REPUBLIC OF ZAMBIA
JUDICIARY
HIGH COURT OF ZAMBIA
22 SEP 2026
P.O. BOX

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	**ARTICLE 73 (1) OF THE CONSTITUTION OF ZAMBA AS READ WITH SECTION 98 (C) OF THE ELECTORAL PROCESS ACT NO. 35 OF 2016**
IN THE MATTER OF	**SECTION 83 OF THE ELECTORAL PROCESS ACT NO. 35 OF 2016**
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:

THE HIGH COURT OF ZAMBIA
DISTRICT REGISTRY-KITWE
ONE NATION ONE ZAMBIA

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

Before Hon. Mr. Justice Bonaventure C Mbewe in chambers

MARSHAL	**:**	**Mary Mwampaule**
RESEARCHER	**:**	**Chanda Mulenga**
For Petitioner	*:*	*Mr. L M Chikuta of Messrs. LM Chikuta Legal Practitioners*
For 1st Respondent	*:*	*Mr. M Mwachilenga of Messrs. James & Doris Legal Practitioners* *Mr. J Chilenga of Messrs. Nyirongo & Co*
For the 2nd Respondent:		*Miss. B Kasembe of Messrs. Freddie and Company*

RULING ON NOTICE OF MOTION RAISING RELIMINARY ISSUES

LEGISLATION AND OTHER AUTHORITIES REFERRED TO:

i. *The Electoral Process Act No.35 of 2016;*

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

iii. *Constitution of Zambia Act No. 3 of 2016*

iv. *Rules of the Supreme Court 1965 (1999 Edition) Volume 2;*

v. *Black's Law Dictionary by Bryan A Garner St Paul, MN, USA, Thomson/ West.*

vi. *Oxford Advanced Learners Dictionary As Hornby, 8th Edition, Oxford University.*

vii. *Fees and Fines Act, Chapter 45 of the Laws of Zambia.*

CASES REFERRED TO:

1. *JCN Holdings Limited v. Development Bank of Zambia (2013) 3 ZR 299;*
2. *Owners of the Motor Vessel "Lillian S" v. Caltex Oil (Kenya) Limited (1989) KLR 19;*
3. *Elias Tembo vs. Florence Chiwela Salati & Others SCZ Appeal No. 200 of 2016;*
4. *Lukasu Properties Limited v. African Banking Corporation (Zambia) Limited;*
5. *Isaac Mwanza (suing as a member and in the interest of the Zambia Civil Liberties Union) v National Assembly and 2 Ors - 2024/CCZ/0022;*
6. *Mutantika & Another v Chipungu - Appeal 94 of 2012;*
7. *Tembo (Suing in his capacity as party President of the Patriots for Economic Progress) v Electoral Commission of Zambia - CCZ 2 of 2022;*
8. *Mutantika & Another v Chipungu - Appeal 94 of 2012;*
9. *Thaker v Access Financial Services Ltd (In Liquidation) and Ors, Appeal 101 of 2020;*
10. *Glocom Marketing ltd v contract Haulage ltd (HP/787/1998).*
11. *Access Bank (Zambia) Limited v. Group Five/ZCON Business Park Joint Venture (SCZ 8/52 of 2014) [2016];*

12. *Musingwa Nathan Siame v. Luka Simumba and The Electoral Commission of Zambia 2026/HP/EP/2026;*

13. *African Banking Corporation Zambia Limited v Mubende Country Lodge Limited (SCZ No. 116 of 2016);*

14. *Muchinka Farm Limited v The Attorney General & Others (Appeal No. 47 of 2017);*

15. *Henry Kapoko v The People* 2016/CC/23)

16. *Anthony Yusuf Filamba v Asphalt Roads (Z) Ltd, Appeal No. 190/2005*

INTRODUCTION AND BACKGROUND

[1] This Ruling is delivered on an application by the 1st Respondent, Kalobo Pavyuma, who has filed a Notice of Motion raising preliminary issues, in respect of the Petitioner's Petition filed herein on 31st August, 2026.

[2] The Notice of motion raises the following jurisdictional questions;

i. *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) and (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?

ii. *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****?*

iii. *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?*

[3] The 1st Respondent's application is supported by affidavit and skeleton arguments. The Petitioner filed an affidavit in opposition to the application supported by skeleton arguments. The 2nd Respondent did not file any documents into Court before the hearing. They however filed an affidavit and skeleton arguments in reply on 17th September, 2026 after the hearing. I shall not consider the said documents as the Petitioner and 1st Respondents were not given a chance to address the Court over the contents thereof at the Scheduling Conference called to issue directions for the matter at which I heard the 1st Respondent's application.

1ST RESPONDENT'S ARGUMENTS AND SUBMISSIONS

[4] The 1st Respondent argues, in the affidavit of Kalobo Pvyuma that he was served the Petition herein and noticed that the Petitioner did not attach copies of the cases relied upon in the skeleton arguments, as well as did not file the list of documents and skeleton arguments including his bundle of documents. That, further, the Petitioner has in his affidavit verifying facts made reference to documents which he has not exhibited.

