

**THE JUDICATURE ACT.**

Statutory Instrument 13—15.

**The Judicature (Rules of the Constitutional Court) (Petitions for  
Declarations under Article 137 of the Constitution) Directions.**

**Arrangement of Paragraphs.**

Paragraph

1. Citation.
2. Modification of the Judicature (Fundamental Rights and  
Freedoms) (Enforcement Procedure) Rules.

**Schedule**

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## **THE JUDICATURE ACT.**

Statutory Instrument 13—15.

### **The Judicature (Rules of the Constitutional Court) (Petitions for Declarations under Article 137 of the Constitution) Directions.** *(Under section 48(1) of the Act.)*

#### **1. Citation.**

These Directions may be cited as the Judicature (Rules of the Constitutional Court) (Petitions for Declarations under Article 137 of the Constitution) Directions.

#### **2. Modification of the Judicature (Fundamental Rights and Freedoms) (Enforcement Procedure) Rules.**

The Fundamental Rights and Freedoms (Enforcement Procedure) Rules are modified in their application to the constitutional court so as to read as set out in the Schedule to these Rules.

—  
*Schedule.*

para. 2.

### **The Fundamental Rights and Freedoms (Enforcement Procedure) Rules.**

#### **1. Citation.**

These Rules may be cited as the Fundamental Rights and Freedoms (Enforcement Procedure) Rules.

#### **2. Interpretation.**

In these Rules, unless the context otherwise requires—

- (a) “court” means the Constitutional Court of Uganda established by article 137 of the Constitution;
- (b) “petition” means the petition of an aggrieved party seeking to institute proceedings for a declaration or redress under article

- 137(3) of the Constitution; and
- (c) “registrar” means the registrar of the court.

### **3. Form of petition.**

(1) The petition prescribed by article 137(3) of the Constitution shall be in the form specified in the Schedule to these Rules.

(2) Every petition shall—

- (a) state the right of a petitioner to present the petition in accordance with article 137(3) of the Constitution;
- (b) state the grievance of the petitioner together with the statement of the grounds relied upon to sustain the prayer in the petition; and
- (c) be divided into paragraphs numbered consecutively, each of which shall be confined, as nearly as may be, to a distinct irregularity complained of.

(3) No costs shall be allowed for the drawing or copying of any petition not substantially in compliance with this rule, unless the court otherwise orders.

(4) The petition shall conclude with a prayer as for instance that the court may—

- (a) grant a declaration that an Act of Parliament or any other law or anything in or done under the authority of any law is inconsistent with the Constitution;
- (b) grant a declaration that any act or omission by any person or authority is inconsistent with or in contravention of a provision of the Constitution;
- (c) grant an order of redress; or
- (d) refer the matter to the High Court to investigate and determine the appropriate redress.

(5) At the foot of the petition shall be stated—

- (a) the address of the place where personal service can be effected on the petitioner and on any respondent to the petition;
- (b) a note signed by the petitioner giving the name of the petitioner’s advocate or stating that the petitioner acts for himself or herself.

(6) The petition shall be accompanied by an affidavit setting out the

facts relating to the grievance complained of by the petitioner and the redress prayed for in the petition.

(7) The petition shall also be accompanied by a list of an documents on which the petitioner intends to rely.

#### **4. Presentation of petition.**

(1) The petition shall be presented by the petitioner by lodging it in person, or, by or through his or her advocate, if any, named at the foot of the petition, at the office of the registrar and shall be lodged within thirty days after the date of the breach of the Constitution complained of in the petition.

(2) With the petition shall be delivered eight copies of the petition for use by the court and for service on the Attorney General.

(3) The petitioner or the advocate of the petitioner, if any, shall, at the time of presenting the petition, pay such fees as would be paid under the Judicature (Courts Fees) Rules for the submission of a special case to include hearing, and a further deposit of one hundred thousand shillings as security for costs.

(4) If subrule (3) of this rule is not complied with, the petition shall not be received by the registrar.

#### **5. Service.**

(1) Immediately upon presentation of the petition, the petitioner shall serve a copy of the petition on the respondent.

(2) If the Attorney General is not a respondent to the petition, the registrar shall serve a copy of the petition on the Attorney General.

(3) Service of a document referred to in these Rules on a respondent shall be personal, except as provided in subrule (4) of this rule.

(4) Where a respondent cannot be found within five days for effecting personal service on him or her, the petitioner or his or her advocate shall immediately make an application to the court supported by an affidavit, stating that all reasonable efforts have been made to effect personal service on the respondent but without success.

(5) If the court on an application under subrule (4) of this rule is satisfied that all reasonable efforts have been made to effect personal service on the respondent but without success, the court may order that service be effected in any of the ways prescribed by Order V of the Civil Procedure Rules for service, other than personal service, fixing the day for appearance within five days.

(6) The registrar shall, in any case, post on the court notice board a copy of the petition.

## **6. Answer of respondent.**

(1) A respondent on whom a petition has been served shall, within three days after the service of the petition on him or her, furnish to the registrar in writing, signed by the respondent or the advocate of the respondent, an address to which any document may be sent relating to the proceedings on the petition and intended for the respondent.

