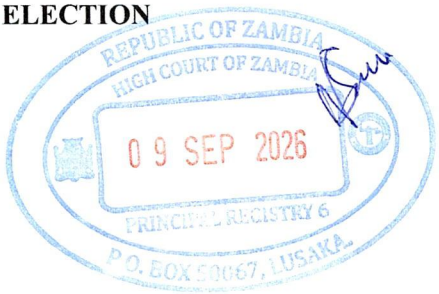
IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(*Civil Jurisdiction*)

2026/HP/EP039

IN THE MATTER OF:	**ARTICLE 73(1) OF THE CONSTITUTION OF ZAMBIA (AMENDMENT) ACT NO.2 OF 2016 OF THE LAWS OF ZAMBIA**
IN THE MATTER OF:	**SECTIONS 72, 76, 87, 97, 98, 99, 100, AND 108 OF THE ELECTORAL PROCESS ACT NO. 35 OF 2016 OF THE LAWS OF ZAMBIA**
IN THE MATTER OF:	**RULE 9 OF THE HIGH COURT (ELECETION PETITION) RULES, 2026 OF THE LAWS OF ZAMBIA**
IN THE MATTER OF:	**AN ELECTION PETITION RELATING TO THE CHILUBI CONSTITUENCY PARLIAMENTARY ELECTION**
BETWEEN:	
SIMON MUSONDA MUWA	**PETITIONER**
AND	
MATHIAS CHITEMBO	**1ST RESPONDENT**
ELECTORAL COMMISSION OF ZAMBIA	**2ND RESPONDENT**



THE 2ND RESPONDENT'S ANSWER

The 2nd Respondent responds to the Petition as follows:

1. The 2nd Respondent admits paragraphs 1 to 4 of the Petition.
2. The 2nd Respondent admits the part of paragraph 5 that states that the Petitioner and 1st Respondent were candidates under CF and UPND respectively and polled 2,760 votes for the Petitioner and 10,429 votes for the 1st Respondent whilst 1, 460 ballots were invalid.
3. The 2nd Respondent denies paragraph 6 and 7 of the Petition and shall aver at trial that the declaration of elections in the Chilubi Constituency Parliamentary election followed the requisite statutory procedure and was informed by the information on the Gen 20b form which was duly tabulated and compiled according to the laid down

guidelines. The 2nd Respondent will put the Petitioner to strict proof of the matters claimed in paragraphs 6 and 7 of the Petition.

4. Paragraph 8 of the Petition is the opinion of the Petitioner and is within his peculiar knowledge.
5. The 2nd Respondent denies paragraph 9 of the Petition and shall state at trial that there were no pre-marked ballots that were unlawfully placed in ballot boxes at the Polling stations. Further the 2nd Respondent shall state at trial that every stakeholder was permitted to have election monitors/observers at the Election. The 2nd Respondent cannot be blamed if the monitors decided not to observe the elections.
6. Contrary to the allegations contained in paragraph 10 of the Petition, the 2nd Respondent fulfilled its mandate by providing an opportunity to all polling agents at the polling stations to have sight, sign and receive a copy of the Gen 20b forms.
7. The 2nd Respondent denies paragraph 11 of the Petition and shall aver at trial that there was no form of violent incidences during the poll and during the vote counting process and in any event even if there were any incidences of violence (which is denied) the same did not in any way affect the final result of the said election.
8. The 2nd Respondent shall say that the Petitioner has not brought any credible evidence to substantiate his claims and further the Petitioner did not bring any formal complaint to the 2nd Respondent or indeed Law enforcement Officers of any criminal, unlawful or irregular activity during the voting and vote counting and final declaration of the poll results.
9. The 2nd Respondent denies paragraph 12 of the Petition and shall say that the Petitioner is not entitled to any of the remedies he seeks because the 2nd Respondent conducted the elections in full compliance with the strict statutory requirements.
10. The 2nd Respondent shall state that no pre-marked ballots were added to ballot boxes, all accredited polling agents that were present during the declaration of the results were granted an opportunity to sign and receive copies of the Gen 20b forms at the polling stations, the results announced and declared were informed by the Gen 20b forms and were a true representation of the will of the people during this election.

11. The 2nd Respondent denies each and every allegation contained in the Petition as if the same were set out separately and denied seriatim.

Dated this .....day of 2026

.....

For and on behalf of the 2nd Respondent

Drawn by: .....

