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## Parliament (Petitions) Act, 1968

Act 16 of 1968

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## eSwatini

# Parliament (Petitions) Act, 1968

Act 16 of 1968

Assented to on 20 August 1968

Commenced on 23 August 1968

*[This is the version of this document at 1 December 1998.]*

**An Act to make provision with respect to Applications to the High Court for the Determination of Questions whether a Person is validly elected as, or, as the case may be, validly appointed as, Member of the Senate or of the House of Assembly or elected as Speaker or Deputy Speaker of the House of Assembly or President of the Senate or whether a seat in the Senate or House of Assembly has become vacant.**

### Part I – Preliminary

#### 1. Short title

This Act may be cited as the Parliament (Petitions) Act, 1968.

#### 2. Interpretation

In this Act, unless the context otherwise requires—

"**Electoral Act, No. 4 of 1971**" means the House of Assembly (Elections) Act, [No. 47 of 1967](#);

"**court**" means the High Court;

"**Member**" means member of the House of Assembly;

"**Minister**" means the Prime Minister;

"**petition**" means a petition under this Act;

"**satisfied**", in relation to the court, means satisfied on a balance of probabilities;

"**Senate Act**" means the Senate (Elections) Act, [No. 48 of 1967](#).

(2) In this Act, unless the context otherwise requires, expressions used with reference to—

(a) the Electoral Act, [No. 4 of 1971](#), or

(b) the Senate Act,

have the same meaning as in those Acts, respectively.

### Part I – Senate

#### 3. Avoidance of election, or appointment of candidate on petition

(1) The election or appointment of a candidate as a Senator shall not be questioned save on a petition presented to the court requesting that the election or appointment be declared void.

- (2) The election or appointment of a candidate as a Senator shall be declared void on any of the following grounds, as appropriate, which are proved to the satisfaction of the court, namely—
  - (a) that, by reason of corrupt practices or other circumstances, the majority of the Members entitled to vote were or may have been prevented from voting for the candidate they preferred; or
  - (b) that, in connexion with the election or appointment, an offence was committed by the candidate; or,
  - (c) subject to [section 16](#), that there was a non-compliance with either the Constitution or the Senate Act; or
  - (d) that the candidate was, at the time of the election or appointment, a person not qualified, or was a person disqualified, for election or appointment as a Senator.

#### **4. Who may present petition**

A petition under this Part may be presented to the court—

- (a) where the question relates to the valid election of a Senator, by an elected Member, or,
- (b) where the question relates to the valid appointment of a Senator, by a Senator, or,
- (c) in either case, by the Attorney-General.

#### **5. Time for presentation of petition**

- (1) A petition under this Part shall be presented within twenty-one days from the date of publication in the *Gazette* of a notice published in accordance with section 19 of the Senate Act.
- (2) Notwithstanding subsection (1), a petition questioning the election upon the ground of an offence in connexion with the election and specifically alleging a payment of valuable consideration or any other act to have been made or done by the Senator whose election is questioned, or with his knowledge or concurrence, in pursuance or in furtherance of such an offence, may, with respect to that offence, be presented at any time within twenty-eight days after the payment or act.
- (3) A petition may, with the leave of the court, be amended within the time during which it may be presented.

#### **6. Votes to be struck off at scrutiny**

On a scrutiny at the trial of a petition under this Part, the following votes only shall be struck off, namely—

- (a) the vote of a person who was not a Member entitled to vote in the manner prescribed by section 39 of the Constitution;
- (b) the vote of a person whose vote was procured by bribery, treating or undue influence;
- (c) subject to section 16 of the Senate Act, the vote of a person proved to have voted more than once at the election; and
- (d) the vote of a person convicted of an offence in connexion with the election.

### **Part III – House of Assembly**

#### **7. Avoidance of election on appointment of candidate on petition**

- (1) The election or appointment of a candidate as a Member shall not be questioned save on a petition presented to the court requesting that the election or appointment be declared void.

