IN THE HIGH COURT FOR ZAMBIA **2026/HP/EP/022**

AT THE PRINCIPAL REGISTRY

HOLDEN AT LUSAKA

(Civil Jurisdiction)



IN THE MATTER OF: **ARTICLE 73(1) AND (2) AND ARTICLE 45(2)(a) AND (b) OF THE CONSTITUTION OF ZAMBIA, CHAPTER 1 OF THE LAWS OF ZAMBIA**

AND

IN THE MATTER OF: **SECTIONS 97, 98, 99 AND 100 OF THE ELECTORAL PROCESS ACT NO. 35 OF 2016**

AND

IN THE MATTER OF: **RULES 9 AND 10 OF THE HIGH COURT (ELECTION PETITION) RULES, STATUTORY INSTRUMENT NO. 31 OF 2026**

AND

IN THE MATTER OF: **THE CHAMA NORTH CONSTITUENCY PARLIAMENTARY ELECTION HELD ON 13TH AUGUST 2026**

BETWEEN:

DAVISON MUNG'ANDU **PETITIONER**

AND

BENSON NJOBVU **FIRST RESPONDENT**

ELECTORAL COMMISSION OF ZAMBIA **SECOND RESPONDENT**

FIRST RESPONDENT'S SKELETON ARGUMENTS IN OPPOSITION TO THE PETITION

May it please this Honourable Court.

INTRODUCTION

1. These Skeleton Arguments are filed on behalf of the First Respondent, Benson Njobvu, in support of his Answer and Affidavit in Opposition to the Petition challenging his election and declaration as Member of Parliament for Chama North Constituency.

2. The Petition alleges inflation of results, denial or non-verification of GEN 20 forms, multiple voting, bribery, distribution of campaign materials, violence, intimidation, unlawful transportation of voters and other election-management irregularities.

3. The First Respondent denies committing, directing, authorising, consenting to, approving or knowingly participating in any corrupt practice, illegal practice, electoral malpractice or other misconduct.

4. He further denies that the alleged conduct of unnamed supporters, traditional leaders, presiding officers, police officers or other election officials is legally attributable to him or to any duly appointed election or polling agent.

5. The Petition should be dismissed because the Petitioner has not established:

   (i) a competent and sufficiently particularised case under the applicable election law;

   (ii) commission of any corrupt or illegal practice by the First Respondent or his duly appointed election or polling agent;

   (iii) that any act of a third party occurred with the knowledge, consent or approval of the First Respondent or his election or polling agent; or

   (iv) that any alleged misconduct prevented, or may have prevented, the majority of voters from electing the candidate whom they preferred, or that any alleged non-compliance affected the result.

PRELIMINARY OBJECTION AND PLEADING DEFECTS

6. Rule 9(2)(c) of the High Court (Election Petition) Rules, 2026 requires a petition to disclose the outcome or results of the election being challenged.

7. The Petition as served does not state the scores obtained by the candidates and therefore does not disclose the result of the challenged election within the Petition itself. The First Respondent maintains his objection to the competence of the Petition on that ground.

8. The allegations of bribery, intimidation, violence, voter buying and unlawful agency are pleaded largely through general expressions such as 'agents', 'known agents', 'supporters' and 'associates'. The Petition does not identify the appointment or status of the alleged actors, the alleged recipients, the precise time and place of each act, or the number of voters affected.

9. The Petition also inconsistently cites electoral enactments as Acts Nos. 25, 36 and 35 of 2016. The governing statute is the Electoral Process Act No. 35 of 2016, as amended, and the Petition must stand or fall under its correct provisions.

10. There are further internal contradictions. The Petition refers to Mbazi Polling Station while the verifying affidavit refers to Muchinga Ward Polling Station; and the allegation that valid ballots 'in favour of the Respondent' were rejected describes an act adverse to, rather than beneficial to, the First Respondent.

11. Without prejudice to the foregoing, the First Respondent preserves the objections pleaded in his Answer concerning the mandatory accompanying documents, security for costs and service, should inspection of the Court record establish non-compliance with the Rules.

MATERIAL BACKGROUND

12. The parliamentary election for Chama North Constituency was held on 13th August 2026. The Petitioner contested on the United Party for National Development ticket, while the First Respondent contested on the National Reconciliation Party for Unity and Prosperity ticket.

13. The First Respondent was duly declared elected on 15th August 2026 after receiving 4,660 votes. The Petitioner received 4,382 votes, giving the First Respondent a lawful majority of 278 votes.

14. At Chibale Streams 1 and 2 in Nkhankha Ward, the official GEN 20A results record 320 and 272 votes respectively for the First Respondent, and 181 and 169 votes respectively for the Petitioner.

15. The Petition does not plead the different figures allegedly counted or announced at either stream, identify an altered entry, or produce a competing result form. The narrow margin does not relieve the Petitioner of the statutory burden of proof.

ISSUES FOR DETERMINATION

16. The principal issues for determination are:

    a) whether the Petition is competent and sufficiently particularised;

    b) whether any alleged corrupt practice, illegal practice or other misconduct occurred;

    c) whether any proved conduct was committed by the First Respondent or his duly appointed election or polling agent, or with their knowledge, consent or approval;

    d) whether any proved misconduct had the widespread electoral effect required by section 97(2)(a) of the Electoral Process Act;

e) whether any non-compliance attributable to the Second Respondent affected the result under section 97(2)(b); and

f) whether the evidence supplies a lawful basis for nullification, a constituency-wide recount or any other relief claimed.

APPLICABLE LAW AND STANDARD OF PROOF

17. Article 73 of the Constitution and section 97 of the Electoral Process Act No. 35 of 2016 govern the validity of a parliamentary election. The burden lies throughout upon the Petitioner.

18. In ***Jere and Others v Zulu***, the Constitutional Court reaffirmed that allegations in an election petition must be proved to a fairly high degree of convincing clarity, being a standard higher than a mere balance of probabilities.

19. Section 97(2)(a) establishes a cumulative twofold threshold. First, the Petitioner must prove a corrupt practice, illegal practice or other misconduct committed by the candidate, or with the knowledge, consent or approval of the candidate or the candidate's election or polling agent.

20. Secondly, the Petitioner must prove that the misconduct was so widespread that the majority of voters were, or may have been, prevented from electing the candidate whom they preferred. Proof of an isolated act, even if serious, is not by itself sufficient.

21. In ***Kafwaya v Katongo and Others***, the Constitutional Court emphasised that nullification is a weighty matter requiring clear and cogent evidence. A court may not speculate as to widespread effect or fill gaps left in a petitioner's evidence.

22. Jere and Others v Zulu further confirms that, under the present statutory language, even an allegation of a single act of bribery must satisfy both attribution and widespread electoral effect before an election may be avoided.

23. In ***Michelo v Sampa and Another***, the Constitutional Court upheld the rejection of allegations where the evidence did not cogently connect alleged cadres or supporters to the candidate or to a duly appointed agent. Once misconduct cannot be tied to the respondent, an inquiry into widespread effect becomes academic.

24. Under section 97(2)(b), non-compliance in the conduct of an election must be proved against the body charged with conducting elections and must be shown to have affected the result. ***Mwanakatwe v Scott and Another*** confirms that an election is not avoided merely because an administrative irregularity is alleged.

25. Section 97(4) preserves an election conducted substantially in accordance with the Act where any breach by an election officer did not affect the result. Section 99 limits relief in an election petition to a declaration that the election was void or that a candidate was duly elected; it does not provide for damages.

NO CONDUCT IS ATTRIBUTABLE TO THE FIRST RESPONDENT

26. The First Respondent has expressly denied personal participation in every alleged corrupt or illegal practice and has sworn that he required his campaign team and agents to comply with the electoral law and the Electoral Code of Conduct.

27. The bare description of a person as an 'agent', 'supporter' or 'associate' does not prove appointment as an election or polling agent. The prescribed appointment, actual authority or other cogent evidence of agency must be produced.

28. Both polling agents appointed for the First Respondent at Chibale Streams 1 and 2 held valid accreditation, as did the campaign monitor deployed across the wards. No accredited agent reported unlawful alteration of the GEN 20A figures.

29. His Royal Highness Chief Lundu was not the First Respondent's election agent or polling agent and did not act under the First Respondent's direction, authority or

control. Traditional standing, friendship or political sympathy is not proof of statutory agency.

30. Presiding officers, the returning officer and police officers performed independent statutory or public functions. The First Respondent neither appointed them nor controlled the electoral records, polling-station equipment, security arrangements or assistance given to voters.

31. Further and in the alternative, if any supporter or other person committed an improper act, which is denied, the Petitioner must still prove that it occurred with the knowledge, consent or approval of the First Respondent or his duly appointed agent. No such facts are pleaded.

GEN 20 FORMS, RESULTS AND VOTERS' REGISTERS

32. The allegation that the Petitioner's agents were denied GEN 20 forms at two polling stations in Nkhankha Ward does not name those stations, the responsible officials, the entries disputed or the manner in which the result was affected. It concerns records and acts within the Second Respondent's custody.

33. The allegation that votes at Chibale Streams 1 and 2 were inflated at the totalling centre is unsupported by alternative figures. The official GEN 20A for Stream 1 records Benson Njobvu 320, Davison Mung'andu 181, Goma 77, Mfune 5 and Nyimbili 2. Stream 2 records Benson Njobvu 272, Davison Mung'andu 169, Goma 73, Mfune 3 and Nyimbili 2.

34. Without a competing result form, testimony of a polling agent as to different figures, or proof of alteration between the polling station and totalling centre, the allegation is no more than assertion.

35. The alleged discrepancies in voters' registers at Ng'anjo Gravel, Kambowe and Kankhomba Polling Stations are not quantified. The Petition pleads neither the

number registered, the number marked as having voted, the ballots cast nor any effect upon the declared majority.

36. The Petition and verifying affidavit are materially inconsistent as to whether an alleged denial of verification occurred at Mbazi Polling Station or at a polling station in Muchinga Ward. That uncertainty prevents the First Respondent from knowing the exact case he is required to meet.

37. The allegation that valid ballots in favour of the First Respondent were rejected cannot establish an advantage to him. If taken literally, it would have reduced his votes. No ballot, count, ruling or objection is identified.

38. The allegation that voters carrying personal pens received more than one ballot paper identifies no voter, polling station or ballot paper. Personal pens were available to voters irrespective of party affiliation, and the Petition offers no evidence that any person voted twice.

39. The lamp at Chibale was brought by a presiding officer for lighting. The First Respondent did not supply or display it, and the Petition identifies no voter who treated ordinary polling equipment as campaign material or whose vote was influenced by it.

