b) the parties and their legal practitioners have a duty to assist the court in curtailing proceedings and to expedite determination of an application;
- (c) the fact that the parties agree to allow each other time beyond that prescribed by these rules is not binding on the court; and
- (d) where there is a conflict between any provision of rules 5, 7 and 8 and this rule, this rule applies.

(2) As soon as practicable after the application has been placed before him or her, the Chief Justice or a judge designated by the Chief Justice must manage the application.

(3) Not less than two days before the holding of a case management conference the parties must hold a parties' case management meeting and -

- (a) discuss the nature and basis of their respective claims and defences;
- (b) consider reasonable ways in which the application may be determined promptly; and
- (c) set out concisely and clearly the issues the parties jointly and severally wish to be addressed during the case management conference.

(4) At the conclusion of the parties' case management meeting the parties by themselves or by their legal practitioners must draw up and sign a report containing -

- (a) the matters they have discussed and agreed on;
- (b) the matters they have discussed and have not agreed on; and
- (c) the issues referred to in subrule (5),

and submit the report to the registrar who must place the report before the Chief Justice or a judge designated by the Chief Justice at least one day before the holding of a case management conference.

(5) The case management conference must be held within 10 days after the close of pleadings and the following issues must be addressed at the conference -

- (a) any proposal regarding an issue referred to in subrule (3), whether agreed by the parties or not;
- (b) reasonable ways in which issues may be limited and admissions and concessions made which may lead to the narrowing of the issues to be adjudicated;
- (c) the need for interlocutory applications and the date for the hearing of those applications;
- (d) the hearing and determination of any preliminary objection on points of law;

- (e) indexing, pagination, and binding of all the pleadings and documents filed of record;
 - (f) determining the date of the hearing of the application; and
 - (g) any other issues which, in the opinion of the Chief Justice or a judge designated by him or her may facilitate the just and speedy determination of the application.
- (6) Where it is shown by a party at the case management conference that an interlocutory application referred to in subrule (5)(c) is intended -
- (a) the interlocutory application must be heard within 10 days after the conclusion of the case management conference;
 - (b) heads of argument of all parties must be filed as directed by the Chief Justice or the judge designated by him or her; and
 - (c) a ruling must be made not less than two days before the hearing of the main application.
- (7) If in the opinion of the Chief Justice or the judge designated by him or her it is necessary to hold a further case management conference, that conference must be held so soon after the case management conference in question and in any case not less than two days before the hearing of the main application.
- (8) A case management conference must be held in the chambers of the Chief Justice or a judge designated by him or her or in open court at the discretion of the Chief Justice or that judge, and the proceedings must be recorded and the conference must be attended by legal practitioners or parties if such parties are unrepresented by legal practitioners.
- (9) The Chief Justice or a judge designated by him or her must make an order in respect of any issue addressed and determined by him or her during a case management conference.

Non-compliance with rules

- 14.** The court may, on application and on good cause shown -
- (a) condone any non-compliance with these rules;
 - (b) extend or abridge any period prescribed by these rules, whether before or after the expiry of such period.

Execution of judgments and orders

15. In addition to the powers the court has under any law, any judgment or order of the court sounding in money may be enforced in accordance with the Rules of the High Court, as if such judgment or order is a judgment or order given in a civil action in the High Court.

Taxation of costs

16. Taxation of fees of legal practitioner and of disbursement of parties who represent themselves is taxed by the registrar as contemplated by rule 13 of the Rules of the Supreme Court.

Tariffs of fees

- 17.** The tariff of -
- (a) court fees are as set out under rule 15;
 - (b) fees for a sheriff or deputy sheriff are as set out under rule 17; and
 - (c) fees of instructing legal practitioner and instructed legal practitioner are as set out under rule 14,

of the Rules of the Supreme Court.

Costs

18. Where the court decides to award costs to any party, the costs recoverable must be the same as those recoverable in respect of the Rules of the Supreme Court, but in a case where a party represents himself or herself, such party's costs are limited to disbursements necessarily and reasonably incurred, and costs must be taxed as contemplated by rule 17.

Forms

19. Any reference in these rules to a numbered form is a reference to the corresponding form set out in the Annexure.

Application of Rules of Supreme Court

20. Subject to the Act, where these rules do not make provision for the procedure to be followed in any matter before the court, the Rules of the Supreme Court do apply to proceedings before the court with such qualifications, modifications and adaptations as the court may consider appropriate.

**ANNEXURE
FORMS**

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FORM 1

(Rule 4(6))

**RETURN OF SERVICE OF PROCESS
IN THE SUPREME COURT OF NAMIBIA**

In the matter between:

Applicant

and

Respondent

STATEMENT OF SERVICE

I,, do hereby certify that on the day of 20 at(state time) I duly served the following document(s)
.....
.....
.....
.....
.....

