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

2026/HP/EP/037

IN THE MATTER OF: THE PARLIAMENTARY ELECTION PETITION FOR WUSAKILE CONSTITUENCY SITUATE IN THE KITWE DISTRICT OF THE COPPERBELT PROVINCE OF THE REPUBLIC OF ZAMBIA HELD ON 13TH AUGUST, 2026

IN THE MATTER OF: ARTICLES 73 (1) OF THE CONSTITUTION OF ZAMBIA AS READ WITH SECTION 98 (C) OF THE ELECTORAL PROCESS ACT NUMBER 35 OF 2016

IN THE MATTER OF: SECTION 83 OF THE ELECTORAL PROCESS ACT No. 35 OF 2026

IN THE MATTER OF: SECTION 97 OF THE ELECTORAL PROCESS ACT No. 35 OF 2016

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

IN THE MATTER OF: THE SCHEDULE TO THE ELECTORAL PROCESS ACT No. 35 OF 2016

IN THE MATTER OF: THE ELECTORAL (CODE OF CONDUCT) REGULATIONS OF 2011 STATUTORY INSTRUMENT 52 OF 2022

IN THE MATTER OF: THE ELECTORAL COMMISSION ACT No. 25 OF 2026

*BETWEEN:*

KATAYI CHIBESA — PETITIONER

AND

KALOBO PAVYUMA — 1ST RESPONDENT
THE ELECTORAL COMMISSION OF ZAMBIA — 2ND RESPONDENT

---

NOTICE OF MOTION TO RAISE PRELIMINARY ISSUE
PURSUANT TO SECTION 13 OF THE HIGH COURT ACT CHAPTER 27 OF THE LAWS OF ZAMBIA AS READ WITH ORDER 14A OF THE RULES OF THE SUPREME COURT OF ENGLAND 1999 EDITION AND RULE 17(1) OF THE HIGH COURT (ELECTION PETITION) RULES S.I NO.31 OF 2026

---

**TAKE NOTICE** that this Honourable Court will be moved by Counsel for the 1st Respondent at the next scheduled hearing of the matter, or so soon thereafter as Counsel may be heard on the following Jurisdictional questions:-

1. Whether this honourable Court has Jurisdiction to hear and determine the Petition herein in the absence of payment of Security for costs by the Petitioner as required by Section 102 (2 & 3) of the Electoral Process Act No.35 of 2016 as read ,together with Rule 9 Sub Rules 6 & 7 of the High Court Election Petition Rules S.I No.31 of 2026?

2. Whether this honourable Court has Jurisdiction to hear and determine the Petition herein in light of the fact that the Petitioner did not attach copies of the authorities relied upon in the list of authorities and skeleton arguments to the Petition as required by Rule 9 (3) (c) of the High Court {Election Petition) Rules S.I No.31 of 2026?

3. Whether the Petition filed in the matter herein is in conformity with form III of the Schedule to the High Court (Election Petition) Rules S.I No.31 of 2026 when the Petitioner failed to follow the guidelines therein and no clear grounds relied upon have been set out in the subject Petition?

**BASIS** the above questions, the 1st Respondent will pray that the Petition herein be dismissed with Costs. **AND TAKE FURTHER NOTICE** that at the hearing of this application, the 1st Respondent shall rely on the Affidavit of **KALOBO PAVYUMA** filed herein in support hereof, together with the Skeleton Arguments and list of authorities filed herewith.

DATED at Lusaka this _____ day of _____, 2026.