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ADVOCATES FOR 2ND RESPONDENT

TO THE PETITIONER

Simon Musonda Muwa
LUSAKA

TO THE 1ST RESPONDENT

Mathias Chitembo
LUSAKA

CamScanner

IN THE HIGH COURT FOR ZAMBIA **2026/HP/EP/039**
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction)

IN THE MATTER OF: **ARTICLE 73(1) OF THE CONSTITUTION OF ZAMBIA (AMENEDMENT) ACT NO.2 OF 2016 OF THE LAWS OF ZAMBIA**

IN THE MATTER OF: **SECTION 72, 76, 87, 97, 98, 99, 100 AND 108 OF THE ELECTORAL PROCESS ACT NO.35 OF 2016 OF THE LAWS OF ZAMBIA**

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

AND

IN THE MATTER OF: **AN ELECTION PETITION RELATING TO THE CHILUBI CONSTITUENCY PARLIAMENTARY ELECTION**

BETWEEN:

REPUBLIC OF ZAMBIA
09 SEP 2026
PRINCIPAL REGISTRY 6
P.O. BOX 50067, LUSAKA

SIMON MUSONDA MUWA **PETITIONER**

AND

MATHIAS CHITEMBO **1ST RESPONDENT**

ELECTORAL COMMISSION OF ZAMBIA **2ND RESPONDENT**

2ND RESPONDENT'S SKELETON ARGUMENTS

May it please this Honorable Court.

These are the 2nd Respondent's Skeleton Arguments in opposition to the Petition herein.

The 2nd Respondent conducted the General Election held on 13th August 2026 for the Chilubi Constituency Parliamentary seat, in the Chilubi District, Northern Province of Zambia. The results, having been consolidated and verified at the Constituency Totalling Center from all the ninety-three (93) polling stations, were declared on 15th August, 2026. The total number of tallied votes were 32,418 votes of which the 1st Respondent received 10,429 votes, the Petitioner received 2,760 votes and the balance was shared among the remaining candidates and rejected ballots.

The Petition alleges as follows: (i) that the total number of votes tabulated and reflected on Form GEN 20b does not correspond with the total votes cast in the election; (ii) that the acts of violence were perpetrated by the 1st Respondent's supporters with full knowledge of the 2nd

Respondent; (iii) that pre-marked ballot papers inserted into ballot boxes by the 1st Respondent's cadres; and (iv) that the declaration of the 1st Respondent's as duly elected Member of Parliament for Chilubi Constituency be declared void and of no legal effect.

My Lord/My Lady, the 2nd Respondent submits that alleged difference between the total number of votes tabulated and reflected on Form GEN 20b on the one hand, and the total number of votes cast, on the other, is explained by the electoral process itself.

First, 2nd Respondent staff, polling staff, uniformed personnel, and other persons performing duties under the 2nd Respondent who are registered voters and are in possession of valid National Registration Cards, but who are deployed outside their respective constituencies, may be issued with Certificates of Authority to Vote. Such persons are entitled to vote in the Presidential election but not in the Parliamentary or Local Government elections for the constituency in which they are deployed.

Secondly, a ballot paper which is invalid for the Parliamentary election may not necessarily be invalid for the Presidential, Mayoral, Council Chairperson, or Local Government election, and vice versa. It follows that the number of votes cast across the various elective positions may not necessarily correspond exactly.

My Lord/My Lady, the Petitioner has not identified with the requisite specificity any polling station or area at which the alleged violence occurred, the nature of the alleged violence, the persons who allegedly perpetrated it, the date and time when it occurred, or the manner in which it is alleged to have affected the election.

Further, the Petitioner has failed to specify where the alleged pre-marked ballot papers were discovered, the number of ballot papers allegedly involved, the polling station or stations affected, the persons alleged to have inserted such ballot papers, or the manner in which the alleged acts affected the result of the election. The 2nd Respondent further states that no formal

complaint or report relating to the alleged pre-marked ballot papers was made to the 2nd Respondent's staff, the Zambia Police Service, election observers, or any other relevant stakeholder present at the material time.

My Lord/My Lady, we wish to place reliance on **Section 97 (2) and (4) of the Electoral Process Act No. 35 of 2016** which provides that:

(2) The election of a candidate as a Member of Parliament, mayor, council chairperson or councillor 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) a candidate; or (ii) with the knowledge and consent or approval of a candidate's election agent or polling agent; and 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.

