

Uganda

Judicature Act

Constitutional Court (Petitions and References) Rules, 2005

Statutory Instrument 91 of 2005

Legislation as at 23 December 2005

FRBR URI: /akn/ug/act/si/2005/91/eng@2005-12-23

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Constitutional Court (Petitions and References) Rules, 2005

Contents

| | |
|---|---|
| Part I – Preliminary | 1 |
| 1. Title | 1 |
| 2. Interpretation | 1 |
| Part II – Petitions under article 137(3) of the Constitution | 1 |
| 3. Form and contents of petition | 1 |
| 4. Presentation of petition | 2 |
| 5. Service | 2 |
| 6. Answer by respondent | 3 |
| 7. Unopposed petition | 3 |
| 8. Place and time of trial | 4 |
| 9. Trial in open court | 4 |
| 10. Expedited hearing | 4 |
| 11. Adjournment | 5 |
| 12. Evidence at trial | 5 |
| 13. Consolidation of petition | 5 |
| 14. Death of petitioner | 5 |
| 15. Death of respondent | 5 |
| 16. Withdrawal of petition | 5 |
| 17. Irregularities | 6 |
| Part III – References to the Constitutional Court | 6 |
| 18. Manner of making reference to Court | 6 |
| 19. Service of reference | 6 |
| 20. Notice for directions | 6 |
| 21. Proceedings of court | 7 |
| 22. Disposition of case | 7 |
| Part IV – Miscellaneous | 7 |
| 23. Civil Procedure Act, and rules to apply | 7 |
| 24. Revocation of Legal Notice No 3 of 1996 and Legal Notice No 4 of 1996 | 7 |
| Schedule (Rule 3) | 7 |

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Constitutional Court (Petitions and References) Rules, 2005 Statutory Instrument 91 of 2005

Published in [Uganda Gazette no. 82](#) on 23 December 2005

Assented to on 10 November 2005

Commenced on 23 December 2005

[This is the version of this document from 23 December 2005 and includes any amendments published up to 30 September 2020.]

IN EXERCISE of the powers conferred on the Rules Committee by section 41(1) of the Judicature Act, these Rules are made this 10th day of November, 2005.

Part I – Preliminary

1. Title

These Rules may be cited as the Constitutional Court (Petitions and References) Rules, 2005.

2. Interpretation

In these Rules, unless the context otherwise requires—

“Court” means the Constitutional Court established by article 137 of the Constitution;

“original court” means a court of law other than a Field Court Martial, hearing proceedings in the course of which a question as to the interpretation of the constitution has arisen;

“petition” means the petition of a party seeking to institute proceedings for a declaration or redress under article 137(3) of the Constitution;

“reference” means a reference as to the interpretation of the Constitution as provided for in article 137(5) of the Constitution;

“Registrar” means the Registrar of the Court.

Part II – Petitions under article 137(3) of the Constitution

3. Form and contents of petition

- (1) A petition under article 137(3) shall be in the form specified in the Schedule to these Rules.
- (2) The petition shall allege—
 - (a) that an Act of Parliament or any other law or anything in or done under the authority of any law is inconsistent with or in contravention of a provision of the Constitution; or
 - (b) that any act or omission by any person or authority is inconsistent with or in contravention of a provision of the Constitution;

- (3) The petition shall be divided into paragraphs numbered consecutively, each of which shall be confined, as nearly as may be, to a distinct inconsistency or contravention complained of.
- (4) 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.
- (5) The petition shall conclude with a prayer that the Court—
 - (a) make 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; or
 - (b) make 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 for redress; or refer the matter to the High Court to investigate and determine the appropriate redress.
- (6) The petition shall—
 - (a) state the address of the place where personal service can be effected on the petitioner and on any respondent to the petition;
 - (b) contain a note signed by the petitioner or the petitioner's advocate giving the name of the petitioner's Advocate or stating that the petitioner acts for himself or herself;
- (7) The petition shall—
 - (a) be accompanied by an affidavit setting out the matters referred to in rule 3(2);
 - (b) where appropriate, the redress prayed for.
- (8) The petition shall also be accompanied by a list of any documents on which the petitioner intends to rely.