(2) If the respondent fails to comply with subrule (1) of this rule, the registrar shall post up every such document as is referred to in that subrule on the court notice board, and the posting up shall be sufficient notice of it to the respondent.

(3) If the respondent wishes to oppose the petition, the respondent shall, within seven days after the petition was served on him or her, file an answer to the petition.

(4) The respondent's answer shall be lodged with the registrar together with eight copies of it for use by the court and for service on the Attorney General, if the Attorney General is not a respondent.

- (5) The answer of the respondent shall be accompanied by—
- (a) an affidavit stating the facts upon which the respondent relies in support of his or her answer; and
  - (b) a fee of ten thousand shillings.

(6) The respondent shall, immediately upon lodging his or her answer with the registrar, serve a copy of the answer on the petitioner or his or her advocate.

(7) Where the respondent requires further particulars of the petition, he or she shall apply for the particulars together with the answer.

(8) The petitioner shall, subject to the directions of the court, supply any particulars requested under subrule (7) of this rule within fourteen days after the service on the petitioner of a request for the particulars by the respondent.

## **7. Unopposed petition.**

(1) If a respondent upon whom a petition has been served intends not to oppose the petition, he or she shall lodge a written notice of that intention signed by the respondent at the office of the registrar at least three days before the day appointed for trial, exclusive of the day on which the notice is filed.

(2) The respondent shall provide to the registrar with the notice at the time of lodging it, a sufficient number of copies of the notice for use by the court and for service on the Attorney General and other respondents if any.

(3) The respondent shall, immediately upon lodging the notice, serve a copy on the petitioner or on his or her advocate.

(4) If a notice is filed under subrule (1) of this rule, the registrar shall immediately serve a copy of the notice on the Attorney General, if the Attorney General is not a respondent, and post up a copy of the notice on the court notice board.

(5) Notwithstanding that the petition is not opposed, it shall not be abated on that account.

## **8. Place and time of trial.**

(1) The trial of a petition shall be held at such time and place as the court shall direct.

(2) Where the petition and answer have been duly served, and any application for further and better particulars has been determined or, as the case may be, where notice of intention not to oppose has been served, the court shall set a date for trial of the petition which shall be within seven days after the date on which further and better particulars were ordered or agreed

to be given.

(3) The court shall, in any case, fix the date for the trial of the petition within seven days after the due service of the petition on the respondent where the respondent has neither filed an answer to the petition nor filed a notice of intention not to oppose the petition.

(4) In a case to which subrule (3) of this rule applies, or where the respondent has filed a notice of intention not to oppose the petition, the petition shall, unless withdrawn, proceed to be heard and determined *ex parte* so far as the respondent is concerned.

(5) Notice of the time and place of trial shall be given by the registrar as soon as possible in the following manner—

- (a) by posting up a notice on the court notice board; and
- (b) by sending a copy of the notice to each party to the proceedings and to the Attorney General if the Attorney General is not a party to the proceedings.

(6) If, after notice of trial has been given, as provided in this rule, and before the trial has begun the registrar receives—

- (a) information of the death of the sole petitioner or the survivor of several petitioners; or
- (b) notice of the petitioner's intention to apply for leave to withdraw the petition,

the registrar shall immediately countermand the notice of trial, and the countermand shall be given in the same manner, as nearly as may be, as the notice of trial.

## **9. Trial in open court.**

(1) A petition shall be tried in open court by an odd number of justices of the court not being less than five.

(2) Where any justice of the court is prevented by illness or any other reason from attending the hearing of a petition, another justice may be substituted and the hearing shall continue subject to subrule (1) of this rule.

## **10. Expeditious hearing.**

(1) The court shall, in accordance with article 137(7) of the

Constitution, inquire into and determine the petition as soon as possible and may for that purpose suspend any other matter pending before it.

(2) The court shall sit from day to day and may, for the purposes of hearing, and determining the petition, sit during Sundays and on public holidays where it considers it necessary for ensuring compliance with article 137(7) of the Constitution.

(3) In any case, the court or the Deputy Chief Justice may order that the registry of the court shall stay open on Sundays and public holidays to facilitate the filing and service of documents connected with the proceedings of the petition.

#### **11. Adjournments.**

The court may, in exceptional circumstances on application by a party to the petition, or of its own motion, adjourn the trial of a petition from time to time.

#### **12. Evidence at trial.**

(1) All evidence at the trial in favour of or against the petition shall be by way of affidavit read in open court.

(2) With the leave of the court, any person swearing an affidavit which is before the court may be cross-examined by the opposite party and reexamined by the party on behalf of whom the affidavit is sworn.

(3) The court may, of its own motion, examine any witness or call and examine or recall any witness if the court is of the opinion that the evidence of the witness is likely to assist the court to arrive at a just decision.

(4) A person summoned as a witness by the court under subrule (3) of this rule may, with the leave of the court, be cross-examined by the parties to the petition.