[5] The Petitioner's first issue argued, is the failure by the Petitioner to pay Security for Costs within 5 days of filing the Petition. He relies on **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 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."**

[6] The 1st Respondent also posits, that **The High Court (Election Petition) Rules, Statutory Instrument No. 31 of 2026**, have prescribed as follows under **Rules 9 (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."**

[7] It is argued, that the Petition herein ought to be dismissed, as this Court has no Jurisdiction to take any further step or 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. The case of **JCN Holdings Limited v. Development Bank of Zambia (1),** is cited wherein, 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."**

[8] The 1st Respondent also relies on the case of **Owners of the Motor Vessel "Lillian S" v. Caltex Oil (Kenya) Limited (2),** wherein the Kenyan Court of Appeal stated that;

"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."

[9] 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".*** in the case of **Elias Tembo vs. Florence Chiwela Salati & Others (3)**. The 1st Respondent thus argues that this Court has no jurisdiction to entertain this petition.

[10] <u>On the second preliminary issue</u> it has raised, the 1st Respondent argues that, the Petitioner failed to attach copies of authorities relied upon in his list of authorities and skeleton arguments. **Rule 9(3)(c) of the High Court (Election Petition) Rules, Statutory Instrument No. 31 of 2026,** provides as follows:

"(3) An election petition referred to under sub rule (l) <u>shall be accompanied by</u> .....

(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."

[11] The 1st Respondent posits that the Petitioner's 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. The said provision is a mandatory provision aimed at assisting both the Respondents 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. It is argued that the non-compliance with a mandatory filing requirement of this nature goes to the competence of the Petition and robs the Court of its jurisdiction.

[12] The 1st Respondent relies on the case of **Lukasu Properties Limited v. African Banking Corporation (Zambia) Limited (4),** wherein the Supreme Court held that the omission to serve a demand letter in the originating process was fatal to the proceedings. That **Rule 9 (3) (c)** is couched in mandatory terms and there is no room for flexibility. In **Isaac Mwanza & Others v. Chitalu Chilufya & Others (5),** 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 documents to be relied on and a bundle of documents."

[13] The Court went on to hold in paragraph 7.20 of its Ruling that:

"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."

[14] In **Order 20A – 397 of the Rules of the Supreme Court 1965 (1999 Edition) Volume 2,** it is 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."

[15] The 1st Respondent argues that this action is wrongly before this Court and must be dismissed with costs.

[16] The third issue for determination laid by the 1st Respondent, concerns 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**. The 1st Respondent cites **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."**

[17] That **Rules 9 (1) & (2) of the High Court (Election Petition) Rules, Statutory Instrument No. 31 of 2026,** 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;**
>
> **(e) Grounds relied on; and relief sought by a petitioner."**

[18] The 1st Respondent refers to the case of **Matilda Mutale v Emmanuel Munaile (6),** where he posits that 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."**

[19] The 1st Respondent submits that, from the foregoing, it is not for the Petitioner to decide which form of petition to use when issuing a petition. He should have looked at the law and strictly complied with the provisions of the subject law as set out in Form III.

[20] The 1st Respondent cites the case of **Tembo (Suing in his capacity as party President of the Patriots for Economic Progress) v Electoral Commission of Zambia (7),** where the Constitutional Court dismissed a petition for, *inter alia* failure to comply with the required form. The Court held as follows:-

> **"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."

[21] The 1st Respondent also refers this Court to the case of **Isaac Mwanza (suing as a member and in the interest of the Zambia Civil Liberties Union) v National Assembly and 2 Ors (5),** where the Constitutional Court guided as follows on the need for 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."

[22] The 1st Respondent submits that in light of the above guidance from the Constitutional Court, 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 for the Respondents herein to have a clear understanding of the issues before the Court. The Petition as currently drafted, has left the Respondent to make assumptions as to what the specific grounds relied upon are.

[23] The 1st Respondent goes on to argue generally, that the rules shown above which the Petitioner has breached, are all mandatory as the drafters of the law used the word "**shall**" in drafting the said provisions. He refers to the case of **Mutantika & Another v Chipungu (8),** 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).

Clearly from the above, any breach of Rule 58 (5) is fatal to a party's appeal."

[24] The 1st Respondent submits that the Petitioner's failure herein to comply with the mandatory provisions relating to Petitions is fatal and robs this Court of its jurisdiction to hear and determine the Petition.

[25] The 1st Respondent argues that it follows that the Petition is incompetently before the Court, and ought to be dismissed for want of jurisdiction. The 1st Respondent goes on to cite the case of **Thaker v Access Financial Services Ltd (In Liquidation) and Ors (9)**, 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."

[26] The 1st Respondent submits that its preliminary objection is meritorious. This Court has no jurisdiction to entertain this Petitioner as his Petition offends the law on election petitions. The 1st Respondent prays that the Petition is incompetent and be dismissed with costs.

2nd RESPONDENT'S ARGUMENTS AND SUBMISSIONS

[27] The 2nd Respondent did not file any documents into Court apart from documents in reply which were filed after the hearing, without leave of Court. I have not taken the same into consideration.

