

THE ELECTION PETITIONS ACT

ARRANGEMENT OF SECTIONS

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THE ELECTION PETITIONS ACT

Cap. 107.
Acts
6 of 1963,
28 of 1988,
29 of 1997,
29 of 2002.

[17th April, 1885.]

1. This Act may be cited as the Election Petitions Act.

Short title.
29/1997

PART I. *Election Petitions*

2. In this Act—

S. 2.
Interpreta-
tion.

“constituency” means an area of Jamaica having separate representation in the House of Representatives;

6/1963
S. 2 (Sch.).
29/2002
S. 2.

“Constituted Authority” means the Constituted Authority established under section 62C of the Kingston and St. Andrew Corporation Act, section 40C of the Parish Councils Act and section 44A of the Representation of the People Act;

“corrupt practice” means bribery, treating and undue influence or any of such offences as defined or recognized by the law of Jamaica;

“division” means—

29/1997
S. 3 (a).

(a) any division of any parish except the parishes of Kingston and St. Andrew, for the purposes of the Parish Councils Act;

(b) any division of the parishes of Kingston and St. Andrew for the purpose of the Kingston and St. Andrew Corporation Act;

“petition” or “election petition” shall mean a petition complaining of an undue return or undue election of a member of the House of Representatives or a councillor of a Parish Council or the Kingston and St. Andrew Corporation, presented to the Supreme Court under the provisions of this Act.

29/1997
S. 3 (b).

3. A petition may be presented to the Supreme Court by any one or more of the following persons, that is to say—

Who may
present
petitions.
6/1963
S. 2 (Sch.).

ELECTION PETITIONS

29/1997
S. 4.

Provisions as
to presenting
petitions.

- (a) in relation to the House of Representatives by the Clerk of the House of Representatives by authority of a resolution of that House;
 - (b) in relation to the House of Representatives or a Parish Council or the Kingston and St. Andrew Corporation, by the Attorney-General or by any other person.
4. The following provisions shall apply to the presentation of an election petition—
- (a) The petition shall be signed by the petitioner, or all the petitioners if more than one.
 - (b) The petition shall be presented to the Registrar of the Supreme Court within twenty-one days after the return has been made of the member to whose election the petition relates, unless it question the return or election upon an allegation of corrupt practices, and specifically alleges a payment of money or other reward to have been made by any member, or on his account, or with his privity, since the time of such return, in pursuance or in furtherance of such corrupt practices, in which case the petition may be presented at any time within twenty-eight days after the date of such payment.
 - (c) Presentation of an election petition shall be made by filing it in the Registry of the Supreme Court.
 - (d) At the time of the presentation of the petition, or within three days afterwards, security for the payment of all costs, charges and expenses that may become payable by the petitioner—
 - (i) to any person summoned as a witness on his behalf; or
 - (ii) to the member whose election or return is complained of (who is hereinafter referred to as the respondent),

shall be given on behalf of the petitioner except where the petitioner is the Clerk of the House of Representatives or the Attorney-General. 6/1963
S. 2 (Sch.).

- (e) The security shall be an amount of five thousand dollars for a petition and shall be deposited in the Consolidated Fund to the credit of the petition to abide the order of the Court. 29/1997
S. 5.

5. On presentation of the petition the Registrar shall publish a copy of the same in the *Gazette*. Publication
of petition.

6. Notice of the presentation of a petition and the security (if any) accompanied by a copy of the petition shall, within ten days after the presentation of the petition, be served by the petitioner on the respondent. Service of
notice and
copy of
petition.
29/1997
S. 6.

Service of the petition may be effected either by personal service or by registered post to the address of the respondent stated in the respondent's nomination paper.

7. [*Repealed by Act 29 of 1997.*]

8. It shall be sufficient that a petition shall state generally the grounds on which the petitioner relies for challenging the election or return, concluding with a statement of the relief sought; particulars, however, of the acts complained of as avoiding the election or return shall be furnished by the petitioner to the respondent, within ten days after the presentation of the petition. General
grounds
and special
relief to be
stated;
particulars
of acts
relied on to
be furnished.

It shall be lawful for a Judge of the Supreme Court, on a summons taken out by the respondent for the purpose, to order further and better particulars to be furnished by the petitioner, or on a summons being taken out by the petitioner to allow such particulars to be added to or amended.

Service of
notices, how
effected.
6/1963
S. 2 (Sch.).