Taken out by: _____

Messrs. James & Doris Legal Practitioners
9th Floor, Premium House
Independence Avenue
P.O. Box 34302
LUSAKA
Email: jamesdoris.lus@gmail.com
Cell: +260977492922
**Advocates for the 1st Respondent**

To: The Petitioner and his Advocates:
Messrs. L.M. Chikuta Legal Practitioners
Plot No. 19, Elm Road, Woodlands
P.O. Box RW 50896
**Lusaka**
Email: office@lmclegal.co.zm

The Electoral Commission of Zambia
Election House
Lusaka

**IN THE HIGH COURT FOR ZAMBIA** **2026/HP/EP/037**
**AT THE PRINCIPAL REGISTRY**
**HOLDEN AT LUSAKA**
***(Civil Jurisdiction)***

| | |
|---|---|
| **IN THE MATTER OF:** | **THE PARLIAMENTARY ELECTION PETITION FOR WUSAKILE CONSTITUENCY SITUATE IN THE KITWE DISTRICT OF THE COPPERBELT PROVINCE OF THE REPUBLIC OF ZAMBIA HELD ON 13TH AUGUST, 2026** |
| **IN THE MATTER OF:** | **ARTICLES 73 (1) OF THE CONSTITUTION OF ZAMBIA AS READ WITH SECTION 98 (C) OF THE ELECTORAL PROCESS ACT NUMBER 35 OF 2016** |
| **IN THE MATTER OF:** | **SECTION 83 OF THE ELECTORAL PROCESS ACT No. 35 OF 2026** |
| **IN THE MATTER OF:** | **SECTION 97 OF THE ELECTORAL PROCESS ACT No. 35 OF 2016** |
| **IN THE MATTER OF:** | **SECTIONS 98, 99 AND 100 OF THE ELECTORAL PROCESS ACT No. 35 OF 2016;** |
| **IN THE MATTER OF:** | **THE SCHEDULE TO THE ELECTORAL PROCESS ACT No. 35 OF 2016** |
| **IN THE MATTER OF:** | **THE ELECTORAL (CODE OF CONDUCT) REGULATIONS OF 2011 STATUTORY INSTRUMENT 52 OF 2022** |
| **IN THE MATTER OF:** | **THE ELECTORAL COMMISSION ACT No. 25 OF 2026** |

**BETWEEN:**

| | |
|---|---|
| **KATAYI CHIBESA** | **PETITIONER** |
| **AND** | |
| **KALOBO PAVYUMA** | **1ST RESPONDENT** |
| **THE ELECTORAL COMMISSION OF ZAMBIA** | **2ND RESPONDENT** |

---

**SKELETON ARGUMENTS AND LIST OF AUTHORITIES IN SUPPORT OF THE 1ST RESPONDENT'S NOTICE OF MOTION TO RAISE PRELIMINARY ISSUE**

---



*These Skeleton Arguments were prepared and filed in by Messrs James & Doris Legal Practitioners, 9th Floor Premium House, Independence Avenue, P.O. Box34302, Lusaka and email:*
*bajaumat2@gmail.com/jamesdoris.lus@gmail.com*

**LIST OF AUTHORITIES**

i. The Electoral Process Act No.35 of 2016

ii. The High Court (Election Petition) Rules, Statutory Instrument No. 31 of 2026

iii. Isaac Mwaanza (suing as a member and in the interest of the Zambia Civil Liberties Union v National Assembly and 2 Ors (2024/CCZ/0022) [2025] ZMCC 17 (27 August 2025)

iv. Tembo (Suing in his capacity as party President of the Patriots for Economic Progress) v Electoral Commission of Zambia (CCZ 2 of 2022) [2022] ZMCC 19 (20 September 2022)

v. Mutale v Munaile (SCZ Judgment 14 of 2007) [2007] ZMSC 188 (25 July 2007)

vi. Mutantika & Another v Chipungu (Appeal 94 of 2012) [2014] ZMSC 127 (13 March 2014)



*These Skeleton Arguments were prepared and filed in by Messrs James & Doris Legal Practitioners, 9th Floor Premium House, Independence Avenue, P.O. Box34302, Lusaka and email:*
bajaymat2@gmail.com/ jamesdoris.lus@gmail.com

## 1.0 INTRODUCTION

**1.1** These skeleton arguments are filed on behalf of the 1st Respondent in support of the Notice of Preliminary Objection raised pursuant to Order 3 Rule 2, of the High Court Rules Chapter 27 of the Laws of Zambia and O.14A and O.18 R 19(1) RSC of 1965 (1999) edition and Rule 17 of the High Court (Election Petition) Rules Statutory Instrument No. 31 of 2026.