40. The claim that a presiding officer at Mwila Polling Station completed ballots for voters similarly concerns the conduct of an election official. There is no pleaded fact that the First Respondent requested, directed or benefited from unlawful assistance.

BRIBERY AND ALLEGED INDUCEMENTS

41. The First Respondent denies distributing salt, chitenge material, footballs, jerseys, K50 notes or K100 notes to induce any voter, and denies authorising any person to do so.

42. The sweeping allegation that K50 notes were distributed in all eight wards and in three quarters of the polling stations gives no names of recipients or distributors, dates, times, locations, amounts or independent supporting material.

43. The allegation concerning K100 payments associated with Chief Lundu is equally unparticularised. No alleged recipient is named and no evidence connects any payment to the First Respondent or to a duly appointed agent.

44. At Sitwe Polling Station, the First Respondent's evidence is that salt found on a bicycle was the personal property of an NRPUP supporter injured when a campaign gathering was disrupted. The supporter was taken to hospital, a medical report was obtained and the matter was reported to police. The salt was not campaign material for distribution.

45. The First Respondent will also call direct evidence, including from Chief Lundu where necessary, to rebut the allegations concerning chitenge or wax material and to place before the Court the actual campaign circumstances.

46. None of the pleaded allegations proves a gift or payment made with corrupt intent, an identified electoral inducement, attribution to the First Respondent, or an effect upon the majority of voters. The requirements of section 97(2)(a) are therefore not met.

VIOLENCE, INTIMIDATION AND CHIEF LUNDU

47. There was no attack upon the Petitioner's polling agents at Chibale Polling Station on polling day by the First Respondent, his agents or any person acting with his knowledge, consent or approval.

48. The disturbance referred to in the Answer occurred approximately two weeks before polling day after a UPND cadre damaged the home of a UPND couple whose son supported NRPUP. Police later detained six NRPUP supporters, after

which some residents threw stones towards the UPND camp. The incident was reported to police and was neither organised nor approved by the First Respondent.

49. The existence of arrests or police dockets does not establish that the First Respondent committed or authorised violence. The dockets are capable of identifying the incident, actors and dates and will demonstrate its separation from polling on 13th August 2026.

50. The allegation of threats at Pondo Polling Station does not identify a perpetrator or victim and mistakenly refers to an 'Appellant'. The allegations concerning Nkhankha Ward likewise do not identify the voters allegedly prevented from voting or quantify any reduction in turnout.

51. The allegations that Chief Lundu summoned headmen, followed subjects, threatened banishment or instructed voters are denied. The Petition must prove each statement through a competent witness and must further prove agency, knowledge, consent or approval.

52. On polling day, Chief Lundu was travelling with his wife from Katangalika to Lundu Polling Station. At Mulopwe he gave his uncle, Headman Mulopwe, and the persons accompanying him a private and familial lift along the same route, and dropped them more than 400 metres from Mphyanakunda Polling Station.

53. No campaign message was delivered during that lift, and no kudu meat, nshima or money was supplied to induce a vote. A private lift to a relative, without proof of electoral inducement or agency, cannot be converted into misconduct by the First Respondent.

54. There was no fight at Mulilo Centre between an NRPUP agent, the returning officer and a police officer. An orderly discussion followed a complaint that persons within

the polling area were canvassing against NRPUP candidates; the issue was resolved amicably. The discussion was recorded and the recording will be produced through a competent witness in accordance with the Court's directions.

ALLEGATIONS AGAINST THE SECOND RESPONDENT

55. Allegations concerning withheld or unverified GEN 20 forms, voters' registers, rejected ballots, polling-station security, a presiding officer's lamp and assistance given to voters principally concern the Second Respondent and its election officers.

56. For section 97(2)(b) to apply, the Petitioner must produce the relevant registers, result forms, ballot-paper accounts, incident records and testimony of responsible officials, and must prove that identified non-compliance affected the result.

57. A bare discrepancy is insufficient. The Petition does not perform a station-by-station reconciliation, state the alleged numerical variance or demonstrate how any asserted error changed or could have changed the overall result.

58. The First Respondent had no custody or control over electoral records and did not cause, direct or participate in any alleged administrative irregularity. Benefit cannot be presumed merely because he was declared the winner.

59. In the absence of proof that any breach affected the result, section 97(4) requires the election, which was conducted substantially in accordance with the Act, to be preserved.

NO WIDESPREAD OR MATERIAL ELECTORAL EFFECT

60. Even if an isolated incident were proved, which is denied, the Petitioner must separately establish by cogent evidence that it was so widespread that the majority of voters in Chama North were, or may have been, prevented from electing their preferred candidate.

61. The Petition combines unrelated allegations from particular stations and villages but does not identify the electorate reached by each alleged act, the number influenced or prevented from voting, or the wards in which an attributable act was proved.

62. No turnout analysis, voter testimony, ward comparison or numerical reconciliation is pleaded to show that any alleged violence, inducement or administrative omission altered the choice of the majority.

63. The allegation of distribution across eight wards is repetition, not proof. Generality does not become cogent evidence merely because a wide geographic label is used.

64. The majority of 278 votes does not reverse the burden, reduce the standard of proof or permit the Court to presume effect. A narrow margin is material only where a proved and quantified irregularity is capable of affecting that margin.

65. Kafwaya v Katongo and Others expressly forbids speculation or judicial completion of evidential gaps. On the Petitioner's present case, the statutory electoral effect has not been established.

RECOUNT RELIEF

66. The Petitioner seeks a recount of all votes cast in Chama North Constituency but does not identify a proved counting or recording error capable of justifying a constituency-wide recount.

67. A recount is not an investigative device by which a petitioner may search for a case after filing. The disputed polling stations, entries and competing figures must first be identified through credible electoral records.

68. At Chibale Streams 1 and 2, the Petition pleads no alternative figures to the official GEN 20A results. At the other stations, no numerical variance is stated at all.

69. A recount would in any event not prove bribery, intimidation, agency, knowledge, consent, approval or widespread electoral effect. The prayer should therefore be refused.

CONCLUSION

70. The Petition rests upon general and contradictory allegations against several third parties, unquantified complaints concerning electoral records and denials unsupported by the particulars required to connect any act to the First Respondent.

71. The Petitioner has not proved any alleged incident to a fairly high degree of convincing clarity, has not proved statutory attribution, and has not established either widespread misconduct under section 97(2)(a) or result-affecting non-compliance under section 97(2)(b).

72. There is consequently no lawful basis for nullifying the election, ordering a constituency-wide recount or awarding damages within this election petition.

73. The First Respondent accordingly prays that:

(i) the preliminary objection concerning non-compliance with rule 9(2)(c) be upheld or, alternatively, the Petition be dismissed on its merits;

(ii) the prayer for nullification be refused;

(iii) the prayer for a constituency-wide recount be refused;

(iv) the prayer for damages be found unavailable under section 99 of the Electoral Process Act;

(v) the election and declaration of Benson Njobvu as Member of Parliament for Chama North Constituency be upheld;

(vi) costs be awarded to the First Respondent; and

(vii) the Court grant such further or other relief as it considers just.

Dated this day of 2026

Per: M. K. ACHIUME & ASSOCIATES
Legal Practitioners
House No. 4, Impala Road
Woodlands
LUSAKA
Advocates for the First Respondent

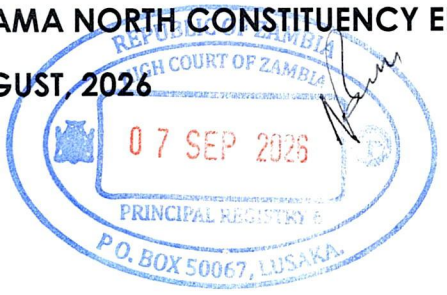
To: **Chiwala Boniface Legal Practitioners**
F32A/G/2/R, Zambezi Road, Foxdale
LUSAKA
Advocates for the Petitioner

Electoral Commission of Zambia
Elections House, Haile Selassie Avenue
LUSAKA
Second Respondent

IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction)

2026/HP/EP/022

IN THE MATTER OF:	**ARTICLE 1(2), (3), 73(1) (a) AND 45(2) (a) (b) OF THE CONSTITUTION OF ZAMBIA, CHAPTER 1 OF THE LAWS OF ZAMBIA**
IN THE MATTER OF:	**SECTION 97 (2) OF THE ELECTORAL PROCESS ACT, NO. 35 OF 2016.**
IN THE MATTER OF:	**SECTIONS 70, 81, 87, 94, 96, 97(1), 2(b) 98(c), 99(a) (b), 100, (2) (a), OF THE ELECTORAL PROCESS ACT NO. 35 OF 2016.**
IN THE MATTER OF:	**RULE 9 OF THE HIGH COURT (ELECTION PETITION) RULES, 2026**
IN THE MATTER OF:	**CHAMA NORTH CONSTITUENCY ELECTIONS HELD ON 13TH AUGUST, 2026**



DAVISION MUNG'ANDU	**PETITIONER**
AND	
BENSON NJOBVU	**1ST RESPONDENT**
ELECTORAL COMMISSION OF ZAMBIA	**2ND RESPONDENT**

2ND RESPONDENT'S AFFIDAVIT IN OPPOSITION

I, **Aaron Munthali** do hereby **MAKE OATH** and state as follows:

1. That my full name is as stated above.

2. That I am a Zambian National.

3. That I reside at old hospital compound Chama district.

4. That I was employed by the 2nd Respondent as the returning officer for Chama North Constituency and depose to facts and information herein which I possess by virtue of the aforesaid position.

5. That I have read what purports to be the Affidavit Verifying Facts in the Petition of one **Davison Mung'andu** and wish to respond as hereunder.

6. That I am advised by the 2nd Respondent's advocates and I verily believe that in the performance of its functions, the 2nd Respondent is guided by the relevant electoral laws which, amongst others, include the Constitution of Zambia (Amendment) Act, Electoral Process Act and Regulations promulgated thereunder.

7. That the Chama North Parliamentary election was held on 13th August, 2026 and contested by the candidates listed in paragraph 2 of the Answer.

8. That contrary to paragraph 6 (a) of the Affidavit Verifying Facts, the Petitioner's agents were not given Gen 20 forms for I polling station being Chibale Polling Station, however they were advised that the Gen 20 forms would be given to them in due course.

9. That the 2nd Respondent denies the contents of paragraph 6 (b) (c) and (d) of the Petition.

10. That contrary to paragraph 6(e) of the Petition, the lamp in question was meant to be used as an alternative source of lighting.

11. That I depose to the above facts verily believing the same to be true and correct to the best of my knowledge and belief.