9. Service of any notices required to be served shall, subject to any direction given by the Chief Justice, be effected in accordance with the rules in force in the Supreme Court or in the Court of Appeal, as the case may be, with reference to service.

Address for
service to be
furnished by
both parties.

10. The petitioner shall in his petition state his address for service within three miles of the Court House of Kingston. Similarly a respondent shall, within ten days after service on him of notice of the petition as aforesaid, furnish an address for service within the distance aforesaid.

Notice of
cross
complaint.

11. Where a petition complains of an undue return and claims the seat for some person other than the person returned, it shall be lawful for the respondent, within ten days after service of the notice of the petition as aforesaid, to give notice to the petitioner that he intends to complain of the election of the person on whose behalf the seat is claimed as undue.

The rules applicable to a petition and to particulars of charges made therein shall apply equally to such notice.

Several
petitions as
to the same
election.

12. Where more petitions than one are presented relating to the same election or return, all such petitions shall be dealt with as one petition, in such manner and on such terms as a Judge in Chambers may direct.

Withdrawal
of petitions.

13. An election petition shall not be withdrawn without the leave of the Court, or of a Judge in Chambers, upon special application made for such leave.

29/1997
S. 9.

No such application shall be granted unless the Court or Judge is satisfied that adequate notice has been given, in the case of an election to the House of Representatives, in the constituency, or, in the case of an election to a Parish Council or to the Council of the Kingston and St. Andrew Corporation, in the parish to which the petition

relates, of the intention of the petitioner to make such application.

On the hearing of the application for withdrawal, any person who might have been a petitioner in respect of the election to which the petition relates may apply to the Court or a Judge to be substituted as petitioner for the petitioner so desirous of withdrawing the petition.

The Court or Judge may, if it or he thinks fit, substitute as a petitioner any such applicant as aforesaid, and may further, if the proposed withdrawal is in the opinion of the Court or Judge induced by any corrupt bargain or consideration, by order direct that the security given on behalf of the original petitioner shall remain as security for any costs that may be incurred by the substituted petitioner, and that to the extent of the sum named in such security the original petitioner shall be liable to pay the costs of the substituted petitioner.

If no such order is made with respect to the security given on behalf of the original petitioner, security to the same amount as would be required in the case of a new petition, and subject to the like conditions, shall be given on behalf of the substituted petitioner before he proceeds with his petition, and within five days after the order of substitution.

Subject as aforesaid, a substituted petitioner shall stand in the same position, as nearly as may be, and be subject to the same liabilities, as the original petitioner.

If a petition is withdrawn the petitioner shall be liable to pay the costs of the respondent.

Where there are more petitioners than one, no application to withdraw a petition shall be made except with the consent of all the petitioners.

Death of
petitioner.

14. An election petition shall be abated by the death of a sole petitioner or of the survivor of several petitioners. The abatement of a petition shall not affect the liability of the petitioner to the payment of costs previously incurred. On the abatement of a petition notice of such abatement having taken place shall be given in the *Gazette*; and within fourteen days after such notice has been given any person who might have been a petitioner in respect of the election to which the petition relates may apply to the Court or a Judge in Chambers to be substituted as a petitioner.

The Court or Judge may, if it or he thinks fit, substitute as a petitioner any such applicant who is desirous of being substituted, and on whose behalf security to the same amount is given as is required in the case of a new petition, and subject to the same right on the part of the respondent to object to the sufficiency of the same.

Respond-
ent's death
or refusal
to contest.

15. If before the trial of any election petition any of the following events happen in the case of the respondent, that is to say—

(a) if he dies;

(b) if he gives notice to the Registrar of the Supreme Court and to the petitioner that he does not intend to oppose the petition,

notice of such event having taken place shall be given in the *Gazette*, and within fourteen days after the notice shall have been given any person who might have been a petitioner in respect of the election to which the petition relates may apply to the Court or a Judge in Chambers to be admitted as a respondent to oppose the petition, and such person shall on such application be admitted accordingly, either with the respondent, if there be a respondent, or in place of a respondent; and any number of persons not exceeding three may be so admitted.