(describe the document(s) served) in the following manner:

*(Complete (a), (b) or (c) as appropriate, *delete as appropriate)*

- (a) By handing a copy to (full name of the person served) the applicant / appellant / respondent / a person apparently not less than 16 years of age and employed at the applicant's / appellant's / respondent's place of business / registered office * and he / she* refused to sign a copy thereof by affixing a copy to the main gate or door of such place of business/registered office;
- (b) By sending a copy by telefacsimile to (full name of the person served) the applicant / appellant / respondent*

at the following number (state telephone number) and I annex hereto the transmission confirmation slip;
- (c) State any other manner, under rule 4, how the document is served:
.....
.....
.....
.....

(d) That the service has been received by the following person:

Acknowledgment of receipt of process

(a) Name of recipient:

(b) Designation of recipient:

(c) Place:

(d) Time:

(e) Date:

(f) Signature of recipient:

Dated at this day of 20

.....
Signature of person serving the process

FORM 2

(Rule 5(1))

PETITION TO CHIEF JUSTICE IN THE SUPREME COURT

PETITION TO CHIEF JUSTICE FOR LEAVE TO REVIEW ELECTORAL MATERIAL
UNDER SECTION 172 OF ELECTORAL ACT, 2014

IN THE SUPREME COURT OF NAMIBIA

To the Honourable Chief Justice of Namibia

THE PETITION OF:

.....
(Name of Petitioner)

humbly sheweth that -

1. Your Petitioner is
(description of petitioner, including Identification Card number, if a natural person) of (residence, place of business or employment of petitioner, or registered office of petitioner, if a registered political party).
2. Your Petitioner says that he, she or it is desirous of reviewing certain electoral material, specified and named in the accompanying affidavit attached hereto and marked Annexure 'A', relating to the Presidential election held on (date of election) on the basis of the grounds set out in the aforementioned affidavit.
3. Your Petitioner says further that he or she or it relies on the abovementioned affidavit for the relief sought.

WHEREFORE Your Petitioner humbly prays that it may please His Lordship the Honourable Chief Justice to grant an order in the following terms or in any terms as His Lordship pleases:

.....
.....
.....
.....
(order sought)

AND YOUR PETITIONER AS IN DUTY BOUND PRAYS FOR SUCH ORDER

.....
Petitioner or his or her legal practitioner

To: The Registrar

And to: The Commission

.....
.....
.....

And to:

.....
.....
.....
.....

(any other persons referred to in rule 5(2) of these rules)

FORM 3

(Rules 7(3) and (20))

NOTICE OF MOTION

IN THE SUPREME COURT OF NAMIBIA

In the matter between:

Applicant

and

Respondent

TAKE NOTICE that
(hereinafter called the applicant) intends to apply to this Court for an order -

- (a)
-
- (b)
-
- (c)
-

(state the relief sought)

and that the accompanying affidavit of
.....
.....
will be used in support of the application.

AND FURTHER TAKE NOTICE that the applicant has appointed -

.....
.....
(state the applicant's address for service) at which he or she will accept notice and service of all process in these proceedings.

AND FURTHER TAKE NOTICE that if you intend opposing this application you are required -

- (a) to inform the registrar at the Supreme Court, Private Bag 13398, Rev Michael Scott Street, Windhoek and the applicant or his or her legal practitioner, if any, on Form 4, within five days as the case may be, after service upon you of this notice, not counting the day of service, of your intention to oppose;

- (b) to appoint an address in your notice of intention to oppose at which you will accept notice and service of all process in these proceedings;
- (c) to -
 - (i) deliver your answering affidavit, if any, to the registrar and the applicant within seven days after service of your notice of intention to oppose; or
 - (ii) notify the registrar and the applicant, in writing, within the said seven-day period that you intend to raise a point of law only, stating concisely the point of law in question.

If no such notice of intention to oppose is given you will not be entitled to take any part in the proceedings, except as provided in rule 7(7), and such judgment may be given or an order made against or in relation to you as the court may consider just and expedient.

DATED AT this day of 20

.....
 Applicant or his or her legal practitioner
 (address)

To:
 RESPONDENT (S)

And to: The Registrar

FORM 4

(Rules 7(5)(b); Rule 5(7))

NOTICE OF INTENTION TO OPPOSE PETITION / APPLICATION

IN THE SUPREME COURT OF NAMIBIA

In the matter between:

Applicant

and

Respondent

TAKE NOTICE that (hereinafter called the respondent) (if more than one respondent is cited state whether first, second, etc. respondent, as the case may be, intends to oppose this petition / application.

AND FURTHER TAKE NOTICE that the respondent has appointed -

.....
(state the respondent's address for service) at which he or she will accept notice and service of all process in these proceedings.

DATED AT this day of 20

.....
Respondent or his or her legal practitioner
(address)

To:
(address) APPLICANT

And to: The Registrar

FORM 5

(Rule 7(17))

COUNTER-APPLICATION

IN THE SUPREME COURT OF NAMIBIA

In the matter between:

Applicant

and

Respondent

TAKE NOTICE that the respondent (if more than one respondent is cited, state whether first, second, etc. respondent, as the case may be, intends to apply to this Court for an order -

- (a)
- (b)
- (c)

(state the relief sought)

and that the accompanying affidavit of

.....