Section 97 (4) further provides that:

(4) An election shall not be declared void by reason of any act or omission by an election officer in breach of that officer's official duty in connection with an election if it appears to the High Court or a tribunal that the election was so conducted as to be substantially in accordance with the provisions of this Act, and that such act or omission did not affect the result of that election.

My Lord/My Lady, it is plain from the above provisions that there is a threshold that ought to be met for an election to be nullified or declared void. It is not sufficient to prove that irregularities did occur, there must be a degree of high convincing clarity and the Petitioner must also prove that the said irregularities were of such magnitude and effect that majority of the voters in the particular constituency were disenfranchised and prevented from electing their preferred candidate.

In essence, the law states that the election shall not be declared void by reason of any act or omission of an election officer in breach of official duty where the election was conducted substantially in accordance with the Act and the act or omission did not affect the result.

In the present case, the Petitioner also made allegations that the numbers on the Form GEN 20b do not correspond with those of the overall votes cast. The reasons given above show that the 2nd Respondent does not dispute this, the 2nd Respondent has explained the lawful and practical circumstances that may give rise to such differences. In any event, the Petitioner has neither pleaded nor established how the alleged difference affected the majority of voters from electing their preferred candidate, or how it affected the overall result of the election.

The Petitioner alleges acts of violence and illegal practice in that the 1st Respondent's cadres inserted pre-marked ballot papers in the ballot boxes which are outside the knowledge of the 2nd Respondent. However, this was not reported, or witnessed by any officials of the 2nd Respondent at the material time. No record exists showing any officials of the 2nd Respondent participated or condoned the alleged practices or that the Petitioner's agents were denied access to polling stations.

The 2nd Respondent relies on the decision of the **CONSTITUTIONAL COURT** in **SIBONGILE MWAMBA VS KELVIN SAMPA AND THE ELECTORAL COMMISSION OF ZAMBIA SELECTED JUDGMENT NO. 57 OF 2017,** in which the Constitutional Court

dismissed the appeal and upheld the decision of the High Court not to nullify the election of Kelvin Sampa as Member of Parliament for Kasama Central.

At page J49 the Constitutional Court stated as follows:

> ***"The evidence of the irregularities alleged on the part of the 2nd Respondent (Electoral Commission of Zambia) fell short of satisfying section 97(2)(b) of the Act as they did not affect the election result and there was no proof that the election was not substantially conducted in compliance with the Act."***

My Lord/My Lady we submit standing on terra firma, that albeit the Constitutional Court acknowledging irregularities on the part of the conduct of the Elections by the 2nd Respondent that did not entail an automatic nullification of the results. The Court at Page J28 emphasized that "....in an election Petition the person alleging must prove to a high standard of convincing clarity and not a balance of probabilities" and further at Page J48 that this burden to prove must go to an extent of showing that the irregularities alleged affected the overall election results. The Petitioner's claims are not substantiated thus, do not meet the required threshold.

My Lord/My Lady, it is also worth noting that the Petitioner has not quantified his case. He does not state how many ballot papers were allegedly put in the ballot boxes, at which polling stations, in whose presence, or how these alter the tabulations by the 2nd Respondent. An allegation incapable of precise verification cannot meet the standard of convincing clarity, and an unquantified allegation cannot discharge the burden of showing that the result, whatever the margin, was affected.

At J47 of the same case, the Constitutional Court did not agree that six (6) out of 60 polling stations was an irregularity so deep rooted so as to prove that there was substantial noncompliance with the law." The Petitioner has not availed the stations affected by his alleged irregularities hence, difficult to ascertain the depth of noncompliance.

My Lord/ My Lady the Petitioner in the the principles arising from that authority do not support the Petitioner's case; rather, they reinforce the requirement that allegations of irregularity must be proved with convincing clarity and shown to have affected the result before an election may be nullified.

My Lord/My Lady, the Petitioner has also prayed for the declaration of the election to be declared void and of no legal effect. Under **Section 97(4) of the Electoral Process Act,** it is clear that a declaration of an election being void is not a remedy available to a Petitioner as of right. The section of the Act confers the right to declare the election void on this Court and only if the election has not been held in substantial conformity with the provisions of the Act. There is nowhere in the Petitioner's petition that proves an allegation of the 2nd Respondent not holding the election in substantial conformity with the law.