16. A respondent who has given the prescribed notice that he does not intend to oppose the petition shall not be allowed to appear or act as a party against such petition in any proceedings thereon, and shall not sit or vote in the House of Representatives until the Speaker or Deputy Speaker of the House of Representatives has been informed of the report on the petition or in a Parish Council or the Council of the Kingston and St. Andrew Corporation until the chairman or vice-chairman of that Parish Council or the Mayor or Deputy Mayor of the Kingston and St. Andrew Corporation has been so informed; and the Court or Judge shall in all cases in which such notice has been given forthwith report the same to the Speaker or Deputy Speaker of the House of Representatives in the case relating to the House of Representatives, or to the chairman or vice-chairman of the Council in a case relating to a Parish Council or to the Mayor or the Deputy Mayor of the Kingston and St. Andrew Corporation in a case relating to the Kingston and St. Andrew Corporation in accordance with the provisions hereinafter contained.

Respondent's disabilities after refusal to contest.

6/1963
S. 2 (Sch.).

29/1997
S. 10 (a) (b).

20/1997
S. 10 (c).

17. Where an election petition complains of a double return, and the respondent has given notice to the Registrar of the Supreme Court and the petitioner that it is not his intention to oppose the petition, and no party has been admitted in pursuance of the provisions of this Act to defend such return, then the petitioner, if there be no petition complaining of the other member returned on such double return, may withdraw his petition, by notice addressed to the Registrar of the Supreme Court; and upon the receipt of such notice the Registrar shall report the fact of the withdrawal of such petition to the Speaker or Deputy Speaker of the House of Representatives or to the chairman or vice-chairman of the Parish Council or to the Mayor or Deputy Mayor of the Kingston and St. Andrew Corporation, as the case may be, and the House

Double return: amendment thereof.

6/1963
S. 2 (Sch.).

28/1997
S. 11 (a).

28/1997
S. 11(b).

of Representatives or the Parish Council or the Council of the Kingston and St. Andrew Corporation, as the case may be, shall thereupon give the necessary directions for amending the said double return.

Complaints
of conduct
of the
Returning
Officer.

18. Where an election petition complains of the conduct of a Returning Officer, such Returning Officer shall for all the purposes of this Act, except the admission of respondents in his place, be deemed to be a respondent.

Complaint
of no return.

19. A petition complaining of no return may be presented to the Court, and shall be deemed to be an election petition within the meaning of this Act; and the Court may make such order thereon as they think expedient for compelling a return to be made, or may allow such petition to be heard by the Judge in manner hereinbefore provided with respect to ordinary election petitions.

Priority
of trial
of elec-
tion
petition.
28/1988
S. 2.

19A. The trial of an election petition shall, so far as practicable consistently with the interests of justice in respect of the trial, commence within ninety days of the date of filing of the petition and be continued from day to day on every lawful day until its conclusion.

Trial of
petitions.

20. The following provisions shall take effect with reference to the trial of an election petition—

- (a) Every election petition shall be tried by the Chief Justice or a Puisne Judge of the Supreme Court nominated by him after consultation with the other Judges.
- (b) The trial of an election petition shall take place at the principal Court House in the parish in which is comprised the constituency or the division to which the election relates:

Provided that if it shall appear to a Judge of the Supreme Court on an application by summons that special circumstances exist which render it desirable that the petition should be tried in Kingston or in some other parish, or, if the parties agree, it shall be lawful for the Judge to order the trial to be held in Kingston or in some other parish.

- (c) Every election petition shall be tried in open Court by a Judge of the Supreme Court sitting alone without a jury.
- (d) Notice of the time and place at which an election petition is to be tried shall be given by affixing a notice signed by the Registrar of the Supreme Court on the notice board (of the Supreme Court), at the Court House where the election petition is to be tried, and by publication in the *Gazette*. Such notice shall be given not less than fourteen days before the day fixed for trial.
- (e) (i) The Judge who has been nominated to try the election petition or, if he is not available, any other Judge of the Supreme Court, may direct the postponement of the trial of the election petition to some other date, if it shall appear to him expedient so to do and may give such directions as to notice of the postponement as he considers necessary.
- (ii) The Judge presiding at the trial may adjourn the same from time to time, and, in case of a trial outside of Kingston, from any one place to any other place within the parish, as to him may seem expedient, or to Kingston or to some other parish, if the parties so agree.

[The inclusion of this page is authorized by L.N. 146/1999]

Decision and
certificate
thereof.

29/1997
S. 12 (a) (f).

6/1963
S. 2 (Sch.).

29/1997
S. 12 (a) (f).

Certificate
where
corrupt
practices
charged.

6/1963
S. 2 (Sch.).

29/1997
S. 12 (b).

