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 CONSTTUENCY SITUATE IN THE KITWE DISTRICT OF THE COPPERBELT PROVINCE OF THE REPUBLIC OF ZAMBIA HELD ON 1 3TH AUGUST 2026**
AND	
IN THE MATTER OF:	**ARTICLE 73 (1) OF THE CONSTITUTION OF ZAMBIA AS READ WITH SECTION 98 (C) OF THE ELECTORAL PROCESS ACT NUMBER 35 OF 2016**
AND	
IN THE MATTER OF:	**SECTION 83 OF THE ELECTORAL PROCESS ACT NO.35 OF 2016**
AND	
IN THE MATTER OF:	**SECTION 97 OF THE ELECTORAL PROCESS ACT NUMBER 35 OF 2016**
AND	
IN THE MATTER OF:	**SECTIONS 98, 99 & 100 OF THE ELECTORAL PROCESS ACT NO.35 OF 2016**
AND	
IN THE MATTER OF:	**THE SCHEDULE TO THE ELECTORAL PROCESS ACT NO 35 OF 2016**
AND	
IN THE MATTER OF:	**THE ELECTORAL (CODE OF CONDUCT) REGULATIONS 2011 STATUTORY INSTRUMENT NO.52 OF 2011**
AND	
IN THE MATTER OF:	**THE ELECTORAL COMMISSION OF ZAMBIA ACT NO. 25 OF 2016**

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 PETITIONER'S AFFIDAVIT IN OPPOSITION TO THE NOTICE OF MOTION TO RAISE PRELIMINARY ISSUE.

LIST OF AUTHORITIES

1. Constitution of Zambia (Amendment) [No. 2 of 2016 (Date of Assent: 5th January, 2016)
2. The Electoral Process Act No. 35 of 2016
3. The Rules of Supreme Court of England 1999 (RSC)
4. The High Court, (Election Petition) Rules, Statutory Instrument No. 31 of 2016
5. *Glocom Marketing Ltd v Contract Haulage Ltd (HP 787 of 1998) [2010] ZMHC 5 (7* September 2010)
6. Access Bank Zambia Limited v Group Five/ Z Con Joint Ventures (sued as a Firm) SCZ/8/52/2014

MAY IT PLEASE THIS HONOURABLE COURT,

1. My Lord / My Lady, these are the petitioner's Skeleton Arguments filed in support of an application seeking to dismiss the Notice of motion to raise a preliminary issue raised by the 1st Responded. leave of this Honourable Court to file amended list of authorities and copies of the authorities and skeleton arguments, and for leave to pay into court herein, out of time, the sum of ZMW 3,200.00 being security for costs in the matter herein.

ISSUE NO. 1

2. My Lady/ Lord, The Applicant seeks to know whether or not this Honourable Court has jurisdiction to hear and determine the Petition herein in the absence of payment for 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 rule 6 & 7 of the High Court Election Petition Rules S.I No. 31 of 2026.

In answer to the above question, we respectfully invite this Honourable Court to the provisions of section 102(2), which provides as follows:

> ***"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".***

Further, sub **rule 6** of the Rules provides;

> ***"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".***

3. My Lady/Lord, we respectfully note that under the cited provisions, the law vests this Honourable Court with the authority to determine and order that security for costs (not exceeding 8,000 fee units) be paid, while at the same time empowering the Court, in appropriate circumstances, not to make any order as to security for costs based on its findings "This is evidenced by the use of the phrase '**as the Court may order**,' which simply means that the Court retains discretion either not to order security for costs, or conversely, to order that such fee units, not exceeding 8,000, be paid.
4. My Lord/My Lady, His Lordship Dr. Matibini, SC, J (as he then was), in *Glocom Marketing Ltd v Contract Haulage Ltd* (HP 787 of 1998) [2010] ZMHC 5, observed as follows:

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

5. We respectfully note that the notice to raise a preliminary issue is before this Honourable Court prematurely, particularly so as no Orders for security for costs has been made capable of being complied with by the petitioner.