In the premises, the 2nd Respondent humbly submits that the Petitioner has failed to establish a case to the requisite standard to warrant the declaration of the Chilubi Constituency Parliamentary election as void.

The alleged difference between the figures on Form GEN 20B and the overall votes cast is explicable within the electoral process and has not been shown to affect the result. The allegations concerning violence and the alleged insertion of pre-marked ballot papers are unparticularised, unsubstantiated, and, in any event, do not meet the threshold prescribed by Section 97 of the Electoral Process Act.

We therefore pray that the Petition be dismissed with costs.

Dated this.....day of.....2026

Drawn by: .....

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To: THE PETITIONER AND HIS ADVOCATES
Mr. Simon Musonda Muwa
Plot no. 360 Linda Road, Bonaventure
LUSAKA

To: THE FIRST RESPONDENT
Mr. Mathias Chitembo
LUSAKA
(whose address for service is unknown.)

039

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

2026/HP/EP/~~033~~

IN THE MATTER OF:	**ARTICLE 73(1) OF THE CONSTITUTION OF ZAMBIA (AMENDMENT) ACT NO. 2 OF 2016 OF THE LAWS OF ZAMBIA**
	AND
IN THE MATTER OF:	**SECTIONS 72, 76, 87, 97, 98, 99, 100 AND 108 OF THE ELECTORAL PROCESS ACT NO. 35 OF 2016 OF THE LAWS OF ZAMBIA**
	AND
IN THE MATTER OF:	**RULE 9 OF THE HIGH COURT (ELECTION PETITION) RULES, 2026 OF THE LAWS OF ZAMBIA**
	AND
IN THE MATTER OF:	**AN ELECTION PETITION RELATING TO THE CHILUBI CONSTITUENCY PARLIAMENTARY ELECTION**

BETWEEN:

SIMON MUSONDA MUWA **PETITIONER**

AND

MATHIAS CHITEMBO **1ST RESPONDENT**

ELECTORAL COMMISSION OF ZAMBIA **2ND RESPONDENT**

REPUBLIC OF ZAMBIA HIGH COURT REGISTRY 09 SEP 2026 PRINCIPAL REGISTRY 6 P.O. BOX 50067, LUSAKA

2ND RESPONDENT'S LIST OF AUTHORITIES

The following are the List of Authorities to be relied on by the 2nd Respondent and attached herewith: **STATUTES**

1. **Electoral Process Act No. 35 of 2016**

CASES

1. **Sibongile Mwamba Vs Kelvin Sampa and The Electoral Commission of Zambia Selected Judgment No. 57 of 2017**

Dated this .....day of 2026

Per:.....

Messrs. Chanza Sikazwe Advocates Plot 1721M/H Main Street,Ibex Hill, P.O. Box Postnet-Kabulonga box 217**LUSAKA.**Email: cksikazwe@csalaws.com Mobile: 260977823133**DVOCATES FOR THE 2ND RESPONDENT**

(1975)

IN THE CONSTITUTIONAL COURT OF ZAMBIA — APPEAL NO. 2/2017
AT THE CONSTITUTIONAL COURT REGISTRY — 2016/CC/A033
HOLDEN AT LUSAKA — SELECTED JUDGMENT NO 57 OF 2017
(CONSTITUTIONAL JURISDICTION)

IN THE MATTER OF: THE PARLIAMENTARY PETITION RELATING TO THE PARLIAMENTARY ELECTION HELD ON 11TH AUGUST, 2016

AND

IN THE MATTER OF: THE CONSTITUTION OF ZAMBIA, THE CONSTITUTION OF ZAMBIA ACT, CHAPTER 1, VOLUME 1 OF THE LAWS OF ZAMBIA

AND

IN THE MATTER OF: SECTIONS 96, 97, 98, 99, 100, 106, 107 AND 108 OF THE ELECTORAL PROCESS ACT (ELECTORAL CODE OF CONDUCT) NO. 35 OF 2016 OF THE LAWS OF ZAMBIA

AND

IN THE MATTER OF: THE ELECTORAL CODE OF CONDUCT 2016

BETWEEN:

REPUBLIC OF ZAMBIA
CONSTITUTIONAL COURT OF ZAMBIA
17 NOV 2017
REGISTRY 2
P O BOX 50067, LUSAKA

SIBONGILE MWAMBA — APPELLANT

AND

KELVIN M. SAMPA — 1ST RESPONDENT

ELECTORAL COMMISSION OF ZAMBIA — 2ND RESPONDENT

CORUM: Sitali, Mulenga, Mulembe, Mulonda, Munalula, JJC on 26th June, 2017 and on 17th November, 2017