(f) At the conclusion of the trial, the Judge shall determine whether the member of the House of Representatives or the Parish Council or the Council of the Kingston and St. Andrew Corporation, as the case may be, whose return or election is complained of, or any and what other person, was duly returned or elected, or whether the election was void, and shall certify such determination to the Speaker of the House of Representatives, or, if the Speaker be the respondent, to the Deputy Speaker, in the case of an election to the House of Representatives, or to the chairman of the Parish Council, or if such chairman be the respondent, to the vice-chairman, in the case of an election to a Parish Council or to the Mayor of the Kingston and St. Andrew Corporation or, if the Mayor be the respondent, to the Deputy Mayor, in the case of an election to the Kingston and St. Andrew Corporation; and subject to an appeal under section 22 the return shall be confirmed or altered, or the writ for a new election shall be issued, as the case may require, in accordance with such determination.

(g) Where any charge is made in an election petition of any corrupt practice having been committed at the election to which the petition refers, the Judge shall in addition to the certificate aforesaid, and at the same time as he sends such certificate, report in writing to the Speaker or Deputy Speaker of the House of Representatives or to the chairman or vice-chairman of the Parish Council or to the Mayor or Deputy Mayor of the Kingston and St. Andrew Corporation, as the case may be, as follows—

(i) whether any corrupt practice has or has not been proved to have been committed at

- such election, and the nature of such corrupt practice;
- (ii) whether any corrupt practice proved to have been committed as aforesaid has or has not been proved to have been committed by, or with the knowledge and consent of any candidate at such election, or by any agent of such candidate;
- (iii) the names of all persons, if any, who have been proved at the trial to have been guilty of any corrupt practice;
- (iv) whether corrupt practices have, or whether there is reason to believe that corrupt practices have extensively prevailed at the election to which the petition relates.
- (h) The Judge may at the same time make a special report to the Speaker or Deputy Speaker of the House of Representatives or to the chairman or vice-chairman of the Parish Council or to the Mayor or Deputy Mayor of the Kingston and St. Andrew Corporation, as the case may be, as to any matter arising in the course of the trial, an account of which in his judgment ought to be submitted. Special report.
6/1963
S. 2 (Sch.).
29/1997
S. 12 (c).
- (i) Where, upon the application of any party to a petition under this Act, it appears to the Court or to a Judge in Chambers that the case raised by the petition can be conveniently stated as a special case, the Court or Judge may direct the same to be stated accordingly; and any such special case shall, as far as may be, be heard before the Court of Appeal, and the decision of the Court of Appeal shall be final; and the Court of Appeal shall certify to the Speaker or Deputy Special case.
6/1963
S. 2 (Sch.)

ELECTION PETITIONS

Speaker of the House of Representatives or to the chairman or vice-chairman of the Parish Council or to the Mayor or Deputy Mayor of the Kingston and St. Andrew Corporation, as the case may be, its determination in reference to such special case.

Power to reserve questions of law.

21. If it appear to the Judge on the trial of the said petition that any question or questions of law, as to the admissibility of evidence or otherwise, require further consideration by the Court of Appeal then it shall be lawful for the said Judge to postpone the granting of the said certificate until the determination of such question or questions by the Court, and for this purpose to reserve any such question or questions in like manner as such questions are generally reserved by a Judge at *nisi prius*.

Appeals.
6/1963
S. 2 (Sch.).

22.—(1) An appeal shall lie from the determination by a Judge of the Supreme Court on a petition under section 20 to the Court of Appeal whose decision shall be final and conclusive to all intents and purposes.

(2) So much of the provisions of this Act, and with such modifications, as may be prescribed by rules of court shall have effect in relation to an appeal under this section, and to the appellants and respondents in such appeal as they apply to a petition and to the petitioner and respondent in respect of such petition.

Evidence as to corrupt practices receivable before proof of agency.

23. At the trial of an election petition, unless the Judge otherwise directs, any charge of a corrupt practice may be gone into, and evidence in relation thereto received, before any proof has been given of agency on the part of any candidate in respect of such corrupt practice.

24.—(1) On the trial of an election petition the Judge shall, subject to the provisions of this Act and to any directions given by the Chief Justice, have all the powers, jurisdiction and authority of a Judge of the Supreme Court; and the Court held by him shall constitute a Court of the Supreme Court.

Powers of Court and procedure.

6/1963
S. 2 (Sch.).

(2) Witnesses shall be subpoenaed and sworn in the same manner (as nearly as circumstances will admit) as in a trial of a civil action in the Supreme Court and shall be subject to the same penalties for perjury.