- (2) The election or appointment of a candidate as a Member shall be declared void on any of the following grounds, as appropriate, which are proved to the satisfaction of the court, namely—
  - (a) that, by reason of corrupt practices or other circumstances, the majority of voters were or may have been prevented from electing the candidate they preferred; or,
  - (b) subject to section 92(3) of the Electoral Act, [No. 4 of 1971](#) and to sections 10 and 13, that an offence in connexion with the election was committed by the candidate or his agent; or,  
*[Amended A.4/1971]*
  - (c) subject to [section 16](#), that there was a non-compliance with the Electoral Act, [No. 4 of 1971](#); or
  - (d) that the candidate was, at the time of his election or appointment, a person not qualified, or was a person disqualified, for election or appointment as a Member.

## 8. Who may present petition

A petition under this Part may be presented to the court—

- (a) where the question relates to the valid election of an elected Member, by a person entitled to vote in the election to which the petition relates; or,
- (b) where the question relates to the valid appointment of a nominated Member, by an elected or a nominated Member; or,
- (c) in either case, by the Attorney-General.

## 9. Time for presentation of petition

- (1) A petition relating to the election of an elected Member shall be presented within forty-two days from the date of publication of the result of the election under the provisions of section 73 of the Electoral Act, [No. 4 of 1971](#).  
*[Amended A.4/1971]*
- (2) Notwithstanding subsection (1), a petition questioning the election upon the ground of a corrupt practice and specifically alleging a payment of valuable consideration or any other act to have been made or done since that date by the Member whose election is questioned or by an agent of the Member or with the knowledge or consent of the Member or of his election agent in pursuance or in furtherance of a corrupt practice may, with respect to that corrupt practice, be presented at any time within forty-two days after the payment or act.
- (3) A petition relating to the appointment of a nominated Member shall be presented within forty-two days from the date of publication, in the *Gazette*, of a notice by the Attorney-General of the appointment of the nominated Member.
- (4) A petition presented in due time may, for the purpose of questioning the nomination or the election upon an allegation of a corrupt or an illegal practice or any other offence in connexion with the election, be amended with the leave of the court within the time within which a petition, questioning the return or the election upon that ground, may be presented.

## 10. When court may hold certain acts or omissions to be exempt from the provisions of the Electoral Act, No. 4 of 1971

- (1) If it is shown to the court, either on application or upon a petition, by such evidence as to the court seems sufficient—
  - (a) that the act or omission of a person would, apart from this section, be an offence under the Electoral Act, [No. 4 of 1971](#); and

- (b) that the act or omission arose from inadvertence or from accidental miscalculation or from some other reasonable cause of a like nature, and in any case did not arise from any want of good faith; and that, under the circumstances, it seems to the court to be just that such person shall not be subject to any of the consequences, under the Electoral Act, [No. 4 of 1971](#), of the act or omission;

the court may make an order allowing the act or omission to be an exception from the provisions of the Electoral Act, [No. 4 of 1971](#) which would otherwise make the act or omission an offence and, thereupon, that person shall not be subject to any of the consequences of that act or omission.

- (2) The provisions of subsection (1) do not apply in relation to an offence under section 87, or mentioned in section 79(1)(a) and (b) both of the Electoral Act, [No. 4 of 1971](#).

*[Amended A.4/1971]*

- (3) Where application is made for relief in terms of this section—

- (a) the court, before hearing the application, must be satisfied that reasonable notice of the application has been given in the constituency in which the election was held; and
- (b) no criminal proceedings for an offence under the Electoral Act, [No. 4 of 1971](#) shall be commenced in respect of the act or omission that is the subject of the application, and any such proceedings already commenced shall be stayed until the application has been finally disposed of.

*[Amended A.4/1971]*

- (4) Evidence tendered under subsection (1) may, subject to a right of cross-examination, be proved in criminal proceedings for an offence under the Electoral Act, [No. 4 of 1971](#).