PLAINTIFF'S ARGUMENTS AND SUBMISSIONS IN OPPOSITION

[28] The Petitioner filed an affidavit in opposition accompanied by skeleton arguments wherein it is argued, regarding the first preliminary issue on the matter of default in paying security for costs within 5 days of filing a petition, that **Section 102 (2) of the Electoral Process Act No. 35 of 2016**, and **Rule**

9 (6) of the High Court (Election Petition) Rules S.I No. 31 of 2026, vest in this Court the authority to determine and order that security for costs not exceeding 8, 000 fee units be paid. That the Court is empowered to make any order as to security for costs as the provisions as **Section 102 (2)** provides that, ***"as the High Court or tribunal may order",*** and in **Rule 9 (6)** states that, ***"as the court may order",*** which gives this Court discretion either not to order costs or order a sum not exceeding 8, 000 fee units.

[29] The Petitioner cites the case of **Glocom Marketing Ltd v Contract Haulage Ltd (10),** wherein his Lordship Justice Dr. Matibini S.C observed that;

> **"The amount to be imposed as security for costs should be such as the court thinks just in all the circumstances of the case."**

[30] The Petitioner argues that no order for security for costs has been made capable of being complied with by the Petitioner. It is argued that the Petitioner has no knowledge of the exact sum to be paid as the law does not prescribe any fixed amount to be paid in the absence of a court order but merely prescribes a ceiling which is not a final figure. The Petitioner submits that this Court has jurisdiction to hear and determine the matter.

[31] The Petitioner argues the second preliminary issue raised by the 1st Respondent, pointing out that **Rule 9 (3)** provides that;

"An election petition referred to under sub rule (1) shall be accompanied by..."

[32] The Petitioner addresses the meaning of *"accompany"*, which it posits means that the copies of authorities must accompany the Petition. These have been filed, *in casu*, with the Reply to the 1st Respondent's Answer to the Petition. According to the Petitioner, *"they are currently seated with and accompanying the Petition in accordance with the said rule."*

[33] The Petitioner quotes the definition of the word *"accompanying"* from **Black's Law Dictionary by Bryan A Garner St Paul, MN, USA, Thomson/West,** as;

> *"means something that attends, goes along with, or is joined to another thing as an incident, adjunct, or subordinate part. In legal usage, it refers to documents, facts, or items that are filed submitted, or presented together with a principal document or proceedings."*

[34] The Petitioner argues that he has filed the said copies of authorities before pleadings have closed and posits that they thus have accompanied the Petition.

[35] The Petitioner urges the Court to consider **Article 118 (2) (e) of The Constitution (Amendment Act No. 3 of 2016**, the supreme law of the land, which requires that justice be administered without due regard to procedural technicalities when it provides that;

"In exercising judicial authority, the Courts shall be guided by the following principles;

(e) justice shall be administered without due regard to procedural technicalities."

[36] The Petitioner goes on to argue that election petitions are not merely private disputes between candidates but are matters of **profound public interest**. The Constitution is designed to protect the people, the electorate, whose sovereign will is expressed through the ballot. That it is therefore imperative that this Court approaches the adjudication of election petitions with the recognition that the issues raised transcend individual grievances and touches upon the integrity of the democratic process itself. The Petitioner calls upon the Court to uphold constitutional supremacy and the principle of substantive justice, ensuring that the voice of the people is not silenced by undue technicalities.

[37] It is further argued, that the right to be heard as enshrined in **Article 118**, guarantees every person a fair hearing before an independent and impartial tribunal, enjoining Courts to administer justice without undue regard to technicalities. The Petitioner argues that this principle rooted in *audi alteram partem,* ensures that no party is condemned unheard, thus requiring that both sides be heard. That the Supreme Court has consistently held that that failure to accord a party the right to be heard renders proceedings a nullity. In election petitions the right to be heard assumes great importance and safe guards not only the litigants but

also the electorate, whose voice **the Constitution** seeks to protect.

[38] The Petitioner, in opposing the third preliminary issue, argues that Form III under **Rule 9 (2) of the High Court Election Petition Rules, S. I No. 31 of 2026,** requires the following to be disclosed, when the Rule states;

> **(2) An election petition referred to under sub rule (1) shall disclose**
>
> **a) Name and address of a petitioner of the petitioner's legal practitioner, if any:** The Petitioner avers that he has disclosed his names and address at paragraph 1, in conformity with the requirements of the Rules.
>
> **b) Constituency in which an election being challenged was held;** He avers that he has disclosed the constituency in which the election was held at paragraph 2, in conformity with the requirements of the Rules.
>
> **c) Outcome or results of an election being challenged;** He avers that he has disclosed the outcome/ or results of the election being challenged at paragraph 25 (i) to (vii) of the Petition, in conformity with the requirements of the Rules.
>
> **d) Date of declaration of the results of an election being challenged;** He avers that he has disclosed the date of declaration of the election results at

paragraph 22, in conformity with the requirements of the Rules.

e) **Grounds relied on:** He avers that he has disclosed the grounds relied upon at paragraphs 5, 6, 7, 8, 9, 10. 11, 12 (a) – (e), 13, 14, 15, 16, 17, 18, 19, 20, 21, 23and 24 of the Petition in conformity with the requirements of the Rules.

f) **Relief sought by a petitioner:** The Petitioner avers that the reliefs he seeks have been duly disclosed at paragraph 26 (1) – (4) of the Petition in conformity with the requirements of the Rules.