4. Presentation of petition

- (1) The petition shall be presented by the petitioner by lodging it at the registry of the Court.
- (2) The petitioner shall lodge with the Registrar the petition together with eight copies of the petition for use by the Court and for service on the Attorney General, if the Attorney General is not a party.
- (3) The petitioner shall, at the time of presenting the petition—
 - (a) pay the appropriate fees;
 - (b) deposit two hundred thousand shillings as security for costs.
- (4) Where subrule (3) 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) Where 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).

- (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 Registrar 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 Registrar on an application under subrule (4) is satisfied that all reasonable efforts have been made to effect personal service on the respondent but without success, the Registrar may order that service be effected in any of the other ways prescribed by Order V of the Civil Procedure Rules.
- (6) The Registrar shall, in any case, post on the Court notice board a copy of the petition.

6. Answer by 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) Where the respondent fails to comply with subrule (1), 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) Where 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 shall lodge with the Registrar the answer together with eight copies of the answer for use by the Court and for service on the Attorney General if the Attorney General is not a party.
- (5) The answer of the respondent shall be accompanied by an affidavit stating the facts upon which the respondent relies in support of his or her answer.
- (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) 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) Where a notice is filed under subrule (1), the Registrar shall forthwith serve a copy of the notice on the Attorney General, if the Attorney General is not a party, 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 to hold a scheduling conference to sort out points of agreement and disagreement.
- (3) After the scheduling conference, the Court shall set a date for trial of the petition which shall be within seven days after the date of the scheduling conference.
- (4) 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.
- (5) 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, be heard and determined by the Court.
- (6) 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;
 - (b) by serving a copy of the notice on each party to the proceedings and on the Attorney General, if the Attorney General is not a party to the proceedings.
- (7) 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 a sole petitioner or the death of the survivor of several petitioners; or
 - (b) notice of the petitioner's intention to apply for leave to withdraw the petition, the Registrar shall forthwith, 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 heard 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).

10. Expedited hearing

- (1) The Court shall, in accordance with article 137(7) of the Constitution, hear 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 Saturdays, Sundays and on public holidays where the Court 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. Adjournment

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 a petition shall be by way of affidavit filed in Court.
- (2) With the leave of the Court, any person swearing an affidavit which is before the Court, may be cross examined or recalled as a 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.
- (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) 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. Consolidation of petition

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.

14. Death of petitioner

- (1) A petition shall abate by the death of a sole petitioner or by the death of the survivor of two or more petitioners unless the cause of action survives or continues.
- (2) The abatement shall not affect the liability of the petitioner or any other person to the payment of costs previously incurred.
- (3) Where the Registrar is satisfied of the death of a sole petitioner or the death of the survivor of several petitioners, the Registrar shall forthwith, cause a notice of it to be posted on the notice board of the Court.

15. Death of respondent

If the respondent to a petition dies, the petition shall not on that account abate.

16. Withdrawal of petition

- (1) A petitioner may at any time after presenting a petition in the Court and before the petition is called on for hearing, lodge in the Registry, notice in writing that he or she wishes to withdraw the petition.
- (2) The petitioner shall, before or within seven days after lodging the notice of withdrawal, serve copies of the notice on each respondent who has complied with rule 6.

- (3) Where there is more than one petitioner, the petition shall not be withdrawn without the consent of the other petitioners.
- (4) If all the parties to the petition consent to the withdrawal of the petition, the petitioner may lodge in the appropriate registry the document or documents signifying the consent of the parties; and the petition shall then be dismissed without costs.
- (5) If not all the parties consent to the withdrawal of the petition, the petition shall stand dismissed with costs, except as against any party who has consented, unless the Court, on the application of the petitioner, otherwise orders.
- (6) An application under subrule (5) shall be made within fourteen days after the lodging of the notice of withdrawal.

17. Irregularities

Proceedings upon a petition shall not be defeated by any formal objection or by the irregularity of any notice or any other document sent by the Registrar to any party to the petition.

Part III – References to the Constitutional Court

18. Manner of making reference to Court

- (1) Where a reference to the Court regarding any question as to the interpretation of the Constitution under article 137(5) of the Constitution is to be made, the original court shall submit the reference in terms of Form II of the Schedule to these Rules, stating the specific questions or issues to be answered or resolved by the Court.
- (2) The Registrar of the original court shall submit to the Court eight copies of the reference and a reference shall be accompanied by a copy of the record of proceedings of the original court.