**1.2** Pursuant to the said Rules, this Honourable Court has jurisdiction to determine questions of law or construction as preliminary issues where such determination may dispose of the matter or materially shorten the proceedings.

**1.3** The purpose of Order 14A is to enable the Court to deal with clear points of law at an early stage without the need for a full trial. It is trite that preliminary issues may properly be determined where they are capable of disposing of the entire action.

**1.4** In addition, the procedure is appropriate where it will lead to a saving of time and costs and where the facts are not in dispute.

## 2.0 ISSUES ARISING IN THE APPLICATION

**2.1** My Lord/Lady, these are the Skeleton Arguments filed by the 1st Respondent in support of the Notice of Motion to Raise Preliminary Issue against the Petition filed herein.

**2.2** The following are the issues that are arising in the application herein as set out in the Notice of Motion: -

1) Whether this honourable Court has Jurisdiction to hear and determine the Petition herein in the absence of payment of Security for costs by the Petitioner as required



*These Skeleton Arguments were prepared and filed in by Messrs James & Doris Legal Practitioners, 9th Floor Premium House, Independence Avenue, P.O. Box34302, Lusaka and email:*
bajaymat2@gmail.com/jamesdoris.lus@gmail.com

by Section 102(2 & 3) of the Electoral Process Act No.35 of 2016 as read together with Rule 9 Sub Rules 6 & 7 of the High Court (Election Petition) Rules S.I No.31 of 2026?

2) Whether this honourable Court has Jurisdiction to hear and determine the Petition herein in light of the fact that the Petitioner did not attach copies of the authorities relied upon in the list of authorities and skeleton arguments to the Petition as required by Rule 9 (3) (c) of the High Court (Election Petition) Rules S.I No.31 of 2026?

3) Whether the Petition filed in the matter herein is in conformity with form III of the Schedule to the High Court (Election Petition) Rules S.I No.31 of 2026 when the Petitioner failed to follow the guidelines therein and no clear grounds relied upon have been set out in the subject Petition?

**BRIEF ARGUMENTS AND AUTHORITIES IN SUPPORT OF THE APPLICATION**

**3.0 ISSUE NO. 1**

**3.1** My Lord/Lady, in the first issue, as can be seen from the notice of motion this issue addresses the failure by the Petitioner to pay Security for Costs within 5 days of filing the Petition. We refer this honourable Court to Section 102 (2 and 3) of the Electoral Process Act No.35 of 2016 which provides as follows:-

> ***"102. ....***
>
> ***(2) After the presentation of an election petition, a petitioner to it shall give such security for costs, not exceeding in amount the sum of eight thousand fee units, as the High Court or a***



*These Skeleton Arguments were prepared and filed in by Messrs James & Doris Legal Practitioners, 9th Floor Premium House, Independence Avenue, P.O. Box34302, Lusaka and email: bajaymat2@gmail.com/jamesdoris.lus@gmail.com*

***tribunal may order, and such security shall be given within the time and in the manner and form as the Chief Justice may prescribe by rules under this section or, in the absence of the rules, as the High Court or a tribunal may order.***

***(3) Where, after the presentation of an election petition, no security for costs is given as required by or under this section, no further proceedings shall be heard on that election petition."***

**3.2** **My** Lord/lady the Chief Justice under the High Court (Election Petition) Rules, Statutory Instrument No. 31 of 2026 has prescribed as follows under Rule 9 Sub Rules 6 & 7:-

***"(6) Subject to the Act, a petitioner shall within five days of filing an election petition, deposit security for costs not exceeding eight thousand fee units as the Court may order.***

***(7) Where a petitioner fails to deposit security for costs in accordance with sub rule (6), a Court shall not hear and determine an election petition or any other proceedings relating to that election Petition."***

**3.3** My Lord basis the above law it is our argument that the Petition herein ought to be dismissed and the honourable Court has no Jurisdiction to take any further step of hear the Petition on account of the failure by the Petitioner to deposit security for costs in accordance with the rules promulgated by the Chief Justice.