Sworn by the said)
Aaron Munthali)
At Lusaka this day of 2026) **Deponent**

COMMISSIONER FOR OATHS
FALESI SHIPOPA
NHARI ADVOCATES
CERTIFIED TRUE COPY OF ORIGINAL

Before Me: _____
Commissioner for oaths

IN THE HIGH COURT FOR ZAMBIA **2026/HP/EP/022**
AT PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction)

IN THE MATTER OF: ARTICLE 73(1) AND (2) AND ARTICLE 45(2)(a) AND (b) OF THE CONSTITUTION OF ZAMBIA, CHAPTER 1 OF THE LAWS OF ZAMBIA

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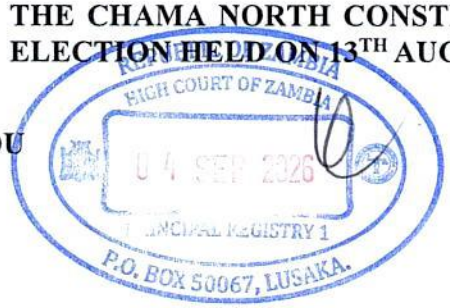
BETWEEN:

DAVISON MUNG'ANDU **PETITIONER**



AND

BENSON NJOBVU **1ST RESPONDENT**
ELECTORAL COMMISSION OF ZAMBIA **2ND RESPONDENT**

AFFIDAVIT IN OPPOSITION TO ELECTION PETITION

I, BENSON NJOBVU, a Zambian national of House No. 21369, Hybrid Road, Chamba Valley, Lusaka District in the Lusaka Province of the Republic of Zambia, DO HEREBY MAKE OATH AND SAY as follows:

1. That my full names and nationality are as stated above and I am the 1st Respondent in these proceedings, duly competent to swear this Affidavit from matters within my personal knowledge and, where stated, from information supplied to me which I verily believe to be true.

2. That I have read the Election Petition filed by Davison Mung'andu and the affidavit verifying facts sworn in support thereof, and I oppose the Petition in its entirety except to the extent expressly admitted in my Answer.

3. That I contested the Chama North Constituency parliamentary election held on 13th August 2026 on the National Reconciliation Party for Unity and Prosperity (NRPUP) ticket and was duly declared elected on 15th August 2026 with 4,660 votes. The Petitioner obtained 4,382 votes, giving me a majority of 278 votes.

4. That the election was conducted openly and substantially in accordance with the electoral law, and the official results reflected the lawful votes cast by the electorate of Chama North Constituency.

5. That I did not personally, through my election agent or polling agents, bribe, intimidate, assault, threaten or improperly influence any voter, polling agent, election officer or other person, and I did not know of, consent to or approve any such conduct by any person.

6. That I required my campaign team, election agent and polling agents to comply with the electoral law and the Electoral Code of Conduct, and I did not authorise violence, inducements, unlawful entry into polling stations or interference with electoral officers.

7. That both polling agents appointed on my behalf at Chibale Streams 1 and 2 held valid accreditation, and the campaign monitor deployed across the wards was also accredited.

8. That I neither directed nor caused any presiding officer to withhold a GEN 20 form from the Petitioner's agents, to prevent them from signing or verifying a form, or to alter any entry in the voters' register. Those records were prepared and kept by officials of the 2nd Respondent.

9. That the allegation that my votes at Chibale Streams 1 and 2 were inflated at the totalling centre is false. The official GEN 20A results for Stream 1 recorded 320 votes for me, 181 for the Petitioner, 77 for Goma, 5 for Mfune and 2 for Nyimbili. Stream 2 recorded 272 votes for me, 169 for the Petitioner, 73 for Goma, 3 for Mfune and 2 for Nyimbili.

10. That the Petition does not state what different figures were allegedly counted or announced at either stream, and no polling agent reported to me that the figures in the GEN 20A forms had been unlawfully changed at the totalling centre.

11. That I did not request or cause any valid ballot paper to be rejected. The Petitioner's allegation itself states that ballot papers in my favour were rejected, which would have reduced rather than increased my votes.

12. That I have no knowledge of any voter being given more than one ballot paper merely because that voter used a personal pen. Voters who chose to use their own pens did so irrespective of political affiliation, and I did not facilitate or encourage any person to vote more than once.

13. That I had no control over a lamp brought to Chibale Polling Station by a presiding officer. I did not supply that lamp, request that it be displayed or use it to campaign, and I am not aware of any voter whose vote was influenced by it.

14. That I did not distribute salt or chitenge material on the day before polling, nor did I instruct or authorise any person to do so on my behalf.

15. That I was informed by His Royal Highness Chief Lundu, which information I verily believe to be true, that during the campaign persons associated with the Petitioner's camp, and not my campaign, distributed wax or chitenge material in the wards. Chief Lundu is able to give direct evidence concerning that matter.

16. That I did not distribute K50 or K100 notes to voters on polling day or at any other time in exchange for votes. The claim that I did so in all eight wards and in three quarters of the polling stations is false.

17. That I did not distribute footballs or jerseys as an inducement during the campaign, and I did not authorise any agent to do so.

18. That there was no attack on the Petitioner's polling agents at Chibale Polling Station on polling day by me, my agents or persons acting with my knowledge, consent or approval.

19. That I was informed by members of my campaign team, which information I verily believe to be true, that approximately two weeks before polling day a disturbance occurred after a UPND cadre damaged the house of a UPND couple whose son supported the NRPUP. The police later detained six NRPUP supporters, and some residents thereafter threw stones towards the UPND camp. That incident was reported to the police and was not organised, directed or approved by me.

20. That police dockets relating to the disturbance described above are available at Chama Police Station. Neither the dockets nor the arrests establish that I committed, authorised or knew of any violence, and the incident was separate in time from polling on 13th August 2026.

21. That I did not threaten the Petitioner's agents at Pondo Polling Station, did not direct anyone to confiscate chitenges and did not cause violence against the Petitioner's supporters in Nkhankha Ward.

22. That His Royal Highness Chief Lundu was not my election agent or polling agent and was not acting under my direction, authority or control.

23. That the allegation that Chief Lundu called headmen, followed subjects from village to village, threatened them or ordered them to vote for me is false. To my knowledge, the Chief had previously worked closely with the Petitioner, and the Petitioner camped within Lundu Chiefdom during the campaign.

24. That I was informed by Chief Lundu, which information I verily believe to be true, that on polling day he was travelling from Katangalika in Chama Central Constituency with his wife, whom he was taking to vote at Lundu Polling Station. At Mulopwe he found his uncle, Headman Mulopwe, and other persons seeking transport to Mphyanakunda Polling Station, which was along his route, and gave them a lift as a private and familial courtesy.

25. That I am further informed and verily believe that the persons referred to in the preceding paragraph were dropped more than 400 metres from Mphyanakunda Polling Station; no campaign message was delivered to them and no kudu meat, nshima or money was provided to induce their votes.

26. That I did not know of, consent to or approve any threat to banish the Petitioner's polling agents from any village, and I did not pay or cause any voter to be paid K100 to vote for me.

27. That allegations concerning discrepancies in the register at Ng'anjo Gravel, Kambowe and Kankhomba Polling Stations, the completion of ballot papers by a presiding officer at Mwila Polling Station, and the verification of GEN 20 forms at Mbazi or Muchinga concern electoral records and officials of the 2nd Respondent. I did not cause, direct or participate in any irregularity at those polling stations.

28. That all persons appointed as my polling agents were accredited. I did not authorise any supporter without accreditation to enter any polling station.

29. That there was no voter buying or distribution of salt by me or my agents at Sitwe Polling Station. I was informed by my ward campaign officials, which information I verily believe to be true, that while an aspiring NRPUP councillor and ward leaders were paying a courtesy

call on the headman before their meeting, UPND cadres disrupted the gathering and an NRPUP supporter was injured. The injured supporter had his own salt on his bicycle. The salt was taken by UPND cadres and presented to the police as though it had been intended for distribution.

30. That the injured supporter referred to above was taken to hospital, a medical report was obtained and the matter was reported to the police. The salt was his personal property and was not campaign material intended for distribution to voters.

31. That there was no fight at Mulilo Centre between my agent, the returning officer and a police officer. An NRPUP agent raised a concern that persons within the polling area were telling voters not to vote for NRPUP candidates. The matter was discussed and resolved amicably, without violence or abandonment of the polling centre. An audio recording of that discussion is available for production in accordance with the directions of the Court.

32. That the Petition and affidavit verifying facts are materially inconsistent as to whether the alleged denial of verification of a GEN 20 form occurred at Mbazi Polling Station or at Muchinga Ward Polling Station. I was involved in no such conduct at either place.

33. That the papers served upon me do not identify the alleged recipients of the money, salt, food, footballs or jerseys; do not name the alleged perpetrators said to be my agents; do not state the number of voters allegedly prevented from voting; and do not quantify how any alleged irregularity altered or could have altered the declared result.

34. That, save for matters concerning electoral officials and records which the 2nd Respondent is better placed to address, the allegations made against me are false and are not supported by facts connecting them to me, my election agent or my polling agents.

35. That I accordingly seek the indulgence of this Honourable Court to dismiss this Petition with costs and that my election as Member of Parliament for Chama North Constituency be upheld.

36. That I depose to this Affidavit conscientiously believing the contents herein to be true and correct to the best of my knowledge, information and belief.

SWORN by the said BENSON NJOBVU
at Lusaka this 4th day of September 2026

.....
DEPONENT

REPUBLIC OF ZAMBIA
CONSTITUTIONAL COURT OF ZAMBIA
CLERK OF COURT
COMMISSIONER FOR OATHS
P.O. BOX 50067, LUSAKA

BEFORE ME: .....

COMMISSIONER FOR OATHS

IN THE HIGH COURT FOR ZAMBIA

AT PRINCIPAL REGISTRY

HOLDEN AT LUSAKA

(Civil Jurisdiction)

REPUBLIC OF ZAMBIA
HIGH COURT OF ZAMBIA
2 8 AUG 2026
PRINCIPAL REGISTRY 1
P.O. BOX 50067, LUSAKA.