(5) The court may refer the matter to the High Court to investigate and determine the appropriate redress.

#### **13. Procedure generally.**

(1) Subject to these Rules, the practice and procedure in respect of a petition shall be regulated, as nearly as may be, in accordance with the Civil Procedure Act and the rules made under that Act relating to the trial of a suit in the High Court with such modifications as the court may consider necessary in the interest of justice and expedition of the proceedings.

(2) For the purposes of appeals against a decision of the court under article 132(3) of the Constitution, the Judicature (Supreme Court) Rules shall apply with such modifications as may be necessary.

#### **14. Consolidation of petitions.**

Where more petitions than one are presented in relation to the same matter, the court may direct that some or all of those petitions be dealt with as one petition.

#### **15. Death of petitioner.**

(1) A petition shall be abated by the death of a sole petitioner or of the survivor of two or more petitioners.

(2) The abatement shall not affect the liability of the petitioner or any other person to the payment of costs previously incurred.

(3) If the registrar is satisfied of the death of a sole petitioner or the survivor of several petitioners, the registrar shall immediately cause a notice of it to be posted on the notice board of the court.

#### **16. Death of respondent.**

If the respondent to a petition dies, the petition shall not on that account be abated, but shall continue.

#### **17. Withdrawal of petition.**

(1) A petition shall not be withdrawn until notice has been given to the respondents as the court may direct.

(2) Where the respondent has been served with notice of withdrawal, the court may give leave to the petitioner to withdraw the petition on such terms as to costs and otherwise as the court may deem fit.

**18. Irregularities.**

No proceedings upon the petition shall be defeated by any formal objection or by the miscarriage of any notice or any other document sent by the registrar to any party to the petition.

**19. Costs.**

(1) All costs of and incidental to the presentation of the petition and the proceedings consequent on the petition shall be defrayed by the parties to the petition in such manner and in such proportions as the court may determine.

(2) Subject to subrule (1) of this rule, where costs are awarded to a party against the petitioner in proceedings under these Rules, the deposit made by the petitioner as security for costs under rule 4(3) of these Rules shall be applicable in payment of the sum ordered but otherwise shall be refunded to the petitioner.

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*Schedule to the Form.*

rule 3.

Petition for a Declaration under Article 137 of the Constitution.

In the Constitutional Court of Uganda.

*The Fundamental Rights and Freedoms (Enforcement Procedure) Rules.*

The petition of \_\_\_\_\_ of \_\_\_\_\_  
(or of \_\_\_\_\_ of \_\_\_\_\_  
and \_\_\_\_\_ of \_\_\_\_\_,  
as the case may be) whose name(s) is (or are) stated at the foot of this  
petition.

1. Your petitioner(s) \_\_\_\_\_  
(and \_\_\_\_\_) is (are) a person  
(persons) having an interest in or is (are) affected by the following  
matters being inconsistent with the Constitution whereby your  
petitioner(s) is (are) aggrieved<sup>1</sup>—
  - (a) that \_\_\_\_\_ (*state the Act of Parliament*) is  
inconsistent with the Constitution for \_\_\_\_\_
  - (b) that \_\_\_\_\_ (*state which other law*)  
is inconsistent with the Constitution \_\_\_\_\_
  - (c) that \_\_\_\_\_  
(*state which thing done in or under the authority of any law  
(stating which law) was inconsistent with the Constitution*)
  - (d) that \_\_\_\_\_ (*state which act or omission  
by which person or which authority*) is inconsistent with or in  
contravention of a provision of the Constitution, namely  
\_\_\_\_\_  
\_\_\_\_\_  
(*state what was inconsistent with or in contravention of which  
provision of the Constitution*).
2. Your petitioner(s) state(s) that (*here state the reasons relied on to show  
why the Act, or law, or thing done under the authority of law, or the act  
or omission, is inconsistent with or in contravention of the  
Constitution*).
3. Therefore your petitioner(s) prays (pray) that the court may—

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<sup>1</sup>Delete whichever is not applicable.

- (a) grant a declaration—
- (i) that the Act of Parliament (*state which Act*);
  - (ii) that any other law (*state which law*);
  - (iii) that the thing done in or under the authority of any law (*state what law*) was inconsistent with the Constitution (*state which provision of the Constitution*);
- (b) grant an order of redress or refer the matter to the High Court to investigate and determine an appropriate redress.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

My (our) address(es) is (are) \_\_\_\_\_

My (our) advocate(s) is (are) \_\_\_\_\_

*or*

I am (We are) acting for myself (ourselves)

The address of the respondent(s) is (are) \_\_\_\_\_

\_\_\_\_\_  
Signed

*NB*—The petition must be accompanied by an affidavit setting out the facts on which the petition is based.

\_\_\_\_\_

**History:** L.N. 4/1996.

### **Cross References**

Civil Procedure Act, Cap. 71.

Civil Procedure Rules, S.I. 71-1.

Constitution of 1995.

Judicature (Courts Fees) Rules, S.I. 13-1.

Judicature (Supreme Court Rules) Directions, S.I. 13-11.

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