6. My Lord/My Lady, the Petitioner did not and does not to date know the exact sum that ought to have been paid into Court as security for costs, given that the law does not prescribe a fixed amount to be paid in default of a Court Order but merely provides a ceiling, stipulating that such security shall not exceed 8,000 fee units (as guidance to the Court). This ceiling of **8,000 fee units** is only a statutory limit, not a prescribed figure capable of being determined by a litigant and paid into Court.

7. We respectfully submit that this Honourable Court retains jurisdiction to hear and determine this matter notwithstanding that no deposit for security for costs has been made, as the Court, in accordance with the law herein, opted not to order such deposit, the provision being expressly couched in permissive terms **'...as the Court may order'**.

ISSUE NO. 2

8. My Lord/ My Lady, the starting point on this issue is **Rule 9 Sub-rule 3** of High Court (Election Petition) Rules, Statutory Instrument No. 31 of 2026, which provides;

"An election Petition referred to under sub rule 1 shall be accompanied by"

The key word is ***"accompanying"***, to mean that the copies of authorities must accompany the Petition. In this case, the said documents have been filed together with the Reply to the 1st Respondent's Answer to the Petition, and they are currently seated with and accompanying the Petition in accordance with the said rule. We find solace in Blacks' Law Dictionary's definition of the word accompanying mean; -

"According to Black's Law Dictionary, the term accompanying 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 proceeding".

Further, the fact that the said copies of authorities have been filed later at a stage when the Pleadings have not closed cannot be said to have not accompanied the because the pleadings had not yet closed.

9. My Lord/My Lady, the 1st Respondent has raised issue with the alleged failure to attach copies of the authorities relied upon by the Petitioner, and contends that this amounts to a fatal contravention of the High Court (Election Petition) Rules, Statutory Instrument No. 31 of 2026. We respectfully note the objection, and invite this Honourable Court to be guided by the constitutional supremacy enshrined under Article 1 of the Republican Constitution, Act No. 2 of 2016, which provides;

    (1) "This Constitution is the supreme law of the Republic of Zambia and any other written law, customary law and customary practice that is inconsistent with its provisions is void to the extent of the inconsistency".

    (2) "An act or omission that contravenes this Constitution is Illegal"

    Further, Article 118(2)(e) of the Constitution of Zambia (Amendment Act No. 2 of 2016) provides that justice shall be administered without undue regard to procedural technicalities.

    (2) In exercising judicial authority, the courts shall be guided by the following principles:

    (e) justice shall be administered without undue regard to procedural technicalities;

10. My Lord/My Lady, election petitions are not merely private disputes between candidates; they are matters of **profound public interest**. The Constitution, in its Preamble and substantive provisions, is designed to protect the people the electorate whose sovereign will is expressed through the ballot. It is therefore imperative that this Honourable Court approaches the adjudication of election petitions with the recognition that the issues raised transcend individual grievances and touch upon the integrity of the democratic process itself. In this regard, the Court is enjoined to uphold constitutional supremacy and the principle of substantive justice, ensuring that the voice of the people, which the Constitution seeks to safeguard, is not silenced by undue technicalities.

11. My Lord/My Lady, the right to be heard is a cornerstone of constitutional justice and the rule of law. It is enshrined in Article 18 of the Constitution of Zambia, which guarantees every person a fair hearing before an independent and impartial tribunal, and reinforced by Article 118(2)(e), which directs courts to administer justice without undue regard to technicalities. This principle, rooted in ***audi alteram partem***, ensures that no party is condemned unheard and that decisions are made only after both sides have been afforded an opportunity to present their case. The Supreme Court has consistently held that failure to accord a party the right to be heard renders proceedings a nullity, as it strikes at the very foundation of natural justice. In election petitions, where the integrity of the democratic process and the sovereign will of the people are at stake, the right to be heard assumes even greater importance. It safeguards not only the litigants but also the electorate, whose voice the Constitution seeks to protect. Accordingly, any attempt to defeat this right through procedural objections must yield to the constitutional imperative of substantive justice.