2026/HP/EP/--- 022

IN THE MATTER OF: **ARTICLE 1(2),(3), 73 (1)(a) AND 45(2)(a)(b) OF THE CONSTITUTION OF ZAMBIA, CHAPTER 1 THE LAWS OF ZAMBIA**

AND

IN THE MATTER OF: **SECTIONS 97 (2) OF THE ELECTORAL PROCESS ACT, NO. 35 OF 2016.**

IN THE MATTER OF: **SECTIONS 70, 81, 87, 94, 96, 97(1),2(b) 98(c), 99(a)(b), 100 (2) (a), OF THE ELECTORAL PROCESS ACT NO. 36 OF 2016.**

IN THE MATTER OF: **RULE 9 OF THE HIGH COURT (ELECTION PETITION) RULES, 2026**

IN THE MATTER OF: **CHAMA NORTH CONSTITUENCY ELECTIONS HELD ON 13TH AUGUST, 2026.**

BETWEEN:

DAVISON MUNG'ANDU **PETITIONER**

AND

BENSON NJOBVU **1st RESPONDENT**

ELECTORAL COMMISSION OF ZAMBIA **2ND RESPONDENT**

AFFIDAVIT VERIFYING FACTS

I, **DAVISON MUNG'ANDU** a Zambian National of House no.31386 New Kasama, Lusaka, in the Lusaka Province of the Republic of Zambia **DO HEREBY** make **OATH** and **SAY** as follows;

1. That my full names, nationality and residential address are as stated above.
2. That I am the Petitioner herein and as such competent to depose to this my affidavit and facts within my personal knowledge and belief.
3. That I did contest as Parliamentary candidate for Chama North constituency of the Chama district of the Republic of Zambia in 2026 on the United National Party for Development (UPND) ticket.
4. That the Respondent was declared winner on the 15th August,2026 having obtained 4,660 votes while the Petitioner got 4,382 votes. There is now produced and shown to me an exhibit marked as "DM1" a true copy of the declaration form , GEN 20b.
5. That this was slim margins which require an order of Court for recount.
6. That the conduct of the Respondent and his Agents and his Known Agents before and during the voting day rendered the elections not free and fair and the following grounds;
    a. In Nkhakha ward which has four (4) polling stations, my Agents were not given form GN20 by the Presiding Officer for them to sign in two (2) of the polling stations in spite spirited request to do so.
    b. At Chibale Polling station in Nkhankha ward, in both stream 1 and 2, the number of votes counted at the polling station were inflated at the totaling centre in favor of the Respondent and voters ticked in the register, to show that they voted is different from the number of those who voted.
    c. At the same Polling station, the Presiding officer rejected valid ballot papers in favour of the Respondent and willingly allowed the respondent agents freely enter the polling station without accreditation by Electoral Commission of Zamia.
    d. Voters who went to vote with their own pens, were given more than one ballot paper, meaning they voted more than once. This was observed by our Agents in Polling stations where they were present.
    e. The Presiding officer at Chibale Polling station came with a lamp, which is a symbol for the NRPUP, and put it on the table purporting that he was to use it when it got dark.
    f. There was massive distribution of salt and chitenge materials by the Respondent a day before the voting day.

g. My Polling Agents were attacked at Chibale Polling station forcing them to flee the scene, thereby disadvantaging me. This incident was reported to the returning officer. The people who beat up and chased my Polling Agents are well known people and are often seen with the Respondent. Those involved in violence were arrested by the police.

h. The Respondent was dishing out K50.00 notes to the voters on election day. This pattern was noticed in all the eight (8) wards and in three quarters of the Polling stations.

i. At Ng'anjo Gravel, Kambowe and Kankhomba polling stations of Luangwa ward, the register did not tally with the total number of voters and this issue was reported to the district returning Officer.

j. In Mchinga ward, there six (6) polling stations. In this ward, there was widespread intimidation orchestrated by His Royal Highness Chief Lundu a close associate of the Respondent and a staunch supporter of the NRPUP. Below are some of the examples of intimidation witnessed in this ward;

k. The Chief called all the Headmen and instructed them to vote for Mundubile and the Respondent, his associate. The chief later followed his subjects in their respective villages and warned them to vote for the Respondent.

l. On the 13th August,2026, the voting day, he ferried voters from Mulopwe village to Mphyanakunda polling station where they were also served with Kudu game meat with nshima.

m. My polling agents were threatened to be banished from the village by the said chief forcing them to flee the polling station.

n. Voters were paid K100.00 each to enable them vote for the Respondent.

o. At Chipara Ward, in particular at Mwila Polling station, the Presiding officer was the one filling in the ballot papers on behalf of the voters.

p. At Pondo polling station, Agents for the Appellant were threatened with beatings and to confiscate the chitenges given to them, by the Agents of the Respondent if they did not vote for their preferred candidate.

q. At NKhankha ward, there was violence against the supporters of the Petitioner and the matter was reported with dockets opened. Now produced and shown to me marked, "MD-1." The consequence of this violence was that most people did not vote thereby affecting the Petitioners votes.

r. At Sitwe Polling station, there was voter buying and distribution of salt.

s. At Muchinga Ward polling station there were irregularities perpetuated by the Presiding officer such that the Agents for the Petitioner were not allowed to verify the GN20 form as the case was at Chibale 1 and 2.

t. The Respondent and his Agents distributed footballs and jerseys during the campaign period.

u. At Chisunga ward, at Mulilo centre, there was a fight between the Agent of the Respondent and the returning officer including the police officer. This fight caused a lot of panic among the voters leading to most of them abandoning the voting centre which affected the Petitioner as most of his supporters were scared of the violent NRPUP supporters and the Presiding officers allowed the NRPUP supporters to access the Polling stations without IDs.

7. That I depose to the above verily believing the same to be true and correct from facts within my personal knowledge and belief.

SWORN BY the said...DAVISON DAVUNG'ANDY...)

At LUSAKA this .....day of .....2026)

DEPONENT

BEFORE ME: ZULU PETER LLB, AHCZ, ASCZ 26 AUG 2026 LEGAL PRACTITIONER COMMISSIONER FOR OATHS

COMMISSIONER FOR OATHS

IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction)

2026/HP/EP/022

IN THE MATTER OF:	**ARTICLE 1(2), (3), 73(1) (a) AND 45(2) (a) (b) OF THE CONSTITUTION OF ZAMBIA, CHAPTER 1 OF THE LAWS OF ZAMBIA**
IN THE MATTER OF:	**SECTION 97 (2) OF THE ELECTORAL PROCESS ACT, NO. 35 OF 2016.**
IN THE MATTER OF:	**SECTIONS 70, 81, 87, 94, 96, 97(1), 2(b) 98(c), 99(a) (b), 100, (2) (a), OF THE ELECTORAL PROCESS ACT NO. 35 OF 2016.**
IN THE MATTER OF:	**RULE 9 OF THE HIGH COURT (ELECTION PETITION) RULES, 2026**
IN THE MATTER OF:	**CHAMA NORTH CONSTITUENCY ELECTIONS HELD ON 13TH AUGUST, 2026**

DAVISION MUNG'ANDU — **PETITIONER**

AND

BENSON NJOBVU — **1ST RESPONDENT**

ELECTORAL COMMISSION OF ZAMBIA — **2ND RESPONDENT**

REPUBLIC OF ZAMBIA
HIGH COURT OF ZAMBIA
07 SEP 2026
PRINCIPAL REGISTRY 6
P.O. BOX 50067, LUSAKA.

2ND RESPONDENT'S ANSWER

The 2nd Respondent's Answer to the Petition herein shows that:

1. The 2nd Respondent is a statutory body established under Article 229 of the Constitution (Amendment) Act No. 2 of 2016 to among other functions; conduct Presidential, Parliamentary, and Local Government elections.

2. That the Chama North Parliamentary election was contested by Njobvu Benson of the National Reconciliation Party for Unity and Prosperity (NRPUP), Mung'andu Davison of the United Party for National Development (UPND), Goma Cacious of the Citizen's First (CF), Mfune Brian of the Leadership Movement (LM) and Nyimbili. A Philimon an independent candidate.

3. The 2nd Respondent admits the contents of paragraph 1 to 5 of the Petition.

4. The 2nd Respondent denies the contents of paragraph 6 (i) of the Petition and shall aver at trial that only Gen 20 forms for Chiluba ward were not given to the Petitioner's agents, however the Petitioners agents were advised that the Gen 20 forms would be given to them in due course.

5. The 2nd Respondent makes no comment as to the contents of paragraphs 6 (ii) to 6(xii) of the Petition as the same are within the peculiar knowledge of the Petitioner.

6. The 2nd Respondent will aver that the election for Chama North was conducted in conformity with the electoral laws and procedures.

7. The 2nd Respondent avers that the Petitioner is not entitled to any of the reliefs sought.

8. Save as herein expressly admitted the 2nd Respondent denies each and every allegation contained in the Petition as if the same was herein set forth and traversed seriatim.

Dated at Lusaka this day of 2026.

Legal Counsel
Electoral Commission of Zambia
Elections House,
Haile Selassie Avenue
P.O. Box 50274
Lusaka
Email: elections@elections.org.zm
ADVOCATES FOR THE 2ND RESPONDENT

To: **THE PETITIONER'S ADVOCATES**
Messrs. Chiwala Boniface, Legal Practitioner's
F32a/G/2/R, Zambezi Road, Foxdale
info@chiwalabonifacelegal.com
LUSAKA

0977 - 758357

IN THE HIGH COURT FOR ZAMBIA **2026/HP/EP/022**
AT PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction)

IN THE MATTER OF: ARTICLE 73(1) AND (2) AND ARTICLE 45(2)(a) AND (b) OF THE CONSTITUTION OF ZAMBIA, CHAPTER 1 OF THE LAWS OF ZAMBIA

AND

IN THE MATTER OF: SECTIONS 97, 98, 99 AND 100 OF THE ELECTORAL PROCESS ACT NO. 35 OF 2016

AND

IN THE MATTER OF: RULES 9 AND 10 OF THE HIGH COURT (ELECTION PETITION) RULES, STATUTORY INSTRUMENT NO. 31 OF 2026

AND

IN THE MATTER OF: THE CHAMA NORTH CONSTITUENCY PARLIAMENTARY ELECTION HELD ON 13TH AUGUST 2026

BETWEEN:

DAVISON MUNG'ANDU **PETITIONER**

REPUBLIC OF ZAMBIA
HIGH COURT OF ZAMBIA
04 SEP 2026
PRINCIPAL REGISTRY 1
P.O. BOX 50067, LUSAKA.

AND

BENSON NJOBVU **1ST RESPONDENT**
ELECTORAL COMMISSION OF ZAMBIA **2ND RESPONDENT**

ANSWER TO ELECTION PETITION BY THE 1ST RESPONDENT

The 1st Respondent responds as follows to each and every allegation in the Election Petition. Except where expressly admitted, every allegation is denied and the Petitioner is put to strict proof thereof.

1. This Answer is filed without prejudice to the 1st Respondent's right to raise preliminary objections and other interlocutory matters permitted by the Electoral Process Act No. 35 of 2016 and the High Court (Election Petition) Rules, 2026.