*These Skeleton Arguments were prepared and filed in by Messrs James & Doris Legal Practitioners, 9th Floor Premium House, Independence Avenue, P.O. Box34302, Lusaka and email:*
*bajaymat2@gmail.com/jamesdoris.lus@gmail.com*

**3.4** In the case of JCN **Holdings Limited vs. Development Bank of Zambia (2013) 3 ZR 299** the Supreme Court stated as follows;

> ***"It is clear from the Chikuta and New Plast Industries cases that if a court has no jurisdiction to hear and determine a matter, it cannot make any lawful orders or grant any remedies sought by a party to that matter."***

**3.5** In the case of **Owners of the Motor Vessel "Lillian S" vs. Caltex Oil (Kenya) Limited (1989) KLR 19** the Kenyan Court of Appeal stated as follows;

> ***"It is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for continuation of proceedings...A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction...where the court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing."***

**3.6** In the case of **Elias Tembo vs. Florence Chiwela Salati & Others SCZ Appeal No. 200 of 2016** the this Court, the Supreme Court of Zambia in its ruling on a preliminary issue it raised on its own volition stated that ***"Out of nothing, comes nothing"***

**3.7** It is therefore our argument that this court has no jurisdiction to entertain this petition.



*These Skeleton Arguments were prepared and filed in by Messrs James & Doris Legal Practitioners, 9th Floor Premium House, Independence Avenue, P.O. Box34302, Lusaka and email:*
bajaymat2@gmail.com/ jamesdoris.lus@gmail.com

## 4.0 ISSUE NO.2

**4.1** My Lord/Lady the second issue for determination is premised on the failure by the Petitioner to attach copies of authorities relied upon in the list of authorities and skeleton arguments. My Lord Rule 9(3)(c) of the High Court (Election Petition) Rules, Statutory Instrument No. 31 of 2026 provides as follows in this regard:-

> ***"(3) An election petition referred to under sub rule (l) shall be accompanied by—***
>
> .....
>
> ***(c) a list of authorities and copies of those authorities;***
>
> ***(d) a list and description of documents to be relied on, if any;***
>
> ***(e) a bundle Of documents, if any."***

**4.2** My Lord the record and the affidavit evidence are clear to the effect that the Petition in the matter herein was not accompanied by copies of the authorities relied upon in the list of authorities.

**4.3** The said provision is a mandatory provision aimed at assisting both the Respondent and the Court given the compressed timelines within which election petitions must be heard and determined. The Rule exists to ensure that the respondents and the Court are placed on timeous and adequate notice of the authorities a petitioner intends to rely upon. Non-compliance with a mandatory filing requirement of this nature goes to the competence of the Petition and robs the Court of its Jurisdiction.

**4.4** It was held in the case of **Lusaka Properties Limited vs. African Banking Corporation (Zambia) Limited** the Supreme Court held



*These Skeleton Arguments were prepared and filed in by Messrs James & Doris Legal Practitioners, 9th Floor Premium House, Independence Avenue, P.O. Box34302, Lusaka and email:*
bajaymat2@gmail.com/ jamesdoris.lus@gmail.com

that the omission to serve a demand letter in the originating process was fatal to the proceedings. Rule 4 (3) (c) is couched in mandatory terms and there is no room for flexibility.

**4.5** In the case of **Isaac Mwanza & Others vs. Chitalu Chilufya & Others** the court stated that:

> ***"In other words, the petition must be filed with an affidavit verifying facts, skeleton arguments, a list of authorities and the copies of those authorities, a list and description of of documents to be relied on and a bundle of documents."***

**4.6** The court went on to hold in paragraph 7.20 of the Ruling in as follows:

> ***"The failure to file the aforesaid documents together with the petition is a fundamental omission that is fatal and renders the petition incompetent and improperly before the court. The result is that the court is divested of the jurisdiction to hear and determine the petition."***

**4.7** In O.20A – 397 of the RSC of 1965 (1999 edition) Volume 2 it was stated as follows concerning want of jurisdiction:

> ***"Where by statute the Court lacks jurisdiction to entertain the plaintiff's claim , it is the duty of the Court to disclaim jurisdiction and to refuse to entertain the action, for to do otherwise would be contrary to law, and in such case jurisdiction cannot be conferred on the Court by consent of the parties, still less by unilateral waiver by one of them."***

**4.8** For the forgoing we argue that this action is wrongly before this court and it must be dismissed with costs.



*These Skeleton Arguments were prepared and filed in by Messrs James & Doris Legal Practitioners, 9th Floor Premium House, Independence Avenue, P.O. Box34302, Lusaka and email:*
bajaymat2@gmail.com/ jamesdoris.lus@gmail.com

## 5.0 ISSUE NO. 3

**5.1** My Lord, the third issue for determination borders on the Petitioners failure to issue a Petition that conforms substantially with form III of the High Court (Election Petition) Rules, Statutory Instrument No. 31 of 2026. We refer this honourable Court to Section 100 of the Electoral Process Act No. 35 of 2016 which provides as follows:-

> ***"100. (1) An election petition shall be in such form as the Chief Justice may by rules prescribe."***

**5.2** My lord we further refer this honourable Court to Rule 9 (1 & 2) of the High Court (Election Petition) Rules, Statutory Instrument No. 31 of 2026 which provides as follows:-

> ***"9. (l) A person who intends to challenge the election Of a Member of Parliament shall file an election petition in Form Ill set out in the First Schedule on payment of a fee set out in the Second Schedule.***
>
> ***(2) An election petition referred to under sub rule (l) shall disclose the—***
>
> ***(a) Name and address of a petitioner or the petitioner's legal practitioner, if any,***
>
> ***(b) Constituency in which an election being challenged was held;***
>
> ***(c) Outcome or results of an election being challenged;***
>
> ***(d) Date of declaration of the results of an election being challenged;***



*These Skeleton Arguments were prepared and filed in by Messrs James & Doris Legal Practitioners, 9th Floor Premium House, Independence Avenue, P.O. Box34302, Lusaka and email: bajaymat2@gmail.com/ jamesdoris.lus@gmail.com*

***(e) <u>Grounds relied on; </u>and relief sought by a petitioner."***

**5.3** We also refer to the case of **Mutale v Munaile (SCZ Judgment 14 of 2007) [2007] ZMSC 188 (25 July 2007)** where the Supreme Court established as follows as regards the various forms of Petitions and which one ought to be relied on when issuing a Petition:-

> ***"From the foregoing exposition of the law, we can say that a petition is a rare mode of commencing an action in this jurisdiction and its application is specially provided or authorized by an Act of Parliament. And as the learned trial judge rightly observed, it is that particular statute that gives authority to commence an action by petition***
> ***that should give guidance on the type or form of petition to be filed with the Court."***

**5.4** From the foregoing my Lord, we submit that it is not for the Petitioner to decide which form of petition to use when issuing a petition. One has to look to the law and to strictly comply with the provisions of the subject law. In the instant case the Petitioner ought to have strictly complied with form III.

**5.5** In the recent case of **Tembo (Suing in his capacity as party President of the Patriots for Economic Progress) v Electoral Commission of Zambia (CCZ 2 of 2022) [2022] ZMCC 19 (20 September 2022)** the Constitution Court dismissed a Petition for inter alia failure to comply with the required form. The Court held as follows:-



*These Skeleton Arguments were prepared and filed in by Messrs James & Doris Legal Practitioners, 9th Floor Premium House, Independence Avenue, P.O. Box34302, Lusaka and email:*
*bajaymat2@gmail.com/jamesdoris.lus@gmail.com*

***"8.4 In addition, the Constitutional Court Rules (CCR) which regulate the practice and procedure of the Court provide under Order IV Rule 1(1) and (2) as follows:***

> ***(1) Except as otherwise provided in the Constitution, the Act and these Rules, all matters under the Act brought before the Court shall be commenced by a petition in Form 1 set out in the schedule.***
>
> ***(2) A petition shall disclose-***
>
> ***(a) the petitioner's name and address***
>
> ***(b) the facts relied upon;***
>
> ***(c) the constitutional provision allegedly violated; and***
>
> ***(d) the relief sought by the petitioner.***