19. Service of reference

Upon receipt of the reference from the original Court, the Registrar of the Court shall serve the reference on all parties to the proceedings in which the question of law has arisen and on the Attorney-General, and the addresses for service shall be as given by the parties in the proceedings in the original court.

20. Notice for directions

At the time of service of the reference, the Registrar of the Court shall give notice to all parties and to the Attorney-General of the date for their attendance on the Court for directions on the following matters—

- (a) whether the questions or issues set out in the reference should be amended;
- (b) whether at the hearing of the issues, apart from arguments of law, there is need for oral or affidavit evidence; except that the Court may, of its own motion call such evidence as will assist it in determining the real issues arising out of the reference; and
- (c) the date of the hearing and the proposed length of the hearing which shall be within twenty one days or as soon thereafter as may be practicable.

21. Proceedings of court

- (1) On receipt of the reference, the Court shall, as soon as practicable answer or resolve the questions or issues set out in the reference and may for that purpose, take or direct the original court to take such further evidence as may be required.
- (2) The proceedings before the Court shall be by way of legal arguments of the parties either written or oral or both which shall be presented to the Court in such order as the Court may determine.
- (3) The decision of the Court together with a copy of its proceedings shall be remitted to the original court.

22. Disposition of case

The original court shall dispose of the case in accordance with the decision of the Court or the Supreme Court if there was an appeal from the decision of the Court.

Part IV – Miscellaneous

23. Civil Procedure Act, and rules to apply

- (1) Subject to the provisions of these Rules, the practice and procedure in respect of a petition or a reference shall be regulated, as nearly as may be, in accordance with the Civil Procedure Act and the rules made under that Act and the Court of Appeal Rules, with such modifications as the Court may consider necessary in the interest of justice and expedition of the proceedings.
- (2) For purposes of appeals against a decision of the Court, the Supreme Court Rules shall apply with such modifications as may be necessary.

24. Revocation of Legal Notice No 3 of 1996 and Legal Notice No 4 of 1996

The Interpretation of the Constitution (Procedure) Rules, 1992 (Modification) Directions, 1996 and the Rules of the Constitutional Court (Petitions for Declarations under article 137 the Constitution) Directions, 1996 are revoked.

Schedule (Rule 3)

Form I - Petition for a declaration under article 137(3) of the Constitution

In the Constitutional Court of Uganda

The Constitutional Court (Petitions and References) Rules, 2005

The petition of AB of _____ (or of AB of _____ and CD of _____ as the case may be) whose name(s) is (or are) stated at the foot of this petition.

1. Your petitioner(s) AB (and CD) allege(s)–

- (a) that _____ (*state the Act of Parliament*) is inconsistent with or in contravention of the Constitution for _____
- (b) that _____ (*state which other law*) is inconsistent with the _____

- (c) that _____ (*state which thing done in or under the authority of any law (stating which law) was inconsistent with or in contravention of 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-
- (a) make 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 or in contravention of the Constitution (*state which provision of the Constitution*)
- (b) grant an order of redress _____ (*state the redress sought*) 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 (or our) advocate(s) is (are) _____

or

I am (or 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.

Form II - Reference to the Constitutional Court (Rule 18(1))

In the Constitutional Court of Uganda

The Constitutional Court (Petitions and References) Rules, 2005

The Reference of the Hon. Mr/Lady Justice _____ of the _____ Court/the _____ Court sitting at _____ in Civil suit/Criminal Case No _____ of _____

1. The original court being of the opinion that a substantial question of law as to the interpretation of the Constitution has arisen in the above proceedings
2. The question or issues are—

(here state the question or issues)

1 _____

2 _____

3 _____

3. The original court desires the Constitutional Court to determine the question or issues in order to dispose of the above suit/case; /or A.B. the plaintiff or C.D. the defendant or both parties request the original court to refer the above question(s) or issue(s) to the Constitutional Court in order that the original court dispose of the above suit/case.

Dated this _____ day of _____ 20_____

Signed

Judge/Magistrate of the _____ Court.

Name(s) of the Plaintiff(s) or name(s) of the Plaintiff's Advocate(s) and address(es) for service.

Signed

Name(s) of the Defendant(s) or name of the Defendant's Advocate and address for service.

Signed

Name(s) of the Accused person or the name of the Advocate of the Accused and address for service.

Signed