[39] The Petitioner posits that he has demonstrated above his compliance with Rule 9 (1) and (2) of the Rules, and the 1st Respondent's averment that the Petition is incompetently before the Court is unfounded and ought be dismissed.

[40] The Petitioner relies on the case of **Access Bank Zambia Ltd v Group Five/ZCON Joint Venture (Sued as a firm) (11),**

> **"We have in many cases consistently held the view that it is desirable for matters to be determined on their merits and in finality rather than on technicalities and piece meal.... We reaffirm this position. Matter should, as much as possible, be determined on their merits rather than be disposed of on technical or procedural points. This is our opinion is what the ends of justice demand."**

[41] The Petitioner argues that **Statutory Instrument No. 31 of 2026** does not state what should happen when a litigant fails to comply with the Rules. The Petitioner cites **Order 2 rule (1) (1) of the Rules of the Supreme Court, 1999 Edition, Vol. 1**, which provides that:

> **"Where, in beginning or purporting to begin any proceedings or at ay stage in the course of or in connection with any proceeding, there has, by reason of anything done or left undone, been a failure to comply with the requirements of these rules, whether in respect of time, place, manner, form or content or in any other respect, the failure shall be treated as an irregularity and shall not nullify the proceedings, any step taken in the proceedings, or any document judgment or order therein."**

The Petitioner posits that this Court retains a discretion to render a decision upon a finding of fact and submits that the Court also has a Constitutional obligation to ensure the right to petition an election is not defeated.

[42] The Petitioner quotes **Mushingwe Nathan Siame v Luka Simumba and the Electoral Commission of Zambia (12)**, delivered on 14th September 2026, that;

> **"Bearing in mind Order 3 rule 2, and the noting of Article 73 (1), Article 73 (2) and Article 118 (2) (e), I find that I have a Constitutional obligation to ensure that the right to petition is not defeated to**

procedural lapses, and that the Petition is heard and determined on its merits within the strict ninety-day timeline."

[43] The Petitioner submits that the 1st Respondent's preliminary issues are misconceived, premature and are without merit.

HEARING

[44] At the hearing, Counsel for the 1st Respondent and the Petitioner relied on the documents filed on record and augmented with extensive verbal submissions. The 2nd Respondent adopted the 1st Respondent's submissions.

ANALYSIS AND DECISION

[45] I thank the parties for the speedy filing of the application and response thereto. I have carefully considered all the documents, arguments and submissions thereon including the law governing the issues raised. The only documents I have not considered are the 2nd Respondent's affidavit and skeleton arguments in reply filed on 17th September, 2026, a day after the hearing of the 1st Respondent's application. Leave of Court was not obtained or granted to file these documents late.

[46] I take due note that the record shows that the Petitioner did not file the following documents together with the Petition on 31st August 2026;

i. the skeleton arguments

ii. a list of authorities and copies of these authorities

iii. a list and description of documents

iv. a bundle of documents.

[47] The issues the 1st Respondent seeks to have determined are the following;

i. *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) and (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?***

ii. *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****?*

iii. *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?*

[48] I take note that the record shows that the.....

1. Non-Payment of Security for Costs by the Petitioner

[49] The 1st Respondent avers, in the affidavit in support, that he has made a search on the Court's record and has not found any evidence of the Petitioner paying any security for costs which according to him is a mandatory requirement under **Rule 9 (6) of the High Court (Election Petition) Rules S.I No. 31 of 2026,** which provides that;

> **"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."**

Rule 9 (7) provides that:

> **"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."**

[50] The above provision is to be read together with **Section 102 (2) and (3) of the Electoral Process Act No. 35 of 2016**, which provides as follows:

> **"(2) After 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 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 tribunal may order.

(3) Where, after the presentation of the 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."

[51] The 1st Respondent has argued very forcefully, that this Court lacks jurisdiction to proceed with the hearing of this Petition on account of the Petitioner's default in paying the security for costs, a condition which he states statute provides that is mandatory and must have been met by the Petitioner herein strictly, within the time provided by statute. The 1st Respondent has argued that there is no application by the Petitioner to the Court for the Court to set the amount of security deposit to be paid, if the Petitioner sought to pay a lower amount than the eight thousand fee units prescribed in the law. He asks the Court to dismiss the Petition arising from the Petitioner's non-compliance with the provisions of the above cited law.

[52] The Petitioner admits that he has not paid the security for costs, as the amount due was not known by him. According to the Petitioner, the same is supposed to be set by the Court. He argues that the delay in compliance is not fatal to this Petition and this Court can make the necessary order at a

scheduling conference for the Petitioner to pay the security for costs. The Petitioner argues that his delay in paying the security for costs is not fatal as it can be remedied.