2. The 1st Respondent shall contend that the Petition, on its face, does not state the scores obtained by the candidates and therefore fails to disclose the outcome or results of the challenged election in the Petition itself as required by rule 9(2)(c) of the High Court (Election Petition) Rules, 2026.

3. The 1st Respondent further reserves the right, upon inspection of the Court record, to object to the competence of the Petition if the mandatory documents prescribed by rule 9(3) were not filed together with the Petition, if security for costs was not deposited within the prescribed period, or if service was not effected in accordance with rule 14.

4. The Petition inconsistently cites Acts Nos. 25, 36 and 35 of 2016. The governing statute is the Electoral Process Act No. 35 of 2016, and the 1st Respondent shall rely on the correct statutory provisions.

5. The allegations of bribery, violence, intimidation, voter buying and other corrupt or illegal practices are vague and lack the material particulars necessary to establish the identity and status of the alleged actors, the persons allegedly influenced, the time and place of each act, the number of voters affected, any knowledge, consent or approval by the 1st Respondent, or any effect upon the result within section 97 of the Electoral Process Act.

6. The general expressions 'agents', 'known agents', 'supporters' and 'associates' do not establish that any unnamed person was the 1st Respondent's election agent or polling agent, or acted with his knowledge, consent or approval. The Petitioner is put to strict proof of agency and attribution in respect of each alleged act.

7. In answer to paragraph 1 of the Petition, the 1st Respondent admits only that the Petitioner is the person named in these proceedings. The 1st Respondent has no personal knowledge of the Petitioner's stated residential address and puts him to proof thereof.

8. In answer to paragraph 2, it is admitted that the 1st Respondent was a candidate in the Chama North Constituency parliamentary election held on 13th August 2026 and was duly declared elected on 15th August 2026.

9. In answer to paragraph 3, the constitutional and statutory status and functions of the 2nd Respondent are matters of law. Save as aforesaid, the 1st Respondent makes no admission concerning allegations directed at the 2nd Respondent.

10. In answer to paragraph 4, it is admitted that the Petitioner contested the election on the United Party for National Development (UPND) ticket.

11. In answer to paragraph 5, it is admitted that the 1st Respondent contested on the National Reconciliation Party for Unity and Prosperity (NRPUP) ticket and was declared elected. The official declaration recorded 4,660 votes for the 1st Respondent and 4,382 votes for the Petitioner, a lawful majority of 278 votes.

12. The introductory allegation in paragraph 6 that the conduct of the 1st Respondent or his agents rendered the election not free and fair is denied in its entirety.

13. In answer to paragraph 6(i), the alleged failure by presiding officers to provide or permit signature of GEN 20 forms and the alleged discrepancy in the voters' register are matters within the official custody and knowledge of the 2nd Respondent. The 1st Respondent denies causing, directing, participating in or benefiting from any unlawful omission, and the Petitioner has not identified the two polling stations or quantified any discrepancy.

14. In answer to paragraph 6(ii), it is denied that votes counted at Chibale Streams 1 and 2 were inflated at the totalling centre. The official GEN 20A results recorded, among others, 320 votes for the 1st Respondent and 181 for the Petitioner in Stream 1, and 272 votes for the 1st Respondent and 169 for the Petitioner in Stream 2. The Petitioner has not pleaded either the figures allegedly announced at the polling stations or the different figures allegedly entered at the totalling centre.

15. In answer to paragraph 6(iii), the allegation is denied. No presiding officer acted at the instance or with the knowledge, consent or approval of the 1st Respondent. Further, the allegation as drafted states that valid ballot papers 'in favour of the Respondent' were rejected, which, if taken literally, would prejudice rather than favour the 1st Respondent. Both polling agents appointed on behalf of the 1st Respondent at Chibale Streams 1 and 2 held valid accreditation, as did the campaign monitor deployed across the wards.

16. In answer to paragraph 6(iv), it is denied that voters using their own pens were issued more than one ballot paper or voted more than once. The use of a personal pen was not confined to supporters of any candidate, and the Petition identifies no voter, ballot paper or polling station to substantiate the allegation.

17. In answer to paragraph 6(v), the 1st Respondent had no control over equipment brought by a presiding officer. It is denied that the presence of a lamp used or intended for lighting constituted campaigning for the 1st Respondent or affected any vote or the result of the election.

18. In answer to paragraph 6(vi), it is denied that the 1st Respondent distributed salt or chitenge materials on the day before polling or authorised any person to do so.

19. In answer to paragraph 6(vii), it is denied that the Petitioner's polling agents were attacked at Chibale Polling Station on polling day by the 1st Respondent's agents or by persons acting with his knowledge, consent or approval. Any disturbance that occurred approximately two weeks before polling day was separate from the conduct of polling, was neither organised nor approved by the 1st Respondent, and was reported to the police at Chama.

20. In answer to paragraph 6(viii), it is denied that the 1st Respondent distributed K50 notes to voters on polling day or at any other time for the purpose of influencing their votes. The sweeping allegation concerning all eight wards and three quarters of the polling stations contains no names, recipients, times, amounts or supporting particulars.

21. In answer to paragraph 6(ix), the alleged discrepancies at Ng'anjo Gravel, Kambowe and Kankhomba Polling Stations are matters for proof from the electoral records held by the 2nd Respondent. The 1st Respondent denies any involvement in, knowledge of or benefit from an unlawful discrepancy and notes that no figures are pleaded.

22. In answer to paragraph 6(x) and its subparagraphs, it is denied that His Royal Highness Chief Lundu intimidated voters, threatened polling agents, transported voters as part of the 1st Respondent's campaign, served game meat to induce votes, or caused voters to be paid K100. Chief Lundu was not the 1st Respondent's election agent or polling agent, and the 1st Respondent neither instructed nor authorised the alleged conduct.

23. Further to the preceding paragraph, any lift given by Chief Lundu to his uncle, Headman Mulopwe, and the persons accompanying him was a private and familial act while the Chief was travelling with his wife. The passengers were dropped more than 400 metres from the polling station. The 1st Respondent did not arrange or authorise that lift, and no food or money was provided by him in connection with it.

24. In answer to paragraph 6(xi), it is denied that the presiding officer at Mwila Polling Station unlawfully completed ballot papers for voters at the instance or for the benefit of the 1st

Respondent. The conduct of the presiding officer and any lawful assistance given to a voter are matters within the 2nd Respondent's knowledge and records.

25. In answer to paragraph 6(xi)(i), it is denied that the Petitioner's agents at Pondo Polling Station were threatened with beatings or confiscation of chitenges by the 1st Respondent's agents. The pleading's reference to an 'Appellant' is unexplained, and no alleged perpetrator or victim is identified.

26. In answer to paragraph 6(xi)(ii), it is denied that violence in Nkhankha Ward was perpetrated by or attributable to the 1st Respondent, or that it prevented the Petitioner's supporters from voting. The Petitioner pleads no turnout figures, names or number of affected voters and no facts capable of showing an effect on the result.

27. In answer to paragraph 6(xi)(iii), it is denied that there was voter buying or distribution of salt at Sitwe Polling Station by the 1st Respondent or his agents. The salt referred to by the Petitioner was personal property carried on a bicycle by an NRPUP supporter who had been injured by UPND cadres in a disturbance; it was not campaign material intended for distribution.

28. In answer to paragraph 6(xi)(iv), the 1st Respondent notes that the Petition refers to Mbazi Polling Station whereas the affidavit verifying facts refers to Muchinga Ward Polling Station. In either case, the allegation concerns a presiding officer and is denied insofar as it suggests any involvement, direction, knowledge or benefit on the part of the 1st Respondent.

29. In answer to paragraph 6(xi)(v), it is denied that the 1st Respondent or his agents distributed footballs or jerseys as an inducement during the campaign.

30. In answer to paragraph 6(xii), it is denied that there was a fight at Mulilo Centre between the 1st Respondent's agent, the returning officer and a police officer, or that voters abandoned the polling centre. There was an orderly discussion after an NRPUP agent raised a concern about persons canvassing voters within the polling area, and the issue was resolved amicably. It is further denied that the 1st Respondent authorised unaccredited persons to enter any polling station.

31. The alleged contraventions set out under the heading 'Alleged Contravention of the Law' are denied. In particular, the allegation that agents of the Petitioner were coerced to sign GEN 20 forms before counting is unsupported by and inconsistent with the pleaded facts, which allege that the agents were not given forms or were not permitted to verify them.

32. The allegations concerning direction of voters in queues, failure to provide security, acts of presiding officers and the presence of a lamp either are not pleaded with material particulars or concern the statutory duties of the 2nd Respondent. They do not establish misconduct by the 1st Respondent, attribution under section 97(2)(a), or non-compliance affecting the result under section 97(2)(b) of the Electoral Process Act.

33. Further and in the alternative, if any supporter or other person committed any improper act, which is denied, the act was not committed by the 1st Respondent personally or by his election agent, nor with their knowledge, consent or approval. The 1st Respondent and his election agent took reasonable steps to require compliance with the electoral law and did not authorise bribery, intimidation, violence or unlawful interference with polling.

34. A narrow numerical margin does not, without proved counting errors or other material non-compliance, establish a right to a constituency-wide recount. The 1st Respondent therefore opposes the prayer for a recount as unparticularised and unsupported.

35. The prayer for nullification is denied because the Petition does not establish any ground under section 97(2) of the Electoral Process Act. The prayer for damages against the 2nd Respondent is not admitted and, in any event, falls outside the reliefs prescribed for an election petition under section 99 of the Act.

36. The 1st Respondent denies that the Petitioner is entitled to costs or to any other relief and shall pray that the Petition be dismissed with costs.

WHEREFORE, the 1st Respondent prays that the Court:

(a) dismisses the Election Petition for want of merit and, where applicable, for procedural non-compliance;

(b) declares and confirms that the 1st Respondent was duly elected as Member of Parliament for Chama North Constituency;

(c) awards costs to the 1st Respondent; and

(d) grants such further or other relief as the Court considers just.

Dated at Lusaka this day of 2026.