For the Appellant : Mr. V. Michelo of VMN and Partners
Mr. C. Sianondo of Malambo and Company
For the 1st Respondent : Mr. K.F. Bwalya of KBF and Partners
For the 2nd Respondent: Mrs M.N. Mulenga, In House Counsel

J U D G M E N T

Mulenga, JC delivered the Judgment of the Court

(1976)

Cases referred to:

1. Brelsford James Gondwe v Catherine Namugala SCZ Judgment no. 2 of 2013
2. Michael Mabenga v Sikota Wina and Others SCZ Judgment no.15 of 2003
3. Justin Chansa v Lusaka City Council (2007) Z.R. 256
4. Phillip Mhango v Dorothy Ngulube and others (1983) Z.R. 61
5. Anderson Kambela Mazoka and Others v Patrick Levy Mwanawasa and Others (2005) Z.R. 138
6. Mike Kaira v Catherine Namugala and Electoral Commission of Zambia SCZ Appeal no. 131/2002
7. Leonard Banda v Dora Siliya SCZ Appeal No. 95 of 2012
8. Examinations Council of Zambia v Reliance Technology Limited SCZ Judgment No. 46 of 2014
9. Attorney General v Kakoma (1975) Z.R. 212 (SC) Webster Chipili v David Nyirenda SCZ Appeal No.35 of 2003
10. Webster Chipili v David Nyirenda SCZ Appeal No.35 of 2003
11. Gastove Kapata v The People (1984) Z.R. 47
12. Reynolds v Llanelly Associated Tin - Plate Company Limited [1948] 1 All E.R.140
13. Hubert Sankombe v The People (1977) Z.R. 127
14. GDC Hauliers (Z) Limited v Trans-Carriers Limited SCZ Judgment No. 7 of 2001
15. Morgan and Others v Simpson and Another [1974] 3 All E.R. 722

Legislation Referred to:

1. The Constitution of Zambia Chapter 1 of the Laws of Zambia
2. The Electoral Process Act number 35 of 2016

Works Referred to:

1. Halsbury's Laws of England, Fourth Edition, Volume 15, paragraphs 652, 653 and 658

This is an appeal against the decision of the High Court in an election petition commenced by the Appellant after her loss in the

August 2011 General Elections. The Appellant vied for the Kasama Central Parliamentary seat under the United Party for National Development (UPND) and the 1st Respondent was sponsored by the Patriotic Front (PF). The 1st Respondent emerged as winner after polling 25, 427 votes against the Appellant's 9, 359 votes. Being dissatisfied with the election results, the Appellant filed a petition seeking a declaration that the 1st Respondent was not validly elected, an order for recount, verification and scrutiny of the votes cast in the parliamentary elections for Kasama Central Constituency and consequently, a declaration that the Appellant was the candidate validly elected.

In her petition, the Appellant alleged that there was violence, intimidation, assault and injury of innocent UPND officials and supporters by the PF supporters and the Zambia Police, who also imposed an illegal curfew. The other allegation was that the Appellant's family home was raided several times by the Police. The Appellant also alleged corrupt and illegal practices on the part of the 1st Respondent relating to distribution of alcohol at a polling station and during the campaign period and donating of shoes during the campaign period. It was further alleged that PF party officials were spreading defamatory messages against the UPND presidential

candidate and other UPND candidates at rallies, on radio, and using flyers and that they destroyed her campaign posters.

In relation to the 2nd Respondent, the Appellant alleged that the 2nd Respondent recruited PF cadres as polling staff who blocked UPND accredited representatives from entering polling stations and did not provide GEN 12 forms nor signed forms and that the results on form ECZ 19 did not tally.

During the trial, the Appellant testified as PW1 and called seven (7) other witnesses to attest to the illegal practices alleged. In rebuttal, the 1st Respondent testified as 1RW1 and called six (6) witnesses while the 2nd Respondents called nine (9) witnesses. We must at this point state that the numbering of the witnesses for the 1st and 2nd Respondents was not properly done. What the lower Court ought to have done was to number the witnesses sequentially without putting the number 1 or 2 in front. However, for the purposes of this Judgment, we shall refer to the witnesses as they were numbered by the lower Court.