*[Amended A.4/1971]*

## 11.

- (1) On a scrutiny at the trial of a petition, the following votes only shall be struck off, namely—

- (a) the vote of a person whose name was not on the register of voters assigned to the polling station at which the vote was recorded or who has not been authorized to vote at the station under the provisions of section 47(1) of the Electoral Act, [No. 4 of 1971](#);

*[Amended A.4/1971]*

- (b) the vote of a person whose vote was procured by bribery, treating or undue influence;
- (c) the vote of a person who committed or aided, abetted, counselled or procured the commission of the offence of personation at the election;
- (d) the vote of a person proved to have voted more than once at the election; and
- (e) the vote of a person who was disqualified, under section 52 of the Constitution, from voting at the election.

- (2) The vote of a registered voter shall not, except in the case specified in subsection (1)(e), be struck off at a scrutiny by reason only of the voter not having been, or not being, qualified to have his name entered on the register of voters.

- (3) On a scrutiny, a tendered vote proved to be a valid vote not added to the poll shall, on the application of a party to the petition, be added to the poll.

## Part IV – Senate and House of Assembly

### 12. Report of court as to corrupt practice or other offence in connexion with election

- (1) At the conclusion of the trial of a petition relating to the election of a Senator or an elected Member, the court shall also report in writing to the Minister—
  - (a) whether a corrupt practice or any other offence in connexion with the election has or has not been proved, to the satisfaction of the court, to have been committed by or with the knowledge and consent of a candidate at the election or by his agent and the nature of the corrupt practice or offence, if any; and
  - (b) the names and descriptions of all persons, if any, who were proved at the trial to have committed a corrupt practice or any other offence in connexion with the election.
- (2) Before a person, not being a party to a petition nor a candidate on behalf of whom the seat is claimed by a petition, is reported under this section by the court, the court shall give that person an opportunity of being heard and of giving and calling evidence to show why he should not be so reported.
- (3) Where the court reports that a corrupt practice or any other offence in connexion with the election has been committed by a person, that person is subject to the same incapacities as if at the date of the report he had been convicted of that practice or other offence and a candidate at the election is subject to the same incapacities if the court reports that a corrupt practice or any other offence in connexion with the election was committed with his knowledge or consent or, subject to [section 13](#), by his agent.
- (4) The Minister shall cause a copy of the report to be published in the *Gazette*, and the principal registration officer shall forthwith peruse the report and thereafter immediately delete from the register of voters the name of every person appearing from the report to be disqualified from voting at an election.

### 13. Exoneration of candidate in certain cases of corrupt practice or other offence by agent

- (1) For the purposes of [section 7\(2\)\(b\)](#), where, upon the trial of a petition respecting an election, the court is satisfied that the agent or agents of a candidate at the election have committed a corrupt or an illegal practice or any other offence in connexion with the election and the court further finds, after giving the Attorney-General an opportunity of being heard, that the candidate has proved to the satisfaction of the court—
  - (a) that no corrupt or illegal practice or other offence was committed at the election by the candidate and the corrupt or illegal practice or other offence was committed contrary to the orders and without the knowledge or consent of the candidate; and
  - (b) that the candidate took all reasonable steps to prevent the commission of corrupt or illegal practices or other offences at the election; and
  - (c) that the offence was of a trivial, unimportant and limited character; and
  - (d) that, in all other respects, the election was free from corrupt or illegal practices or other offences on the part of the candidate or of his agents;then the election of the candidate shall not, by reason of the offence, be declared void nor shall the candidate be subject to any incapacity.
- (2) Where, under subsection (1), the court makes a finding, the registrar of the court shall issue a certificate accordingly, and report the matter to the Attorney-General.

#### 14. Disciplinary action on report of corrupt practice

Where a legal practitioner is found by the Court to have been guilty of a corrupt practice with reference to an election, the registrar of the court shall report the matter to the Attorney-General who shall take such disciplinary action, in accordance with the law relating to legal practitioners, as he considers to be suitable.