***<u>The said Form I which is set out in the schedule to the CCR at page shows the Form which the petition should take. It clearly shows what should be in the heading of the petition inter alia as follows</u>:***

> ***IN THE MATTER OF ARTICLE...***
>
> ***IN THE MATTER OF ALLEGED CONTRAVENTION OF....***
>
> ***(insert article)***

***It also shows the part where the allegations upon which the petitioner relies should be stated.***

***8.5 It is therefore imperative that a person who petitions this Court alleging contravention of the Constitution must clearly state in the petition which article is allegedly contravened and how so.***

***8.6 Our perusal of the petition in casu reveals that the petition does not expressly state which article the respondent allegedly violated, contrary to the petitioner's contention that it does. The petition is simply entitled:***

> ***IN THE MATTER OF THE ELECTORAL COMMISSION OF ZAMBIA TO COMPEL CANDIDATES FILING FRESH NOMINATIONS TO PAY NOMINATION FEES TWICE" AND "IN THE MATTER OF ARTICLE 52(6) OF THE REPUBLICAN CONSTITUTION AND SECTION 81) (B) OF THE CONSTITUTIONAL COURT ACT NO. 8 OF 2016.***

***Equally in the contents or body of the petition no allegation of any constitutional violation is alluded to.***

***8.7 It is not enough for the title of the petition to state under which article of the Constitution the Court is purportedly moved without stating the alleged contravention as we are not expected to discern from the title of the petition what the alleged contravention is. The petition must clearly state which article is allegedly contravened in the heading and the body. In the absence of a clear allegation in the petition, of what article of the constitution has been contravened, this Court cannot provide redress to the petitioner."***



*These Skeleton Arguments were prepared and filed in by Messrs James & Doris Legal Practitioners, 9th Floor Premium House, Independence Avenue, P.O. Box34302, Lusaka and email: bajaymat2@gmail.com/ jamesdoris.lus@gmail.com*

**5.6** We additionally refer this honourable Court to the case of **Isaac Mwaanza (suing as a member and in the interest of the Zambia Civil Liberties Union v National Assembly and 2 Ors (2024/CCZ/0022) [2025] ZMCC 17 (27 August 2025)** where the Constitutional Court guided as follows as regards the strict adherence to Rules of the Court when drafting Petitions:-

> ***"160. With matters adumbrated in paragraphs 150, 151,152,153 and 159 hereof we wish to emphasize that those who resort to the processes of this Court, should when crafting their documents include therein only relevant material or information that is required by the CCR. This is on account of the fact that a petition in essence is a formal written document which outlines the petitioner's claim. The petition defines the issues in the case and serves as a public record of the case it relates to. The petition is crucial for ensuring that the respondent understands the petitioner's case and for narrowing down the issues to be decided by the Court. Therefore, the inclusion of irrelevant material or information serves no useful purpose but merely overburdens the petition and does not in any way enhance the petitioner's chances of succeeding.***
>
> ***161. With the foregoing matters in mind, we come to the ineluctable conclusion that the Petition is not properly before the Court and is therefore dismissed."***

**5.7** My Lord, basis the above guidance of the Constitutional Court we submit that the Petitioner herein ought to have strictly followed the format given in the law when drafting the Petition including the headings set out in the law so as for the Respondent herein



*These Skeleton Arguments were prepared and filed in by Messrs James & Doris Legal Practitioners, 9th Floor Premium House, Independence Avenue, P.O. Box34302, Lusaka and email: bajaymat2@gmail.com/ jamesdoris.lus@gmail.com*

to have a clear understanding of the issues before the honourable Court. The Petition in the manner drafted by the Petitioner has left the Respondent to make assumptions as to what the specific grounds relied upon are.