After considering the evidence and submissions made by the respective parties, the lower Court narrowed down the issues for

determination to three interrogative statements stated as follows:

1. Whether or not the 1st Respondent engaged in corrupt and illegal practices or other misconduct during the campaign period and election day;
2. whether such conduct prevented the majority of voters in Kasama Central Constituency from electing a candidate whom they preferred; and
2. Whether there was non-compliance in the conduct of the elections that affected the result to warrant voiding the election.

Addressing the allegations under the 1st and 2nd heads, the lower Court observed that it was apparent from case law that satisfactory proof of any one corrupt practice or illegal practice or misconduct in an election is sufficient to nullify an election. She relied on the case of **Brelsford James Gondwe v Catherine Namugala**[1] and re-affirmed the principle laid down in **Michael Mabenga v Sikota Wina and Others**[2] that-

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

The lower Court proceeded to consider the allegation of the violence perpetrated against twenty eight (28) of the Appellant's

signed by presiding officers who also did not indicate their names and those of polling stations.

Upon the lower Court's finding that five (5) GEN 12 forms were irregular in that they lacked the names of the polling stations, presiding officers and signatures despite being signed by polling agents at the back, it went on to hold that the said irregularities which affected all the candidates, did not affect the results to warrant the voiding of the election.

We have perused the record of appeal which reveals that it was not five but six (6) GEN 12 forms at pages 214, 226, 246, 288, 296 and 302 that were signed by both the Presiding Officers and the polling agents but did not indicate the names of the presiding officers and of the polling stations. Of these, the GEN 12 form at 288 also had the name of the polling station. The polling agents of the Appellant and 1st Respondent also signed form ECZ 19 which was the consolidation of the results as well as form GEN 14 being the declaration of the results form.

It is clear from section 97 (2) (b) and (4) that for these two grounds of appeal to succeed, the Appellant was required to prove to the required standard that the election was not conducted or not

signed by presiding officers who also did not indicate their names and those of polling stations.

Upon the lower Court's finding that five (5) GEN 12 forms were irregular in that they lacked the names of the polling stations, presiding officers and signatures despite being signed by polling agents at the back, it went on to hold that the said irregularities which affected all the candidates, did not affect the results to warrant the voiding of the election.

We have perused the record of appeal which reveals that it was not five but six (6) GEN 12 forms at pages 214, 226, 246, 288, 296 and 302 that were signed by both the Presiding Officers and the polling agents but did not indicate the names of the presiding officers and of the polling stations. Of these, the GEN 12 form at 288 also had the name of the polling station. The polling agents of the Appellant and 1st Respondent also signed form ECZ 19 which was the consolidation of the results as well as form GEN 14 being the declaration of the results form.

It is clear from section 97 (2) (b) and (4) that for these two grounds of appeal to succeed, the Appellant was required to prove to the required standard that the election was not conducted or not

Further, **Halsbury's Laws of England** at paragraph 658 states that failure to comply with provisions regarding the forwarding of documents after the close of the poll is not sufficient to avoid the election. Paragraphs 652 and 653 of **Halsbury's Laws of England** highlight examples of such failures to include the failure to date the forms or ballot paper accounts and the failure to indicate names of the constituency or electoral area, as the case may be.

In the instant case, the irregularity concerns 6 out of 60 GEN 12 forms. The Appellant's argument is that the 6 forms established that there was substantial non-compliance with the law or that the irregularity in the conduct of the election was deep rooted. We do not agree. Six (6) out of 60 polling stations does not prove that the irregularity was deep rooted or that there was substantial non-compliance with the law.

The Appellant's other argument that the six (6) GEN 12 forms that had irregularities affected the result is not tenable in the absence of actual proof that the results were affected. For the defect to be said to have affected the result, the Appellant ought to have shown that it actually changed the results. This was not so in this case and hence the consolidation of results form ECZ 19 and the declaration of results form GEN 14 were signed by the Appellants' polling agent.

The burden was on the Appellant to show to the required standard that the election results were actually affected by the irregularity. It is not sufficient to merely state in broad terms and it is not for the trial Court to speculate, that the results were affected. As the trial Judge rightly observed, the irregular forms also affected all the other candidates but their effect on the result was not shown. Further, the signing of the six (6) forms by the polling agents of the concerned parties showed that there was no dispute as regards the results reflected thereon and this was acknowledged by the Appellant in her evidence.