#### 15. Relief which may be claimed

All or any of the following reliefs, as appropriate, to which the petitioner may be entitled, may be claimed in a petition under Part II or III, namely—

- (a) a declaration that the election or appointment was void;
- (b) a declaration that the nomination of the person elected was undue;
- (c) a declaration that a candidate was duly elected or appointed; and,
- (d) where the seat is claimed for an unsuccessful candidate on the ground that he had a majority of lawful votes, a scrutiny.

#### 16. Where failure to comply with the Assembly and Senate Acts does not affect result of election

For the purposes of [sections 3\(2\)\(c\)](#) and [section 7\(2\)\(c\)](#) where, upon the trial of a petition respecting and election, the court finds that there was a failure to comply with a provision of the Senate Act or, as the case may be, of the Electoral Act, [No. 4 of 1971](#) and the court is satisfied, after giving the Attorney-General an opportunity of being heard, that the election was conducted in accordance with the principles laid down in the appropriate Act, and that the failure did not affect the result of the election, then, by reason of the failure, the court shall not declare the election of the successful candidate void nor shall he be subjected to any incapacity.

*[Amended A.4/1971]*

#### 17. Trial of petition

- (1) A petition under Part II or III shall be tried by the court in open court.
- (2) Witnesses shall be subpoenaed and sworn in the same manner as nearly as circumstances admit as in a trial by the court in the exercise of its original civil jurisdiction and are subject to the same penalties for the giving of false evidence or for non-attendance.
- (3) On the trial of a petition under Part II or III, the court may, by order, compel the attendance of a person as a witness and a person who refuses to obey such an order is guilty of a contempt of court.
- (4) The court may examine a witness so compelled to attend, or any other person in court, although the witness is not called and examined by a party to the petition.
- (5) After the examination of a witness by the court, the witness may be cross-examined by or on behalf of the petitioner or respondent or both of them.

#### 18. Witnesses required to answer questions

- (1) A witness at the trial of a petition under Part II or III shall not be excused from answering a question, relating to a corrupt or an illegal practice or any other offence connected with the election or appointment forming the subject of inquiry, on the ground of privilege, or that the answer may incriminate or tend to incriminate himself.
- (2) If a witness answers every such question as he is required by the court to answer and an answer may incriminate or tend to incriminate him, he shall receive, from the court, under the hand of

the registrar, a certificate stating that the witness was upon his examination required by the court to answer questions, the answer to which incriminated or tended to incriminate him, and that he answered every such question.

- (3) Where proceedings are, at any time after the trial, pending in any court against the witness for an offence—
  - (a) committed by him prior to the time of his giving his evidence, and
  - (b) at, or in relation to, the election or appointment concerning, or in relation to, which the witness was so examined,then the court shall, on production and proof of the certificate, stay the proceedings.
- (4) A statement made by a person in answer to a question put to him by or before the court shall be inadmissible in evidence against him in criminal or civil proceedings except on a charge of perjury.

### 19. Certificate of court as to validity of election or appointment

- (1) At the conclusion of the trial of a petition under Part II or III, the court shall determine whether the Senator or Member, whose nomination or election or appointment is complained of, or any and which person, was duly nominated or elected or appointed, or the election or appointment was void, and shall certify its determination to the President of the Senate or Speaker of the House of Assembly, as the case may be.
- (2) Upon such certification the President of the Senate, in the case of—
  - (a) an elected Senator shall confirm or alter, as may be required, the notice published, in accordance with section 19 of the Senate Act, by like notice in the *Gazette* and, as the case may require, order, the holding of an election in accordance with the certificate; and
  - (b) an appointed Senator shall advise the King accordingly, and cause that advice to be notified in the *Gazette*.
- (3) Upon such certification, the Speaker of the House of Assembly in the case of—
  - (a) an elected member shall confirm or alter the endorsement of the writ made under section 74(2)(b) of the Electoral Act, [No. 4 of 1971](#) and not later than one month after the certification, by notice published in the *Gazette* order the holding of an election in the constituency concerned in accordance with the certificate; and  
*[Amended A.4/1971]*
  - (b) a nominated member shall advise the King accordingly, and cause that advice to be notified in the *Gazette*.