## 6.0 REASONS FOR THE APPLICATION

**6.1** My Lord the rules shown above which the Petitioner has breached are all mandatory as the drafters of the law used the word "**SHALL**" in crafting the said provisions. We refer this honourable Court to the case of **Mutantika & Another v Chipungu (Appeal 94 of 2012) [2014] ZMSC 127 (13 March 2014)** where the Court guided as follows:-

> ***"Both provisions are couched in a mandatory manner as each uses the word "shall". The two Rules are therefore, not regulatory as they do not at all give the Court discretionary power. The Rules provide, respectively, as follows:-***
>
> > ***"58 (5) The appellant shall file in the Registry thirteen hard copies of the record of appeal, including an electronic copy thereof, together with the heads of argument.***
> >
> > ***70 (1) An appellant or respondent who will be represented by a practitioner at the hearing of the appeal shall prepare a document setting out the main heads of his argument together with the authorities to be cited in support of each head." " (Underlining ours for emphasis only).***
> >
> > ***<u>Clearly from the above, any breach of Rule 58 (5) is fatal to a party's appeal."</u>***



*These Skeleton Arguments were prepared and filed in by Messrs James & Doris Legal Practitioners, 9th Floor Premium House, Independence Avenue, P.O. Box34302, Lusaka and email:*
*bajaymat2@gmail.com/jamesdoris.lus@gmail.com*

**6.2** My Lord basis the above we submit that failure by the Petitioner to comply with the mandatory provisions relating to Petitions shown in the matter herein is fatal and it robs this honourable Court of its Jurisdiction to hear and determine the Petition.

**6.3** My Lord, it follows that the Petition is incompetently before the Court and ought to be dismissed for want of jurisdiction. We also refer this Court to the case of **Thaker v Access Financial Services Ltd (In Liquidation) and Ors (Appeal 101 of 2020) [2021] ZMCA 122 (5 November 2021)**, where the Court of Appeal held as follows as regards jurisdiction:-

> "This is in keeping with the holding in the case of JCN Holdings Limited v Development Bank of Zambia, where the Supreme Court held that: "It is clear from the Chikuta and New Plast Industries Cases that if a court has no jurisdiction to hear and determine a matter**, it cannot make any lawful orders or grant any remedies sought by a party to that matter.**" Affirming our decisions in the Chikuta and New Plast Industries Cases, we hold that since this matter was improperly before Mutuna, J, he had no jurisdiction to hear and determine it. **Also, he had no jurisdiction to make any order or grant any remedy. Consequently, the judgment and the ruling he delivered, which are the subject of this appeal, are null and void."**

## 7.0 CONCLUSION

**7.1** It is thus for the foregoing reasons that the 1st Respondent submits that the preliminary objection is meritorious. This Court



*These Skeleton Arguments were prepared and filed in by Messrs James & Doris Legal Practitioners, 9th Floor Premium House, Independence Avenue, P.O. Box34302, Lusaka and email:*
bajaymat2@gmail.com/ jamesdoris.lus@gmail.com

has no jurisdiction to entertain this Petitioner as the Petition offends the law on election petitions.

**7.2** The 1st Respondent accordingly prays that the Petition be dismissed with costs as it is incompetent before this court.

Dated at Lusaka this _____ day of _____, 2026.

**Per:**_____

**Messrs.** James & Doris Legal practitioners
9th Floor Premium House Building
P.O. Box 20333
**Lusaka.**
jamesdoris.sol@gmail.com
**Advocates for the 1st Respondent**

To:

The Petitioner
c/o Messrs. L. M. Chikuta Legal Practitioners
Plot No. 4880, Elm Road
Woodlands, P.O. Box RW 50896
Lusaka, Zambia.

And To:

The 2nd Respondent
The Electoral Commission of Zambia
Haile Selassie House
P.O. Box 50274
Lusaka, Zambia.