BENSON NJOBVU
1ST RESPONDENT

Filed by:
MESSRS. M. K. ACHIUME & ASSOCIATES, Legal Practitioners for the 1st Respondent, House No. 4, Impala Road, Woodlands, Lusaka. Email: simonmulengamwila@icloud.com | Tel: +260 976 389 038

IN THE HIGH COURT FOR ZAMBIA **2026/HP/EP/022**
AT PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction)

IN THE MATTER OF: **ARTICLE 73(1) AND (2) AND ARTICLE 45(2)(a) AND (b) OF THE CONSTITUTION OF ZAMBIA, CHAPTER 1 OF THE LAWS OF ZAMBIA**

AND

IN THE MATTER OF: **SECTIONS 97, 98, 99 AND 100 OF THE ELECTORAL PROCESS ACT NO. 35 OF 2016**

AND

IN THE MATTER OF: **RULES 9 AND 10 OF THE HIGH COURT (ELECTION PETITION) RULES, STATUTORY INSTRUMENT NO. 31 OF 2026**

AND

IN THE MATTER OF: **THE CHAMA NORTH CONSTITUENCY PARLIAMENTARY ELECTION HELD ON 13TH AUGUST 2026**

BETWEEN:

DAVISON MUNG'ANDU **PETITIONER**

AND

BENSON NJOBVU **1ST RESPONDENT**
ELECTORAL COMMISSION OF ZAMBIA **2ND RESPONDENT**

AFFIDAVIT IN OPPOSITION TO ELECTION PETITION

I, BENSON NJOBVU, a Zambian national of House No. 21369, Hybrid Road, Chamba Valley, Lusaka District in the Lusaka Province of the Republic of Zambia, DO HEREBY MAKE OATH AND SAY as follows:

1. That my full names and nationality are as stated above and I am the 1st Respondent in these proceedings, duly competent to swear this Affidavit from matters within my personal knowledge and, where stated, from information supplied to me which I verily believe to be true.

2. That I have read the Election Petition filed by Davison Mung'andu and the affidavit verifying facts sworn in support thereof, and I oppose the Petition in its entirety except to the extent expressly admitted in my Answer.

3. That I contested the Chama North Constituency parliamentary election held on 13th August 2026 on the National Reconciliation Party for Unity and Prosperity (NRPUP) ticket and was duly declared elected on 15th August 2026 with 4,660 votes. The Petitioner obtained 4,382 votes, giving me a majority of 278 votes.

4. That the election was conducted openly and substantially in accordance with the electoral law, and the official results reflected the lawful votes cast by the electorate of Chama North Constituency.

5. That I did not personally, through my election agent or polling agents, bribe, intimidate, assault, threaten or improperly influence any voter, polling agent, election officer or other person, and I did not know of, consent to or approve any such conduct by any person.

6. That I required my campaign team, election agent and polling agents to comply with the electoral law and the Electoral Code of Conduct, and I did not authorise violence, inducements, unlawful entry into polling stations or interference with electoral officers.

7. That both polling agents appointed on my behalf at Chibale Streams 1 and 2 held valid accreditation, and the campaign monitor deployed across the wards was also accredited.

8. That I neither directed nor caused any presiding officer to withhold a GEN 20 form from the Petitioner's agents, to prevent them from signing or verifying a form, or to alter any entry in the voters' register. Those records were prepared and kept by officials of the 2nd Respondent.

9. That the allegation that my votes at Chibale Streams 1 and 2 were inflated at the totalling centre is false. The official GEN 20A results for Stream 1 recorded 320 votes for me, 181 for the Petitioner, 77 for Goma, 5 for Mfune and 2 for Nyimbili. Stream 2 recorded 272 votes for me, 169 for the Petitioner, 73 for Goma, 3 for Mfune and 2 for Nyimbili.

10. That the Petition does not state what different figures were allegedly counted or announced at either stream, and no polling agent reported to me that the figures in the GEN 20A forms had been unlawfully changed at the totalling centre.

11. That I did not request or cause any valid ballot paper to be rejected. The Petitioner's allegation itself states that ballot papers in my favour were rejected, which would have reduced rather than increased my votes.

12. That I have no knowledge of any voter being given more than one ballot paper merely because that voter used a personal pen. Voters who chose to use their own pens did so irrespective of political affiliation, and I did not facilitate or encourage any person to vote more than once.

13. That I had no control over a lamp brought to Chibale Polling Station by a presiding officer. I did not supply that lamp, request that it be displayed or use it to campaign, and I am not aware of any voter whose vote was influenced by it.

14. That I did not distribute salt or chitenge material on the day before polling, nor did I instruct or authorise any person to do so on my behalf.

15. That I was informed by His Royal Highness Chief Lundu, which information I verily believe to be true, that during the campaign persons associated with the Petitioner's camp, and not my campaign, distributed wax or chitenge material in the wards. Chief Lundu is able to give direct evidence concerning that matter.

16. That I did not distribute K50 or K100 notes to voters on polling day or at any other time in exchange for votes. The claim that I did so in all eight wards and in three quarters of the polling stations is false.

17. That I did not distribute footballs or jerseys as an inducement during the campaign, and I did not authorise any agent to do so.

18. That there was no attack on the Petitioner's polling agents at Chibale Polling Station on polling day by me, my agents or persons acting with my knowledge, consent or approval.

19. That I was informed by members of my campaign team, which information I verily believe to be true, that approximately two weeks before polling day a disturbance occurred after a UPND cadre damaged the house of a UPND couple whose son supported the NRPUP. The police later detained six NRPUP supporters, and some residents thereafter threw stones towards the UPND camp. That incident was reported to the police and was not organised, directed or approved by me.

20. That police dockets relating to the disturbance described above are available at Chama Police Station. Neither the dockets nor the arrests establish that I committed, authorised or knew of any violence, and the incident was separate in time from polling on 13th August 2026.

21. That I did not threaten the Petitioner's agents at Pondo Polling Station, did not direct anyone to confiscate chitenges and did not cause violence against the Petitioner's supporters in Nkhankha Ward.

22. That His Royal Highness Chief Lundu was not my election agent or polling agent and was not acting under my direction, authority or control.

23. That the allegation that Chief Lundu called headmen, followed subjects from village to village, threatened them or ordered them to vote for me is false. To my knowledge, the Chief had previously worked closely with the Petitioner, and the Petitioner camped within Lundu Chiefdom during the campaign.

24. That I was informed by Chief Lundu, which information I verily believe to be true, that on polling day he was travelling from Katangalika in Chama Central Constituency with his wife, whom he was taking to vote at Lundu Polling Station. At Mulopwe he found his uncle, Headman Mulopwe, and other persons seeking transport to Mphyanakunda Polling Station, which was along his route, and gave them a lift as a private and familial courtesy.

25. That I am further informed and verily believe that the persons referred to in the preceding paragraph were dropped more than 400 metres from Mphyanakunda Polling Station; no campaign message was delivered to them and no kudu meat, nshima or money was provided to induce their votes.

26. That I did not know of, consent to or approve any threat to banish the Petitioner's polling agents from any village, and I did not pay or cause any voter to be paid K100 to vote for me.

27. That allegations concerning discrepancies in the register at Ng'anjo Gravel, Kambowe and Kankhomba Polling Stations, the completion of ballot papers by a presiding officer at Mwila Polling Station, and the verification of GEN 20 forms at Mbazi or Muchinga concern electoral records and officials of the 2nd Respondent. I did not cause, direct or participate in any irregularity at those polling stations.

28. That all persons appointed as my polling agents were accredited. I did not authorise any supporter without accreditation to enter any polling station.

29. That there was no voter buying or distribution of salt by me or my agents at Sitwe Polling Station. I was informed by my ward campaign officials, which information I verily believe to be true, that while an aspiring NRPUP councillor and ward leaders were paying a courtesy

call on the headman before their meeting, UPND cadres disrupted the gathering and an NRPUP supporter was injured. The injured supporter had his own salt on his bicycle. The salt was taken by UPND cadres and presented to the police as though it had been intended for distribution.

30. That the injured supporter referred to above was taken to hospital, a medical report was obtained and the matter was reported to the police. The salt was his personal property and was not campaign material intended for distribution to voters.

31. That there was no fight at Mulilo Centre between my agent, the returning officer and a police officer. An NRPUP agent raised a concern that persons within the polling area were telling voters not to vote for NRPUP candidates. The matter was discussed and resolved amicably, without violence or abandonment of the polling centre. An audio recording of that discussion is available for production in accordance with the directions of the Court.

32. That the Petition and affidavit verifying facts are materially inconsistent as to whether the alleged denial of verification of a GEN 20 form occurred at Mbazi Polling Station or at Muchinga Ward Polling Station. I was involved in no such conduct at either place.

33. That the papers served upon me do not identify the alleged recipients of the money, salt, food, footballs or jerseys; do not name the alleged perpetrators said to be my agents; do not state the number of voters allegedly prevented from voting; and do not quantify how any alleged irregularity altered or could have altered the declared result.

34. That, save for matters concerning electoral officials and records which the 2nd Respondent is better placed to address, the allegations made against me are false and are not supported by facts connecting them to me, my election agent or my polling agents.

35. That I accordingly seek the indulgence of this Honourable Court to dismiss this Petition with costs and that my election as Member of Parliament for Chama North Constituency be upheld.

36. That I depose to this Affidavit conscientiously believing the contents herein to be true and correct to the best of my knowledge, information and belief.

SWORN by the said BENSON NJOBVU
at Lusaka this _____ day of September 2026

.....
DEPONENT

BEFORE ME: .....

COMMISSIONER FOR OATHS

IN THE HIGH COURT FOR ZAMBIA **2026/HP/EP/022**
AT PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction)

IN THE MATTER OF: **ARTICLE 73(1) AND (2) AND ARTICLE 45(2)(a) AND (b) OF THE CONSTITUTION OF ZAMBIA, CHAPTER 1 OF THE LAWS OF ZAMBIA**

AND

IN THE MATTER OF: **SECTIONS 97, 98, 99 AND 100 OF THE ELECTORAL PROCESS ACT NO. 35 OF 2016**

AND

IN THE MATTER OF: **RULES 9 AND 10 OF THE HIGH COURT (ELECTION PETITION) RULES, STATUTORY INSTRUMENT NO. 31 OF 2026**

AND

IN THE MATTER OF: **THE CHAMA NORTH CONSTITUENCY PARLIAMENTARY ELECTION HELD ON 13TH AUGUST 2026**

BETWEEN:

DAVISON MUNG'ANDU **PETITIONER**

AND

BENSON NJOBVU **1ST RESPONDENT**
ELECTORAL COMMISSION OF ZAMBIA **2ND RESPONDENT**

AFFIDAVIT IN OPPOSITION TO ELECTION PETITION

MESSRS. M. K. ACHIUME & ASSOCIATES, Legal Practitioners for the 1st Respondent, House No. 4, Impala Road, Woodlands, Lusaka. Email: simonmulengamwila@icloud.com | Tel: +260 976 389 038

REPUBLIC OF ZAMBIA
HIGH COURT OF ZAMBIA
2 8 AUG 2026
PRINCIPAL REGISTRY
P.O. BOX 50067, LUSAKA.