(3) An election petition shall be deemed to be a proceeding in the Supreme Court and, subject to the provisions of this Act and to any directions given by the Chief Justice, the provisions of the Judicature (Civil Procedure Code) Law and the rules of court shall, so far as practicable, apply to election petitions.

Cap. 177
(1953 Edn.
Omitted).

(4) Unless otherwise ordered by the Chief Justice and subject to the provisions of this Act, all interlocutory matters in connection with an election petition may be dealt with and decided by any Judge of the Supreme Court.

25. The Judge shall be attended on the trial of an election petition by the Clerk of the Circuit Court for the parish in the same way as if he were sitting as the Judge of such Circuit, and by such other officers as usually attend the last-mentioned Judge.

Officers to attend Court.

26. On the trial of an election petition the Judge may, by order under his hand, compel the attendance of any person as a witness who appears to him to have been concerned in the election to which the petition refers, and any person refusing to obey such order shall be guilty of contempt of Court.

Attendance and examination of witnesses.

The Judge may examine any witness so compelled to attend, or any person in Court, although any such witness is not called and examined by any party to the petition.

After the examination of a witness by the Judge, such witness may be cross-examined by or on behalf of the petitioner and respondent, or either of them.

Costs of witnesses.

27. The reasonable expenses incurred by any person in appearing to give evidence at the trial of an election petition, according to the scale allowed to witnesses on the trial of civil actions in the Circuit Court, may be allowed to such person under the hand of the Judge; and such expenses, if the witness was called and examined by the Judge under the powers conferred by the preceding clause, shall be paid in the same manner as the expenses of witnesses summoned on behalf of the Crown to give evidence on a criminal trial in the Circuit Court, and in other cases shall be paid by the party who subpoenaed such witness, and shall be deemed to form part of the costs of such party.

Award and taxation of costs.

28. All costs and charges and expenses of and incidental to the presentation of a petition and to the proceedings consequent thereon, with the exception of such costs, charges and expenses, as are by this Act otherwise provided for, shall be defrayed by the parties to the petition in such manner and in such proportions as the Court or Judge may determine, regard being had to the disallowance of any costs, charges or expenses which may, in the opinion of the Court or Judge, have been caused by vexatious conduct, unfounded allegations or unfounded objections, on the part either of the petitioner or the respondent, and regard being had to the discouragement of any needless expense by throwing the burden of defraying the same on the parties by whom it has been

caused, whether such parties are or are not on the whole successful. And the Court or Judge shall give judgment for such costs in accordance with such determination as aforesaid. Such costs shall be taxed by the proper officer of the Supreme Court according to the same principles as costs between solicitor and client are taxed in an equity suit in the Supreme Court.

29. *[Repealed by Act 29 of 1997.]*

30. Where it is reported by a Judge under the provisions of this Act, that at the trial of an election petition any corrupt practice was proved to have been committed by, or with the knowledge and consent of, any candidate at the election to which the petition relates, not only shall the election of such candidate, if he has been elected, be void, but he shall be incapable of being elected to or of sitting in the House of Representatives during the five years next after the date of the said report; and he shall further be incapable during the said period of five years—

Results of reports of corrupt practices, by or with the consent of the candidate.

- (a) of being registered as an elector or voting at any election of a member of the House of Representatives; and
- (b) of holding any office under the Crown in this Island, or any municipal office; and
- (c) of holding any judicial office, and of being appointed and of acting as a Justice of the Peace.

Where it is reported as aforesaid that any corrupt practice was proved to have been committed by the agent of any candidate at such election, but not with the knowledge or consent of such candidate, not only shall the election of such candidate be void, but he shall be incapable of being elected or sitting in the House of

29/1997
S. 14 (a).

29/1997
S. 14 (b).

6/1963
S. 2 (Sch.).

Representatives for the Constituency or in the Parish Council of the parish for which the election was held or in the Council of the Kingston and St. Andrew Corporation, during the House of Representatives or Parish Council or the Council of the Kingston and St. Andrew Corporation, as the case may be, then in existence:

Provided that in the event of an appeal any incapacity under this section shall continue until the appeal is determined and thereafter, unless the report is set aside, remain in force for a period of five years from the determination of the appeal except where the Court of Appeal directs that the period of five years shall run from the date of the report.

Employment
as agent of
a person
known to
have been
found guilty
of corrupt
practices:
effect there-
of.

6/1963
S. 2 (Sch.).