.....

will be used in support of this counter-application.

AND FURTHER TAKE NOTICE that if you intend opposing this counter-application you are required -

- (a) to inform the registrar at the Supreme Court, Private Bag 13398, Rev M Scott Street, Windhoek, and the respondent or his or her legal practitioner, if any, on Form 4, within five days after service upon you of this notice, not counting the day of service, of your intention to oppose;
- (b) (i) to deliver your replying affidavit, if any, to the registrar and the applicant within seven days after service of your notice of intention to oppose; or
 - (ii) to notify the registrar and the applicant, in writing, within the said seven-day period that you intend to raise a point of law only stating concisely the point of law in question.

If no such notice of intention to oppose is given you will not be entitled to take any part in the proceedings in so far as they relate to this counter-application, except as provided in rule 7(7), and such judgment may be given or order made against or in relation to you as the court may consider just and expedient.

.....
Respondent or his or her legal practitioner

To: The applicant

And to: The Registrar

FORM 6

(Rule 8(2))

AGREEMENT OF JOINT APPLICATION

IN THE SUPREME COURT OF NAMIBIA

In the matter between:

Applicant

and

Respondent

AGREEMENT

We, the undersigned applicants, in our capacity as parties to these proceedings before the court, do hereby agree that

.....
(state name of the representative) is hereby authorised to represent us in the above-named application and have the following powers:

- (a) to file affidavits, statements or any other documents;
- (b) to amend the application or to abandon it;
- (c) to call witnesses and give evidence and make submissions to the Court on any matter arising during the hearing of the application;
- (d) to take any other necessary steps incidental to the prosecution of the application.

DATED AT this day of 20

Initials, Surname, Identity Document number, Voter Card number of each applicant

.....

.....

.....

.....

.....

I,
(name of authorised representative) do hereby accept the conditions of this agreement subject to the provisions of rule 8.

FORM 7

(Rule 10)

NOTICE OF JOINDER

IN THE SUPREME COURT OF NAMIBIA

In the matter between:

Applicant

and

Respondent

TAKE NOTICE that you are called upon to show cause on the day of 20 at (time) why:

(1)*
(state name(s) and address(es) of person(s) to be joined) should not be joined as an applicant/
respondent in these proceedings.

(2)*
(state name of respondent to be dismissed) should not be dismissed from these proceedings.

**(Complete as appropriate)*

DATED AT this day of 20

.....
Registrar

To:
(address) Applicant

And to:
(address) Respondent (s)

FORM 8

(Rule 11(5)(a))

ORDER TO SERVE WITNESS STATEMENT

IN THE SUPREME COURT OF NAMIBIA

Case Number:/.....

In the matter between:

Applicant

and

Respondent

TAKE NOTICE that
(applicant/respondent) is hereby ordered to serve on:

.....

.....

(applicant/respondent) the witness statement(s) of:

1

2

3 (witness (ses))

On or before (date) of the oral evidence
of the abovementioned witness (es) which

.....

(applicant/respondent) intends to rely on in relation to any issue of fact to be decided at the hearing.

TAKE FURTHER NOTICE that the following directions are made by the court to which the parties
must adhere:

.....

.....

.....

.....

.....

TAKE FURTHER NOTICE that failure to serve the abovementioned witness statement or statements
may result in the court disallowing such evidence at the hearing.

DATED AT this day of 20

BY ORDER OF THE COURT

.....
Registrar of the Supreme Court

To:

Legal practitioner for
(Address)

And To:
.....

Legal practitioner for
(Address)

FORM 9

(Rule 12(2) and (4))

SUBPOENAING OF WITNESSES

IN THE SUPREME COURT OF NAMIBIA

In the matter between:

Applicant

and

Respondent

PART A

LIST OF WITNESSES TO BE SUBPOENAED IN TERMS OF RULE 12(2)

Note: Correct residential and postal addresses, telephone numbers and facsimile numbers, if any, of witnesses must be furnished.

On Behalf of the Applicant

On Behalf of the Respondent

- 1
- 2
- 3
- 4
- 5
- 6

.....
Signature of Applicant or his or her legal practitioner

.....
Signature of Respondent or his or her legal practitioner

Date:

Date:

PART B

SUBPOENAING OF WITNES IN TERMS OF RULE 12(4)

You are hereby required to appear in person before this court at on the day of 20 at o'clock and to remain in attendance until you are excused by the said court, in order to testify on behalf of the above-named applicant or respondent in regard to all matters within your knowledge relating to a matter now pending in the said court, wherein the applicant prays for an order in the following terms:

- (1)
(2)
(3), etc.

AND you are informed that you are further required to bring with you and to produce to the said court:
.....
.....
.....
.....

(describe accurately each document, book or other thing to be produced)

AND FURTHER you are informed that should you, without reasonable cause, fails to appear before the said court, or after having attended court fails to remain in attendance until you are excused by the presiding judge, you will be dealt with in accordance with section 21 of the Act.

DATED aton this.....day of20.....

BY ORDER OF THE COURT

.....
Registrar of the Supreme Court