[53] The law relied upon by the parties, **Rule 9 (6) and (7) of the High Court (Election Petition) Rules 2026,** and **Section 102 (2) and (3) of the Electoral Process Act, 2016,** are very clear on the requirement to pay costs, which is mandatory in every election petition. Both statutes specify the amount of security of costs as being eight thousand fee units. These costs have to be paid in a period of five (5) days of filing a petition for which they are being paid. Both statutes are very clear on the consequences of non-payment of the security for costs. **Rule 9 (7) of the High Court (Election Petition) Rules 2026,** and **Section 102 (3) of the Electoral Process Act, 2016,** both provide a prohibition or bar the Court from proceeding to hear and determine such election petition.

[54] I agree with the arguments posited by the 1st Respondent that **Rule 9 (6) of the High Court (Election Petition) Rules 2026,** and **Section 102 of the Electoral Process Act,** make it mandatory for the payment of security of costs, and that these must be paid within 5 days of filing. I agree that the law has specified the amount of costs to be paid under the above provisions of the law. I note that the amount of eight thousand fee units stated is the upper limit, when it states that **"....security for costs <u>not exceeding eight thousand fee units as the Court may order</u>."** I also agree that no costs have been paid, which is admitted by the Petitioner. The 1st

Respondent submits that this Court cannot therefore proceed to hear and determine the Petition herein. I also agree with this submission by the 1st Respondent, which is clearly set out in **Rule 9 (7) of the High Court (Election Petition) Rules 2026,** which provides that;

> **"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."**

Section 102 (3) of the Electoral Process Act, 2016, also provides that;

> **"(3) Where, after the presentation of the 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."**

[55] The above provisions of the law are very clear in their input and we cannot argue with them. One thing which is very clear is that in setting the penalty for a failure or breach in paying the costs, the law does not state that a failure to pay the costs ends up in a dismissal of the Petition. It simply freezes or halts the proceedings.

[56] I therefore do not agree with the Petitioner's arguments and submissions, that the matter of security for costs is one which has to wait for a scheduling conference of the Court to determine what amount of these costs is going to be. The

provisions of the law have clearly stated how much the costs are, which is eight thousand fees units, and that they must be paid within 5 days from the date of filing a petition otherwise proceedings are liable to be stayed. To come up with the amount in Kwacha, one has to have recourse to the **Fees and Fines Act, Chapter 45 of the Laws of Zambia.** For the current election cycle, upon applying the current multiplier of 0.40 ngwee per fee unit, the security for costs which are due and payable by any petitioner on filing an election petition is ZMW3, 200.00.

[57] Had the Petitioner sought to entreat the Court to allow him pay a lesser amount, he should have so applied for such accommodation. He has not done so herein.

[58] Does the failure to pay the security for costs within the time provided by statute operate as an automatic stay barring the Court from hearing "*...any other proceedings...*" *in stricto sensu*?. Adopting such a narrow interpretation of **Rule 9 (7) and Section 102 (3)**, would be an absurdity, as I would not even have the jurisdiction to hear this application by the 1st Respondent who is raising preliminary issues.

[59] The Act requires that the Court sets down a petition for a scheduling conference within 7 days of its filing. A number of actions are required to be undertaken by the Court prior to and at the scheduling conference, which include *inter alia* review compliance with the provisions Act and the rules promulgated thereunder, which allow the Court ensure compliance and readiness for trial as it issues its order for

directions. This is the time when a number of interlocutory applications and preliminary issues are best raised, heard and resolved, including amendments to the petition itself, the answer, and matters to do with payment of security for costs such as setting a lower amount, where an application is so made, etc, etc.

[60] I therefore do believe that this Court has jurisdiction over this matter, save that it has to stay the matter and make an order for the payment of security for costs, in default of which order, the Petition would only then be dismissed.

2. *Failure by the Petitioner to attach other required documents to the petition as required by* ***Rule 9 (3) (c) of the High Court (Election Petition) Rules, S.I No. 31 of 2026***

[61] The 1st Respondent has argued rather forcefully that the Petitioner's failure to file the required documents with the Petition at the time of filing the Petition as required by **Rule 9 (3) (c) of the High Court (Election Petition) Rules, S.I No. 31 of 2026,** is fatal to the action and the Court ought to dismiss the same as a consequence thereof. I have noted that the record shows that the following were not filed with the Petition;

1. skeleton arguments
2. list of authorities and copies of the authorities

3. list and description of documents to be relied on
4. bundle of documents.

[62] The 1st Respondent relies on the case of **Lukasu Properties Ltd v African Banking Corporation Zambia Plc (4),** a Supreme Court decision dealing with failure to serve of a letter before action, which omission the apex Court held is fatal to the proceedings, as it is couched in mandatory words. He also cited the case of **Isaac Mwanza and Others v Chitalu Chilufya and Others (5),** a Constitutional Court decision, ,which held that failure to file an affidavit verifying facts, skeleton arguments, a list of authorities and copies of the said authorities, a list and description of the documents to be relied on, and a bundle of documents together with the petition is fatal and renders the petition incompetent and divests a court of jurisdiction.