In the instant case, the lower Court therefore rightly considered this issue and found that there was no proof that the results were affected or that the results which were recorded in the six (6) GEN 12 forms in issue were wrong. We accede to the principle set out in **Anderson Kambela Mazoka and Others v Levy Patrick Mwanawasa and Electoral Commission of Zambia**[5] that the effect of the irregularities have to result in the election being so flawed that the defects actually and significantly affected the result which could no longer reasonably be said to represent the true free choice and will of the majority of voters.

The evidence of the irregularities alleged on the part of the 2nd Respondent fell short of satisfying section 97 (2) (b) of the Act as they did not affect the election result and there was no proof that the election was not substantially conducted in compliance with the Act. Grounds eight and nine also fail.

All the grounds of appeal having failed, we find no merit in this appeal and accordingly dismiss it.

Each party shall bear their own costs.

.....

A.M. SITALI

CONSTITUTIONAL COURT JUDGE

.....

M.S. MULENGA

CONSTITUTIONAL COURT JUDGE

.....

E. MULEMBE

CONSTITUTIONAL COURT JUDGE

.....

P. MULONDA

CONSTITUTIONAL COURT JUDGE

.....

M.M. MUNALULA

CONSTITUTIONAL COURT JUDGE

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

2026/HP/EP/~~033~~ 039

IN THE MATTER OF:	**ARTICLE 73(1) OF THE CONSTITUTION OF ZAMBIA (AMENDMENT) ACT NO. 2 OF 2016 OF THE LAWS OF ZAMBIA**
	AND
IN THE MATTER OF:	**SECTIONS 72, 76, 87, 97, 98, 99, 100 AND 108 OF THE ELECTORAL PROCESS ACT NO. 35 OF 2016 OF THE LAWS OF ZAMBIA**
	AND
IN THE MATTER OF:	**RULE 9 OF THE HIGH COURT (ELECTION PETITION) RULES, 2026 OF THE LAWS OF ZAMBIA**
	AND
IN THE MATTER OF:	**AN ELECTION PETITION RELATING TO THE CHILUBI CONSTITUENCY PARLIAMENTARY ELECTION**

BETWEEN:

SIMON MUSONDA NUWA	**PETITIONER**
AND	
MATHIAS CHITEMBO	**1ST RESPONDENT**
ELECTORAL COMMISSION OF ZAMBIA	**2ND RESPONDENT**

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

2ND RESPONDENT'S LIST AND DESCRIPTION OF DOCUMENTS

THE FOLLOWING is a List of Documents relating to the matter in question in this action which are in or have been in the possession, custody or power of the above-named 2nd Respondent.

1. The 2nd Respondent has in possession or power documents relating to the matters in question in this action set forth in Part I of the first schedule hereto.
2. The 2nd Respondent objects to producing the documents set forth in Part II of the schedule hereto on the grounds that the same are privileged and came into existence and were made after this litigation was in contemplation.
3. The 2nd Respondent has had but has not now in their possession custody or power, documents relating to the matter in question in this action enumerated in the second schedule hereto.

4. The documents in the said schedule were last in the 2nd Respondent's possession custody or power when the same were posted or delivered to their respective address.
5. According to the best of its knowledge information and belief, the 2nd Respondent has not now and never have had in their possession custody power of their Advocates or agents or in the possession custody or power of any other person or persons in their behalf any deed, account, book of account, voucher, receipt, letter, memorandum, paper or writing or any copy of an extract from any such documents, or any other documents whatsoever relating to the matters in question in this suit or any of them wherein any entry has been made relating to such matters or any of them, other than and except the documents set forth in the first schedule hereto.

FIRST SCHEDULE

PART I

NO.	DESCRIPTION OF DOCUMENTS	DATED
1.	Declaration of the Results of the Poll (GEN 20b)	15.08.2026

PART II

Privileged documents between the 2nd Respondent and its Advocates after the commencement of or relating to the institution of the proceedings in this action. Draft pleadings proof or evidence and similar documents prepared for the purpose of this action.

SECOND SCHEDULE

The originals of those documents and letters set forth in Part I of the first schedule hereto.

Dated this..... day of 2026

Drawn by: .....

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ADVOCATES FOR THE 2ND RESPONDENT

To: **THE PETITIONER**
Mr. Simon M. Muwa
LUSAKA

To: **THE FIRST RESPONDENT**
Mathias Chitembo
LUSAKA