## Part V – President and Speaker and their deputies

### 20. Petition relating to election of person as President or Deputy President of Senate

- (1) A question arising as to whether a person, who was elected as President or Deputy President of the Senate from among persons who were not members thereof, was qualified to be so elected shall be referred to and determined by the court on petition presented by a Senator, or the Attorney-General.
- (2) Where under subsection (1), the court decides a question, the registrar of the court shall certify the decision of the court, to the King.

## **21. Petition relating to election of person as Speaker or Deputy Speaker of House of Assembly**

- (1) A question arising as to whether a person, who was elected as Speaker or Deputy Speaker of the House of Assembly from among persons who were not Members thereof, was qualified to be so elected shall be referred to and determined by the court on petition presented by an elected or nominated Member, or the Attorney-General.
- (2) Where, under subsection (1), the court decides a question, the registrar of the court shall certify the decision of the court to the Minister.

## **Part VI – Vacant seat**

### **22. Petition relating to vacant seat**

- (1) A question arising as to whether the seat of a Senator or a Member has become vacant, other than a question arising from the election or appointment of the Senator or Member, shall be referred to and determined by the court on petition presented—
  - (a) by a Senator, or an elected or a nominated Member, as the case may be, or
  - (b) by the Attorney-General, or,
  - (c) in the case of the seat of an elected Member, by a person registered in some constituency as a voter in elections of elected Members.
- (2) Where the court decides a question, under subsection (1), the registrar of the court shall certify the decision of the court to the President of the Senate or the Speaker of House of Assembly, as the case may be.
- (3) Where the court decides that the seat of a Senator or a Member has become vacant, the seat of the Senator or Member shall become vacant as soon as the decision of the court is certified.

## **Part VII – General**

### **23. Respondent not opposing petition**

- (1) A respondent who gives notice that he does not intend to oppose the petition shall not, pending the result of the trial of the petition be allowed to appear or to act as a party against the petition in any proceedings on the petition nor sit nor vote in Parliament.
- (2) Where notice is given under subsection (1), the registrar of the court shall report the fact to the Speaker of the Senate or House of Assembly, as the case may be.

### **24. Special case**

- (1) If, on the application in the prescribed manner of a party to a petition under this Act, it appears to the court that the case raised by the petition can be conveniently stated in a special case, the court may direct it to be stated accordingly and the special case shall be heard before the court.
- (2) The court shall certify to the President or Speaker as the case may be its decision with reference to the special case.

## 25. Practice and procedure

- (1) The practice and procedure of the court relating to petitions, applications under [section 10](#) or [section 26](#); and special cases under [section 24](#), shall be in accordance with rules made by the Chief Justice.
- (2) Rules made under subsection (1) shall, amongst other things, provide for the following—
  - (a) the keeping, by the registrar of the court, of a list of petitions and for their trial, unless otherwise directed, in the order in which they stand;
  - (b) the giving, by the petitioner, of security for costs and the serving, by the petitioner, or the respondent, of notice of presentation of the petition and the nature of the proposed security and a copy of the petition;
  - (c) the service of notice by the respondent, on the petitioner as to whether or not the respondent intends to oppose the petition and of any notice of objection to the security and the grounds of objection;
  - (d) the quorum of the court on the trial of a petition, or application under [section 10](#) or a special case under [section 24](#), the giving of notice of the trial, application or special case, the adjournment of the court and the awarding of costs of the petition, application or special case, including the allowance of reasonable witness expenses; and,
  - (e) subject to subsection (3), the withdrawal and abatement of a petition, the substitution of a petitioner and the costs of withdrawn petitions.
- (3) Where there are more petitioners than one, an application to withdraw a petition shall not be made without the consent of all the petitioners.

## 26. Extension of time

The court may, where it considers justice so requires, extend any period of time within which any act is required or permitted to be done in terms of this Act.