[63] The Petitioner has passionately argued that the words *"accompanying"* differ from the words *"together"*. He admits that he did not file the List of Authorities and Skeleton arguments as well as copies of the authorities relied upon with the Petition, only doing so days after the filing of the Petition. He however posits that the said omission is not fatal to his cause which ought not be dismissed.

[64] **Rule 9 (3) of the High Court (Election Petition) Rules** provides that;

"(3) An election petition referred to under sub rule (l) shall be accompanied by— .....

(a) an affidavit verifying facts;

(b) skeleton arguments of not more than fifteen pages, in font size 12 and with double spacing;

(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."

[65] The definition quoted from **Black's Law Dictionary by Bryan A Garner, St Paul, MN, USA, Thomson/West,** by the Petitioner himself is very clear, unambiguous and self - explanatory, and therefore he should not be beard splitting hairs on distinction between the word "accompany" and "together", as the said words appear to be used synonymously in the quoted definition, when it reads as follows;

> *"Accompany means something that attends, goes along with, or is joined to another thing as an incident, adjunct, or subordinate part. In legal usage, it refers to documents, facts, or items that are filed, submitted, or presented* ***together with*** *a principal document or proceedings."*

[66] I therefore do not for one minute buy the Petitioner's arguments and I agree with those of the 1st Respondent.

[67] The Petitioner has argued forcefully, invoking **Article 118 (2) (e) of The Constitution**, which provides that;

"In exercising judicial authority, the Courts shall be guided by the following principles;

(e) justice shall be administered without due regard to procedural technicalities."

[68] The Petitioner makes an impassioned plea for the Court to allow the Petitioner a right to hearing of his Petition, and not dismiss it on the technicalities arising from his omissions which, it is argued, are not fatal and can be remedied. The Petitioner calls upon the Court to uphold constitutional supremacy as election petitions are not merely private disputes between candidates but are matters of **profound public interest**. That it is therefore imperative that this Court approaches the adjudication of this election petition with the recognition that the issues raised transcend individual grievances and touches upon the integrity of the democratic process itself.

[69] The Supreme Court decision of **Access Bank v Group 5 / ZCON Business Park Joint Venture (11),** addressed the matter of reliance on **Article 118 (2) (e) of the Constitution,** when the Court had this to say;

"In conclusion, we are mindful that the issue regarding Article 118(2) (e) of the Constitution was raised in passing by Mr. Silwamba S.C and it was not part of his written arguments before us we do not intend to engage in anything resembling the interpretation of the Constitution within this Judgment. All we can say is that the Constitution

never means to oust the obligations of litigants to comply with procedural imperatives as they seek justice from the courts."

[70] In **African Banking Corporation Zambia Limited v Mubende Country Lodge Limited (12)** at P. 29, the Supreme Court, reaffirmed its earlier position, when it stated that;

> **"Time without number, we have stated in various case authorities that Article 118 (2) (e) of the Constitution was not enacted to shield litigants from complying with professional rules which are intended to provide an orderly administration of justice.**

[71] The Court of Appeal in its holding in the case of **Muchinka Farm Limited v The Attorney General and A T Phiri and Eva Phiri Appeal (13),** guided that;

> **"From the extracts, it is clear that the provision was not intended to do away with existing principles, laws or rules of procedure. Depending on the circumstances, courts are urged to be flexible in cases where strict compliance with rules of procedure may lead to injustice."**

[72] The Constitutional Court's Judgment in **Henry Kapoko v The People 2016/CC/23** is another case which considered **Article 118 (2) (e) of the Constitution of Zambia**. Her Ladyship Justice Munalula JC, delivering the judgment of the Court said as follows at page J30;

"The Article's beneficial value is achieved well if it is applied in an eclectic fashion depending on the nature of the rule before it. Each court will need to determine whether in the peculiar circumstances of the particular case, what is in issue is a technicality and if so whether compliance with it will hinder the determination of a matter in a just manner."

At page J33, she stated;

"while the facts and the law in each case will vary the principle laid out by this court on the meaning and application of Article 118 (2) (e) remains constant. The court's word is clear. Article 118 (2) (e) is not intended to do away with existing principles, laws and procedures, even where the same constitute technicalities. It is intended to avoid a situation where manifest injustice would be done by paying unjustifiable regard to technicality."

[73] The Petitioner's reliance on **Article 118 (2) (e) of the Constitution** is something which this Court cannot brush off lightly and must be examined. Looking at the circumstances of the case and whether the Petitioner's breaches or failures in complying with the Rules of Court are mere technicalities, which if not allowed to be remedied would cause manifest injustice to the Petitioner. I have taken, as the starting point the Supreme Court's hard position which is that the provision in the Constitution was not intended to do away with existing principles, laws or rules of procedures. This must be weighed

against the guidance of the Constitutional Court and Court of Appeal which both call upon a relaxation of the general rule set by the Supreme Court in **Henry Kapoko v The People (15),** and in **Muchinka Farm Limited v The Attorney General and A T Phiri and Eva Phiri (14),** that Court's must consider the peculiar circumstances of the particular case and exercise some flexibility to avoid a situations where manifest injustice would be done by paying unjustifiable regard to technicality. The Court is also called upon to decide whether indeed it is faced with a technicality.