31. If, on the trial of any election petition under this Act, any candidate is proved to have personally engaged at the election to which such petition relates, as a canvasser or agent for the management of the election, any person, knowing that such person has within five years previous to such engagement been found guilty of any corrupt practice by any competent legal tribunal, or been reported guilty of any corrupt practice by the report of the Judge upon an election petition under this Act, the election of such candidate shall subject to appeal under section 22 be void.

Where
corrupt
practices
proved as to
individual
voters,
course to
be pursued.

32. Where a candidate, on the trial of an election petition claiming the seat for any person, is proved to have been guilty, by himself or by any person on his behalf, of any corrupt practice in respect of any person who voted at such election, it shall not be necessary on a scrutiny to ascertain how such person voted, but there shall be struck off, from the number of votes appearing to have been given to such candidate, one vote for every person who voted at such election and in respect of whom any such corrupt practice is proved to have been committed as aforesaid.

33. If, at any time after any person has become disqualified by virtue of this Act, the witnesses, or any of them, on whose testimony such person shall have so become disqualified, shall, upon the prosecution of such person, be convicted of perjury in respect of such testimony, it shall be lawful for such person to move the Court to order, and the Court shall, upon being satisfied that such disqualification was procured by means of perjury, order, that such disqualification shall thenceforth cease and determine, and the same shall cease and determine accordingly.

Determina-
tion of dis-
qualification
if procured
by perjury

34. No person who has voted at an election shall, in any legal proceeding to question the election or return, be required to state for whom he has voted.

No person
to be
required to
state for
whom he
voted

PART II *Voiding of Taking of a Poll*

29/1997
S 15

35.—(1) Where under section 37 (1) of the Kingston and St. Andrew Corporation Act, section 15 (1) of the Parish Councils Act and section 22 (1) of the Representation of the People Act, a returning officer issues an election notice, the Chief Justice shall appoint a panel of three Judges of the Supreme Court to constitute a Court to be known as the Election Court.

Election
Court to be
constituted

(2) The Chief Justice may direct that the Election Court sit in one or more division, each division being presided over by a single Judge.

36.—(1) The Election Court shall have the power—

Powers of
Election
Court

(a) to hear applications by way of originating motion from the Constituted Authority,

ELECTION PETITIONS

(b) to declare in relation to such applications—

- (i) that the taking of the poll is void; or
- (ii) that the taking of the poll is not void.

(2) The Election Court may, in making a declaration under subsection (1) (b) (i) make such declaration in respect to—

- (a) a polling station, polling division or an electoral division under the Kingston and St. Andrew Corporation Act or the Parish Councils Act; or
- (b) a polling station, polling division or a constituency under the Representation of the People Act.

(3) The Election Court shall deliver its decision within forty-eight hours of arguments being completed.

(4) The Election Court shall, within six months of the date of the taking of a poll, determine all matters brought before the Court relating to the poll.

Grounds on which Constituted Authority may apply to Election Court for the voiding of the taking of a poll.

37. The Constituted Authority may, subject to section 38, apply to the Election Court for the voiding of the taking of a poll on one or more of the following grounds—

- (a) that the total number of votes cast in a constituency or electoral division exceeds the number of electors on the official list for that constituency or electoral division;
- (b) that ballot boxes have been stolen or destroyed or have in any manner been tampered with and the number of electors on the list of electors for the polling stations is more than the difference in the number of votes cast for the candidate declared the winner and the candidate who is not declared the winner;

- (c) that a presiding officer has, under duress, signed ballots and that the number of ballots so signed is sufficient to cast doubt on the majority of votes counted for the candidate declared elected;
- (d) that votes have been polled by persons who are not *bona fide* electors thereby casting doubt on the integrity of the votes counted for the candidate declared elected;
- (e) that there is an upsurge in violence or any irregularity during election day in one or more polling stations or polling divisions or in any electoral division or constituency which would lead to a substantial distortion or subversion of the process of free and fair election.

38.—(1) Where under section 37 the Constituted Authority makes an application to the Election Court, the application shall be made within twenty-eight days of the taking of the poll.

Time within which application to be made.
29/2002
S. 4 (a).

(2) The hearing of an application under section 37 shall, so far as practicable, commence within sixty days after the application is filed and shall be continued from day to day and every lawful day until its conclusion.

29/2002
S. 4.(b).

(3) The Election Court may extend the period for the filing of an application under subsection (1) where the Court is of the opinion that, in the circumstances of the case, the period ought to be extended, so, however, that the Court shall not extend the period for more than three days after the period specified in that subsection.

29/2002
S. 4.(b).