**IN THE HIGH COURT FOR ZAMBIA** **2026/HP/EP/037**
**AT THE PRINCIPAL REGISTRY**
**HOLDEN AT LUSAKA**
***(Civil Jurisdiction)***

**IN THE MATTER OF:** **THE PARLIAMENTARY ELECTION PETITION FOR WUSAKILE CONSTITUENCY SITUATE IN THE KITWE DISTRICT OF THE COPPERBELT PROVINCE OF THE REPUBLIC OF ZAMBIA HELD ON 13TH AUGUST, 2026**

**IN THE MATTER OF:** **ARTICLES 73 (1) OF THE CONSTITUTION OF ZAMBIA AS READ WITH SECTION 98 (C) OF THE ELECTORAL PROCESS ACT NUMBER 35 OF 2016**

**IN THE MATTER OF:** **SECTION 83 OF THE ELECTORAL PROCESS ACT No. 35 OF 2026**

**IN THE MATTER OF:** **SECTION 97 OF THE ELECTORAL PROCESS ACT No. 35 OF 2016**

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

**IN THE MATTER OF:** **THE SCHEDULE TO THE ELECTORAL PROCESS ACT No. 35 OF 2016**

**IN THE MATTER OF:** **THE ELECTORAL (CODE OF CONDUCT) REGULATIONS OF 2011 STATUTORY INSTRUMENT 52 OF 2022**

**IN THE MATTER OF:** **THE ELECTORAL COMMISSION ACT No. 25 OF 2026**
**BETWEEN:**

**KATAYI CHIBESA** **PETITIONER**

**AND**

**KALOBO PAVYUMA** **1ST RESPONDENT**

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

---

**AFFIDAVIT IN SUPPORT OF NOTICE OF MOTION TO RAISE PRELIMINARY ISSUE**

---

I, **KALOBO PAVYUMA**, a Zambian male adult of Wusakile Constituency, Kitwe District, in the Copperbelt Province of the Republic of Zambia, do hereby make oath and state as follows:-

1. THAT my full names, Nationality and residential address are as stated above.

2. THAT I am the 1st Respondent in this matter and thus duly competent to depose to the contents of this Affidavit from my personal knowledge obtained by virtue of my said capacity.

3. THAT I was served with a Petition in relation to the matter herein and I have since filed into this honourable Court my Answer and supporting documents thereof.

4. That upon perusal of the Petition and the documents served on me I came to notice that the Petitioner herein did not attach copies of the cases relied upon in the skeleton arguments to the documents that are on the record of the court which made it difficult for myself and my lawyers to access them.

5. That I further noted that the Petition filed in the matter herein does not clearly state the grounds relied upon by the Petitioner and differs substantially in form with the form III which my advocates herein have shown me and which ought to have been used by the Petitioner in issuing the Petition. Now shown to me marked and produced as exhibit "**KP1**" is a true and correct copy of the said form III availed to me by my advocates.

6. That following my instruction Messrs James and Doris Legal Practitioners did conduct a search on the record on the 8th of September 2025 and came to find the following:

    i. That the Petitioner had not deposited any security for costs within 5 days from the date of filing the Petition.
    ii. That the Petitioner has not filed in a List of Authorities
    iii. That the Petitioner has not filed together with the Petition copies of Authorities relied upon in the Skeleton Arguments

Now produced and shown to me marked as exhibit **"KP2"** is a true and correct copy of the search form by my advocates.

7. That I have further noted from the Affidavit verifying Facts in the Petition that the Petitioner has further made references to documents which he has not exhibited and no bundle of documents and or list of documents to be relied upon at trial has been filed by the Petitioner.

8. That I have been advised by my advocates and verily believe the same to be true that failure to comply with the strict provisions of the law in a Petition is fatal.

9. THAT I have been advised by my advocates and verily believe the same to be true that this honourable Court has power to dismiss a matter for incompetence and want of jurisdiction.

10. THAT I verily believe that it is in the interest of justice that this Honourable Court determines the said preliminary issues before proceeding, if at all, to determine the Petition on its merits.

11. THAT I have deposed to the facts above believing that the same are true and correct to the best of my knowledge, information, and belief.

SWORN by the said )
**KALOBO PAVYUMA** )
At Lusaka this ____day of _____2026 )

**BEFORE ME:**_____
**COMMISSIONER FOR OATHS**

SANDRAH MUFETWA
LLB. AHCZ, ASCZ
COMMISSIONER OF OATHS