[74] In considering the peculiar circumstances of this case, I have also considered whether the Rules of Court not followed by the Petitioner are mandatory or directory, and in reality whether they are mere technicalities. I am guided by the Supreme Court in the case of **Matilda Mutale v Emmanuel Munaile (6),** wherein the Supreme Court was of the position that;

> **"In construing whether it is mandatory or directory for the petitioner to sign the petition, we had occasion to visit the case of *The Attorney General and Another v Lewanika and Others (4)*, which both the petitioner and the 1st Respondent referred us to. In that case we said –**
>
> > ***"if the words of the statute are precise and unambiguous, then no more can be necessary to expand on those words in their ordinary and natural sense. Whenever a strict interpretation of a statute gives rise to an absurdity and unjust situation, the judges can***

and should use their good sense to remedy it by reading words into it, if necessary, so as to do what Parliament would have done had they had the situation in mind."

In the context of section 96 (3), the view we hold is that the words used therein do not carry any technical meaning to require further elaboration as to the true intention of the legislature. As far as we can ascertain, the words in section 96 (3) are clear, plain and unambiguous. Given their literal interpretation, they clearly demonstrate that it is mandatory for the petitioner to sign the petition personally."

[75] The above and other authorities cited such as **Lukasu Properties Ltd v African Banking Corporation Zambia Plc (4)**, and **Anthony Yusuf Filamba v Asphalt Roads (Z) Limited (16)**, a case also dealing with commencement of proceedings, in that case by a writ of summons, wherein **Order 6 rule (1) (1) of the High Court Rules** provides that

"(1) (1) Except as otherwise provided by any written law or these Rules every action in the High Court shall be commenced by a Writ of Summons endorsed and <u>accompanied by</u> a full statement of claim."

[76] His Lordship Mr. Justice Chitengi JS in delivering the Judgment of the Court, states at page J4, that;

"But in its present form Order VI rule (1) (1) requires that the writ of summons must be endorsed and accompanied by a full statement of claim. In other words, the endorsed Writ of Summons and the Statement of Claim must be filed together.

[77] The Judgment goes on to give the rationale for the requirement for originating process to be filed together or at the same time, with supporting documents, when it explains the following at page J5 and J6;

"A writ of Summons and a statement of claim are pleadings in a case. The function of pleadings is to give a fair notice of the case which has to be met and to define the issues on which the Court will have to adjudicate in order to determine the matter in dispute between the parties. See Halsbury's Laws of England (1). The question arises, when read together do the Writ of Summons and the Statement of Claim not give a fair notice to the Defendant of the case to be met and define the issues? In our view, the answer is in the affirmative. The Writ of Summons states the amounts claimed while the Statement of Claim states the amount claimed and explains the circumstances under which the Defendant became liable to the Plaintiff in the sums of money claimed. Rule VI 1(1) requires that the endorsed writ of summons and a full statement of claim shall be filed together. And we have no doubt in our minds that it is the requirement of Order VI 1(1) that when the

Defendant is served with a writ of summons accompanied by a full statement of claim, the Defendant must read the two documents together and not in isolation.

The Defendant has no right under Order VI rule 1(1) to choose to read the writ of summons only and ignore the accompanying full statement of claim."

[78] When I look at the issue under this head herein, the law relating to the filing lists of authorities accompanying documents i.e. skeleton arguments, lists of authorities as well as copies of the authorities relied upon therein and bundles of documents is couched in very clear and unambiguous wording that a Petition must be duly accompanied by the following when, **Rule 9(3) of the High Court (Election Petition) Rules, Statutory Instrument No. 31 of 2026,** provides that;:

"(3) An election petition referred to under sub rule (l) shall be accompanied by— .....

(a) an affidavit verifying facts;

(b) skeleton arguments of not more than fifteen pages, in font size 12 and with double spacing;

(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."

[79] The above Rule of Court in my view is mandatory when it uses the word "**shall**". Unlike **Rule 9 (7)**, it does not provide sanction of staying proceedings where a Petitioner does not comply with the requirement to file all named required documents with a petition. I therefore do not have any discretion to proceed to hear the Petitioner's Petition in the absence of his complying with the letter of the law. This compliance must be at the time of filing the Petition.

[80] Further, the Respondents herein were robbed of knowing fully what fully issues and the law underpinning these issues, which they were going to meet in this Petition, by the Petitioner not filing ALL required documents when filing the Petition. Petitions are a rare mode of commencing an action as said by the Supreme Court in the **Mutale v Munaile case (6).** The mode of commencing an action by Petition is usually set out by statute and they are a form of action which requires speedy determination within a specified period of time as is the case with election petitions whose law gives a limited 90 days for hearing and determination from the date of filing to judgment. No one has the luxury of choosing to file the required documents piece meal, at their own time, whether pleadings are closed or not. Form 3 in the Schedule of the **High Court (Election Petition) Rules** which is the form of petition to be filed, also sets out the documents required to accompany a petition. This to me is additional guidance and emphasis on the importance of filing ALL documents at the same time as a petition.