2026/HP/EP/022

IN THE HIGH COURT FOR ZAMBIA

AT PRINCIPAL REGISTRY

HOLDEN AT LUSAKA

(Civil Jurisdiction)

IN THE MATTER OF: **ARTICLE 1(2),(3), 73 (1)(a) AND 45(2)(a)(b) OF THE CONSTITUTION OF ZAMBIA, CHAPTER 1 THE LAWS OF ZAMBIA**

AND

IN THE MATTER OF: **SECTIONS 97 (2) OF THE ELECTORAL PROCESS ACT, NO. 35 OF 2016.**

IN THE MATTER OF: **SECTIONS 70, 81, 87, 94, 96, 97(1),2(b) 98(c), 99(a)(b), 100 (2) (a), OF THE ELECTORAL PROCESS ACT NO. 36 OF 2016.**

IN THE MATTER OF: **RULE 9 OF THE HIGH COURT (ELECTION PETITION) RULES, 2026**

IN THE MATTER OF: **CHAMA NORTH CONSTITUENCY ELECTIONS HELD ON 13TH AUGUST, 2026.**

BETWEEN:

DAVISON MUNG'ANDU — **PETITIONER**

AND

BENSON NJOBVU — **1ST RESPONDENT**

ELECTORAL COMMISSION OF ZAMBIA — **2ND RESPONDENT**

PETITIONER'S LIST OF AUTHORITIES AND SKELETON ARGUMENTS

A. LIST OF AUTHORITIES:

1. **THE CONSTITUTION OF ZAMBIA (AMENDMENT) ACT, NO. 2 OF 2016 CHAPTER 1 OF THE LAWS OF ZAMBIA.**
2. **THE ELECTORAL PROCESS ACT NO. 35 OF 2016.**
3. **THE ELECTORAL (CODE OF CONDUCT) REGULATIONS 2016.**

B. CASES REFERRED TO:

1. **SIKOTA WINA, MAFO WALLACE MAFIYO, GEORGE SAMULELA AND MICHAEL MABENGA- SCZ NO. 15 OF 2003**
2. **MATILDA MACARIAS MUTALE VS SEBIO MUKUKA AND ELECTORAL COMMISSION OF ZAMBIA SCZ APPEAL NO. 45/2003**
3. **MICHAEL MABENGA VS. SIKOTA WINA AND OTHERS (2003) Z.R. 110**
4. **JONATHAN KAPAIPI VS- NEWTON SAMAKAYI CCZ APPEAL NO. 13/2017**
5. **SIMASIKU NAMAKANDO VS ELLEN IMBWAE APPEAL NO. 108/2007**

1.0 INTRODUCTION

1.1 IF IT MAY PLEASE THIS HONOURABLE COURT, hereunder are the Petitioner's List of Authorities and Skeleton in support of the Election Petition for Lumezi South Constituency. We wish to state from the outset that it is an established and profound principle in law that he who alleges must prove and the standard of proof in this instance is higher than the balance of probabilities.

2.0 BRIEF FACTS

2.1 The Petitioner was a United Party for National Development (UPND) candidate duly nominated in the Lumezi North Constituency Parliamentary Election held on 13th August, 2026 wherein the Returning Officer declared the 1st Respondent as duly elected Member of Parliament for Lumezi North Constituency.

2.2 However, the Petitioner filed his Petition to challenge the validity of the 1st Respondent's election and declaration by the 2nd Respondent's agent as the duly elected Member of Parliament for Lumezi North Constituency on the grounds of serious irregularities and breach of the electoral law.

3.1 ARGUMENTS ON GROUND ONE AND TWO.

3.1 MY LORD/LADY, Regarding the Petitioner's Petition, the legal basis for seeking the reliefs enunciated in the Petition are as follows:

3.2 MY LORD/LADY, it is clear from the Affidavit evidence that sufficient evidence was adduced by the Petitioner herein in his Affidavit to the effect that during the campaigns and on voting

cap. 13. The activities of the appellant were so improper that they eroded the electoral process and induced the electorate to vote for a candidate not of their choice."

3.5 In the same vein, **Regulation 2 of the Electoral Code of Conduct, 2016** provides that:

"A person shall during an election campaign or election, promote conditions conducive to the conduct of free and fair elections and be bound by this code."

3.6 Further relying on the case of **Matilda Macarias Mutale Vs Sebio Mukuka and Electoral Commission of Zambia SCZ Appeal No. 45/2003** wherein the Supreme Court held that:

"The Respondent who was actively involved in the distribution of maize and fertilizer to the electorate and further used his position to his advantage was acting against the law. The Court found that the distribution of fertilizer and maize was a government programme but that the timing was bad"

3.7 Furthermore, in the case of **Michael Mabenga Vs. Sikota Wina and Others (2003) Z.R. 110**, the Court held that:

"Satisfactory proof of any one corrupt or illegal or misconduct in an election petition is sufficient to nullify any election."

3.8 **MY LORD/LADY,** we submit that in the case herein, the affidavit evidence points to acts of corruption, illegal practice and misconduct which require an order for a recount. Therefore, if this Honourable Court will prove the same to the aforestated standard of proof, the Court will be justified to declare the election of the 1st Respondent void for his failure or neglect as a candidate to comply with the constitutional duty, electoral laws and regulations to promote free and fair elections. We humbly draw the attention of this Honourable Court to **Article 54 of The Constitution of Zambia as Amended by Act No. 2 of 2016** provided that:

"...a candidate and a political party shall comply with a prescribed electoral code of conduct."

3.9 **MY LORD/LADY,** taking into consideration the strength of the evidence adduced in the Affidavit and the strength of the law, it is our humble submission that this Honourable Court will be on Terra firma and justified if it declared the 1st Respondent as not having been duly elected as Member of Parliament for Lumezi North Constituency. To buttress the foregoing

submission, the Petitioner will rely on the principles of law as elaborated in the case of; **Jonathan Kapaipi Vs- Newton Samakayi Ccz Appeal No. 13/2017**, wherein the Court went at lengthy to adumbrate the threshold required to be met by the Petitioner in order for the Court to nullify a Parliamentary Election thus:

"...the provision for declaring an election of a member of parliament void is only where whatever activities is complained of, it is proved satisfactorily that as a result of that wrongful conduct, the majority of the voters in a constituency were or might have been prevented from electing a candidate of their choice, it is clear that when facts alleging misconduct are proved and fall into the prohibited category of misconduct was widespread in the constituency to the level where registered voters in great numbers were influenced so as to change their selection of a candidate for that particular election in that constituency, only then can it be said that a greater number of registered voters were prevented or might have been prevented from electing their preferred candidate."

3.10 **MY LORD/LADY,** in view of the foregoing, we submit that it is clear that all the allegations complained of benefited the 1st Respondent to the detriment of the Petitioner herein. We therefore request this Court to nullify the 1st Respondent's election as Member of Parliament for Lumezi North Constituency.

3.11 **MY LORD/LADY,** it is also clear from the Affidavit evidence that the 1st Respondent or his polling agent/ cadres with his consent and knowledge, based his Campaigns on violence, intimidations and harassment against the Petitioner and his polling agents who belonged to a Party that according to the 1st Respondent was tribally misaligned to the interest of region and that the said party despised the people of the said Constituency and Eastern Province region as a whole. Therefore, our humble submission is that the said sentiments grossly fell within the prohibited practice. Therefore, we humbly draw the attention of this Court to the case of: **Simasiku Namakando Vs Ellen Imbwae Appeal No. 108/2007** wherein the Court cited the case of **Alex Cadman Luhila Vs Batuke Imenda** where Judge Munthali said:

"Those who think they can find their way to parliament on the platform of lies and calumnies intended to deform the characters of opponents, those who think they can find their way to parliament on the platform of illegal practices of various shades, those who think they can find their way to parliament on the

platform of bribery and corruption the message is this; the Courts will not hesitate to show them the door and eject them from parliament." (Underlining for our emphasis)

4.0CONCLUSION

4.1 MY LORD/LADY, it is our submission that the allegation of electoral offence committed by the 1st Respondent had serious effect on the majority of the voters in the Lumezi North Constituency. The Affidavit evidence laid before this Honourable Court is to the effect that reports of corrupt practice, illegal practice or other misconduct that were committed in connection with the election were severe, massive and widespread.

4.2 MY LORD/LADY, on the strength of the submission herein, and the authorities cited, it is our humble submission and prayer that this Honourable Court must hold that the declaration of 1st Respondent as a validly elected Member of Parliament for Lumezi North Constituency be overturned and that the said election be nullified in the interest of justice and promotion of free and fair electoral system in Zambia.

WE ARE MOST OBLIGED

Dated at Lusaka the _____ day of _____, 2026.

Filed by Counsel of: _____

Messrs. Chiwala Boniface, Legal Practitioners
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LUSAKA
ADVOCATES FOR THE PETITIONER

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MAKENI T/SHIP
P. O. Box 540012
CHAMA

TO: THE 2ND RESPONDENT
The electoral Commission of Zambia
Elections House, Haile Selassie Avenue, Longacres,
P.O Box 50274 ,**Lusaka, Zambia**

IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction)

2026/HP/EP/022

IN THE MATTER OF:	**ARTICLE 1(2), (3), 73(1) (a) AND 45(2) (a) (b) OF THE CONSTITUTION OF ZAMBIA, CHAPTER 1 OF THE LAWS OF ZAMBIA**
IN THE MATTER OF:	**SECTION 97 (2) OF THE ELECTORAL PROCESS ACT, NO. 35 OF 2016.**
IN THE MATTER OF:	**SECTIONS 70, 81, 87, 94, 96, 97(1), 2(b) 98(c), 99(a) (b), 100, (2) (a), OF THE ELECTORAL PROCESS ACT NO. 35 OF 2016.**
IN THE MATTER OF:	**RULE 9 OF THE HIGH COURT (ELECTION PETITION) RULES, 2026**
IN THE MATTER OF:	**CHAMA NORTH CONSTITUENCY ELECTIONS HELD ON 13TH AUGUST, 2026**



DAVISION MUNG'ANDU	**PETITIONER**
AND	
BENSON NJOBVU	**1ST RESPONDENT**
ELECTORAL COMMISSION OF ZAMBIA	**2ND RESPONDENT**

2ND RESPONDENT'S SKELETON ARGUMENTS AND LIST OF AUTHORITIES

MAY IT PLEASE THIS HONOURABLE COURT the following are the 2nd Respondent's List of Authorities and Skeleton Arguments.