[81] I contrast the current situation with that where a Petitioner files all the required documents with the Petition but for some good reason applies to amend the same, which to me does not breach the Rules.

[82] I therefore find that from the wording in the Rules and the weight of the legal authority, the Petitioner's breach of **Rule 9 (3)** is fatal to his action, and renders the petition to be incompetently before Court and robs me of the jurisdiction to proceed with the hearing and determination of this Petition and I accordingly dismiss it.

3. *Whether the Petitioner's failure to file a Petition which conforms with* ***Form III of the Schedule to the High Court (Election Petition) Rules, S.I No. 31 of 2026*** *is fatal to the action?*

[83] The 1st Respondent raises the issue that the Petitioner's failure to file the Petition which conforms with **Form III of the Schedule to the High Court (Election Petition) Rules, S.I No. 31 of 2026** is fatal to the action

[84] The 1st Respondent has placed reliance on the Supreme Court's guidance on forms of petitions in the case of **Matilda Mutale v Emmanuel Munaile (6),** when it held that:-

> **"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."

[85] The Petitioner, on the contrary, is of the position that his Petition conforms to the Rules of Court, and avers at pages 7 and 8 of his skeleton arguments in opposition to the application, the details of the specific paragraphs of the Petition, pointing out which of the requirements of a petition stated in **Rule 9 (1)** they conform to. The Petitioner has argued that his Petition is substantially in conformance with the Rules as it contains all the listed items and ought not be dismissed as the 1st Respondent's application is misconceived.

[86] The defect, if there is one, in the Petitioner's compliance with **Rule 9 (1)** over the form which the Petition should be in, is a matter of fact, which I can discern from reading the Petition and comparing it with the contents listed on Rule 9 (1) as well as Form III and comparing these with the actual Petition

[87] The word *"Form"* is defined as follows in **Oxford Learner's Dictionary of Current English, AS Hornby, 8th Edition, Oxford University Press,** as follows;

"Document An official document containing questions and spaces for answers"

Other dictionaries define a form as the structure or appearance of something or a document with blank spaces

for filling in information. The common thread herein is that a person fills in what is missing or the blank spaces. Form 3 conatins such blank spaces.

[88] I am convinced that the Chief Justice, in going out of his way to designate Form III as the Form an election petition should be drafted in, intended that it be followed strictly. The writ of summons or originating summons are all Forms set out in the Schedule of the **High Court Act**, and parties are not allowed to dream up their preferred forms or formats of these important originating process documents or templates but have to follow or reproduce them as prescribed.

[89] Having read the Petitioner's Petition, I find that he has complied with the required form of an election petition in a few respects, and whereas he has put in the facts and issues as well as relief he seeks the Court to determine, he has not complied with the form and substance of an election petition as required by Rule 9 (1).

[90] The foregoing leads me to a finding that the Petitioner's Petition is defective. I am, however of the position that Form 3 is a guideline and therefore this defect by the Petitioner is not fatal to the Petition and is capable of being remedied by the Petitioner with leave of Court. No leave has been applied for.

DECISION / ORDERS

[91] On the whole, I have determined the three issues raised by the 1st Respondent as follows: (not set out in the order raised);

[92] I find that the Petitioner's failure to pay security for costs is something that is not fatal to his action, as the Rules provide that the action be stayed and not dismissed. The Rules give this Court the discretion to order the Petitioner to pay the security for costs within a specified time.

[93] Lastly, though I find that the Petitioner's Petition is defective on account of not being strictly in the form specified in Form 3 of the Rules, I am, however of the position that this defect is not fatal to the Petition, and is capable of being remedied by the Petitioner with leave of Court.

[94] The Petitioner's failure to file his skeleton arguments, list of documents and copies of the authorities and bundle of documents is fatal to the Petitioner's action and is ground for the Court to dismiss the Petition herein.

[95] On the whole, some of the 1st Respondent's preliminary issues raised in his Notice of Motion are not successful, in that 2 of them are of such nature I do not find them to be fatal to the Petition and are capable of being remedied upon leave being granted by the Court. However, the 2nd preliminary issue, which relates the Petitioner's failure to file multiple accompanying documents together with the Petition

is successful as it is fatal to the Petition and obliges this Court to dismiss the Petition. Therefore, the two issues which the Court has determined can be remedied are otiose because the Petition is liable to be dismissed.

[96] I therefore hereby dismiss the Petitioner's Petition herein.

[97] Costs to the Respondents, to be taxed in default of agreement.

[98] Leave to appeal is hereby granted.

Delivered at Kitwe this 22nd day of September 2026

.....

BONAVENTURE .C. MBEWE
HIGH COURT JUDGE