LIST OF AUTHORITIES

Cases

(i) Abuid Kawangu v Elijah Muchima Appeal No. 8 of 2017;

(ii) Akashambatwa Mbikusita Lewanika And Others v Fredrick Jacob Titus Chiluba (1998) Z.R. 79;
(iii) Austin Liato v Sitwala Sitwala Selected Judgement No. 23 of 2018;
(iv) Kufuka Kufuka V Mundia Ndalamei Appeal No. 15 of 2016;
(v) Josephat Mlewa v Wightman (1995/97) Z.R 171
(vi) Nakbukeera Hussein Hanifa v Kibule Ronald and Another (2011) UGHC64;
(vii) Nkandu Luo V Doreen Sefuke Mwamba and Attorney General Selected Judgement No. 51 OF 2018 P51;
(viii) Richwell Siamunene V Sialubalo Gift Selected Judgement No. 58 of 2017; and
(ix) Saul Zulu v Victoria Kalima SCZ Judgment No. 2 of 2014;

Legislation

(i) The Constitution of Zambia (Amendment) Act No. 2 of 2016; and
(ii) The Electoral Process Act No. 35 of 2016.

Other Authorities

(i) The International Foundation for Electoral Systems Guidelines for Understanding, Adjudicating, and Resolving Disputes in Elections (2011 p86/7).

1.0. STANDARD OF PROOF IN ELECTION PETITION MATTERS

1.1. My **Lady/My Lord**, it is our submission that the standard of proof required in election petitions, though a civil matter, is higher than "on a balance of probabilities". According to the case of **Lewanika and Others v Chiluba (1998) ZR 79** the Supreme Court held that ***"election petitions are required to be proven to a standard higher than a mere balance of probabilities***."

1.2. Similarly, In the case of ***Saul Zulu v Victoria Kalima SCZ Judgment No. 2 of 2014***, the Court opined that ***"An election petition is like any other civil claim that depends on the pleadings. . . Issues raised are required to be established to a fairly high degree of convincing clarity." (Emphasis Ours)***

1.3. **My Lady/My Lord**, it is our submission that as regards witnesses called by the parties in an election petition, we respectfully refer the Honourable

Court to the Ugandan case of ***Nakbukeera Hussein Hanifa v Kibule Ronald and Another (2011) UGHC64*** where the Court observed as follows;

> ***"in an election Petition, just like in the election itself, each party is set out to win. Therefore the Court must cautiously and carefully evaluate all the evidence adduced by the parties. To this effect evidence of partisans must be viewed with great care and caution. Scrutiny and circumspection.....it would be difficult indeed for a court to believe that supporters of one candidate behaved in a saintly manner, while those of the other candidate were all servants of the devil; further that in election contests of this nature, witnesses most of them motivated by the desire to score victory against their opponents deliberately resort to peddling falsehoods. What was a hill is magnified into a mountain and that the evidence of both parties is, entirely subjective and cannot be relied upon without testing its authenticity from a neutral and independent source"***

2.0. THE LAW RELATING TO ELECTION PETITIONS

2.1. The law relating to parliamentary or local government electoral petitions is premised on Section 97 (2) and (3) of the Electoral Process Act No. 35 of 2016. The said provisions provide as follows:

> ***""97 (2) The election of a candidate as a Member of Parliament, mayor, council chairperson or councilor shall be void if, on the trial of an election petition, it is proved to the satisfaction of the High Court or a tribunal, as the case may be, that— (a) a corrupt practice, illegal practice or other misconduct has been committed in connection with the election— (i) by a candidate; or (ii) with the knowledge and consent or approval of a candidate or of that candidate's election agent or polling agent; and the***

majority of voters in a constituency, district or ward were or may have been prevented from electing the candidate in that constituency, district or ward whom they preferred; (b) subject to the provisions of subsection (4), there has been non-compliance with the provisions of this Act relating to the conduct of elections, and it appears to the High Court or tribunal that the election was not conducted in accordance with the principles laid down in such provision and that such non-compliance affected the result of the election; or (c) the candidate was at the time of the election a person not qualified or a person disqualified for election. (3) Despite the provisions of subsection (2), where, upon the trial of an election petition, the High Court or a tribunal finds that a corrupt practice or illegal practice has been committed by, or with the knowledge and consent or approval of, any agent of the candidate whose election is the subject of such election petition, and the High Court or a tribunal further finds that such candidate has proved that— (a) a corrupt practice or illegal practice was not committed by the candidate personally or by that candidate's election agent, or with the knowledge and consent or approval of such candidate or that candidate's election agent; (b) such candidate and that candidate's election agent took all reasonable means to prevent the commission of a corrupt practice or illegal practice at the election; and (c) in all other respects the election was free from any corrupt practice or illegal practice on the part of the candidate or that candidate's election agent; the High Court or a tribunal shall not, by reason only of such corrupt practice or illegal practice, declare that election of the candidate void."

2.2. The Constitutional Court has ably guided on the import of the foregoing provisions.

2.3. The Constitution Court in the case of **Nkandu Luo V Doreen Sefuke Mwamba And Attorney General Selected Judgement No. 51 OF 2018 P51** guided as follows:

> ***"As earlier stated, we have, in unequal terms, stated our position on the above provisions. In order for a petitioner to successfully have an election annulled pursuant to section 97 (2) (a) there is a threshold to surmount. The first requirement is for the petitioner to prove to the satisfaction of the court, that the person whose election is challenged personally or through his duly appointed election or polling agents, committed a corrupt practice or illegal practice or other misconduct in connection with the election; or that such malpractice was committed with the knowledge and consent or approval of the candidate or his or her election or polling agent".***

2.4. **My Lady/Lord**, we submit that the Court in the same judgment on page 5 guided on the additional requirement namely:

> ***"In addition to proving the electoral malpractice or misconduct alleged, the petitioner has the further task of adducing cogent evidence that the electoral malpractice or misconduct was so widespread that it swayed or may have swayed the majority of the electorate from electing the candidate of their choice".***

2.5. My Lady/My Lord, as to the burden of proof the Court reiterated the long-standing principle that the burden of proof rests on the petitioner and categorically stated (page 60):

> ***"In particular, we emphasise that the burden resting squarely on the shoulders of the person alleging is to adduce cogent evidence to prove the allegation, without which judgment will not go in his or her favour".***

2.6. The Constitutional Court further in the case of **Abuid Kawangu v Elijah Muchima Appeal No. 8 of 2017** buttressed the foregoing position in the following words:

> **"We agree with the Respondent's submissions that the burden lay on the Appellant as Petitioner in the court below to prove the allegations made in his petition against the Respondent. This is because the one alleging ... carries the burden of proving all the allegations. He must prove the allegations to the required standard with cogent evident otherwise no judgement will be entered in his favour".**

2.7. **My Lady/My Lord**, we submit that as guided by the Constitutional Court it is imperative that a petitioner should satisfy the trial court that the Respondent personally or through his duly appointed election or polling agents committed a corrupt practice or illegal practice or other misconduct in connection with the election; or that such malpractice was committed with the knowledge and consent or approval of the candidate or his or her election or polling agent. We submit that anything below the threshold should not be entertained by the Honourable court. Further as guided by the Constitutional Court there is the additional requirement to prove that the electoral malpractice or misconduct was so widespread that it swayed or may have swayed the majority of the electorate from electing their preferred candidate.

2.8. The Constitutional Court restated this position in the case of **Austin Liato v Sitwala Sitwala Selected Judgement No. 23 of 2018** and thus guided:

> **"It is not sufficient for a petitioner to prove only that a candidate committed an illegal or corrupt practice or engaged in other misconduct in relation to the election without proof that <u>the illegal or corrupt practice or misconduct was widespread and prevented or may have prevented the majority of the voters in the</u>**

constituency, district or ward from electing a candidate of their choice". (Emphasis Ours)

2.9. We submit that a candidate can only be held liable for own conduct or misconduct or that of his appointed agent in line with section 97(2) of the Electoral Process Act. The Supreme Court in the case of **Akashambatwa Mbikusita Lewanika And Others v Fredrick Jacob Titus Chiluba (1998) Z.R. 79** offered ample guidance on the matter:

> **"... a candidate is only answerable for those things which he has done or which are done by his election agent or with his consent. In this regard, we note that not everyone in one's political party is one's election agent since... An election agent has to be specifically so appointed".**

2.10. **My Lady/My Lord**, we submit that a general allegation that supporters of a particular party were implicated in a misconduct is not enough to attach responsibility to the Respondent. As guided by the Constitutional court in the case of **Richwell Siamunene V Sialubalo Gift Selected Judgement No. 58 of 2017**,as follows:

> ***"Mere proof that UPND supporters were indeed involved in the said acts does not warrant an inference being drawn that the Respondent had directly incited the UPND supporters to act as they did. To do so would amount to speculation and it is not the duty of the court to make assumptions based on nothing more than party membership and candidacy in an election".***

2.11. **My Lady/Lord,** We further submit that the Constitutional Court has confirmed its departure from the position taken in the case of **Josephat Mlewa v Wightman (1995/97) Z.R 171**. The wrong doer has to be specifically identified and the Respondent can only be held liable of the wrong complained of, if they were done by him or through his

appointed agent. Further it must be demonstrated that the act complained of must be widespread or affect the majority of the voters. The Constitutional Court in the **Kufuka Kufuka V Mundia Ndalamei Appeal No. 15 OF 2016** in discounting the **Mlewa V Wightman** case thus stated;

> ***"We wish to stress the proof of one corrupt or illegal practice or misconduct by the candidate is generally enough to nullify an election only if that one act is also proved to have been so widespread or that it affected or may have affected the majority of the electorate. It is to this effect only that the case of JOSEPHATE MLEWA V ERIC WIGHTMAN is distinguishable from the current provisions of section 97 (2) (a) of the Act."***

2.12. **My lady/My Lord** apart from the foregoing numerous pronouncements by the Constitutional Court the international electoral law instruments are categorical on the sanctity of election results and guide that election results should not be disregarded lightly or easily. ***The International Foundation for Electoral Systems Guidelines for Understanding, Adjudicating, and Resolving Disputes in Elections (2011 p86/7) thus provides:***

> ***Elections are meant to give voice to the will of the people. The results of elections should not be disregarded lightly or easily. Election outcomes should only be overturned in extraordinary circumstances, where evidence of illegality, dis-honesty, unfairness, malfeasance or other misconduct is clear and, importantly, where such improper behaviour has distorted the vote outcome. Absent such extraordinary circumstances, candidates and parties that lose elections should accept electoral outcomes rather than routinely claim the elections and the governments they produce are illegitimate. Complaints adjudication mechanisms should not be manipulated to continue political battles after the election and to undermine the finality of official election results. Persons who violated the law may still be***

pursued through administrative or criminal processes without holding up election results.

Dated at Lusaka this day of 2026

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