ISSUE NO. 3

12. My Lord/My Lady, the 1st Respondent alleges that the Petition does not conform with Form III of the High Court (Election Petition) Rules, Statutory Instrument No. 31 of 2026. We respectfully refer this Honourable Court to the Petition which was filed, and in particular to the paragraphs which demonstrably conform to the said Rules governing election petitions.

The contents of Form III of the Rules are codified under Rule 9, sub-rule (2), and are here reproduced for ease of cross-reference to the Petition as set out below.

(2) An election petition referred to under sub- rule (1) shall disclose the—

(a) name and address of a petitioner or the petitioner's legal practitioner, if any; The names and address of the petitioner have been duly disclosed under paragraph 1 of the Petition, in conformity with the requirements of the Rules.

(b) constituency in which an election being challenged was held; The constituency in which the election was held has been duly disclosed under paragraph 2 of the Petition, in conformity with the requirements of the Rules.

(c) outcome or results of an election being challenged; The outcome/ or results of the election being challenged have been duly disclosed under paragraph 25, sub-paragraphs (i) through (vii) of the Petition, in conformity with the requirements of the Rules.

(d) date of declaration of the results of an election being challenged; The date of declaration of the election results has been duly disclosed under paragraph 22 of the Petition, in conformity with the requirements of the Rules.

(e) grounds relied on; The grounds relied upon have been duly disclosed under paragraphs 5, 6, 7, 8, 9, 10, 11, 12 (a–e), 13, 14, 15, 16, 17, 18, 19, 20, 21, 23, and 24 of the Petition, in conformity with the requirements of the Rules, ***and***

(f) relief sought by a petitioner. The reliefs being sought by the Petitioner have been duly disclosed in paragraph 26, sub-paragraphs (i) through (iv) of the Petition, in conformity with the requirements of the Rules.

As demonstrated above, the requirements of Form III together with the provisions of Rule 9(1) and (2) of the High Court (Election Petition) Rules, Statutory Instrument No. 31 of 2026, have been duly complied with.

The assertion by the 1st Respondent that this matter is incompetently before this Honourable Court on account of the Petitioner's alleged non-compliance with the Rules is unfounded and ought to be dismissed.

13. My Lord/My Lady, we respectfully invite this Honourable Court to be guided by the authoritative position of the Supreme Court in the case of ***Access Bank Zambia Limited v Group Five/ Z Con Joint Ventures (sued as a Firm) SCZ/8/52/2014*** wherein the Court stated as follows; -

    "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. Matters should, as much as possible, be determined on their merits rather than be disposed of on technical or procedural points. This in our opinion is what the ends of justice demand*".

14. My Lord/My Lady, the reading of Statutory Instrument No. 31 does not state what should happen to a litigant who fails to comply with the rules. In default thereof, we find solace in Order 2, Rule 1(1) of the Supreme Court Rules, being the Rules of the Supreme Court of England (RSC), which provides as follows: -

    "Where, in beginning or purporting to begin any proceedings or at any 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."

15. My Lord/My Lady, we submit that the 1st Respondent's resort to seeking dismissal of this matter is stretching the point too far and amounts to tampering with the ends of justice, as this Honourable Court retains the discretion to render a decision upon its findings of fact.

16. My Lord/ My Lady, in a very Recent Ruling in the case of Musingwe Nathan Siame vs Luka Simumba and the Electoral Commission of Zambia 2026/HP/EP/016 (Delivered on 14th September, 2026) in which the Court stated 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 by procedural lapses, and that the Petition is heard and determined on its merits within the strict ninety- day timeline".**

We accordingly submit that this Honurable Court has a Constitutional obligation to ensure the Right to Petition an election is not defeated.

17. CONCLUSION

My Lady/ Lord, in light of the foregoing, it is respectfully submitted that the preliminary objections raised by the 1st Respondent are misconceived, premature, and without merit. The Petition demonstrably conforms to the requirements of the Electoral Process Act and the High Court (Election Petition) Rules by the close of these Pleadings, while the constitutional imperatives of supremacy, substantive justice, and the right to be heard demand that this matter proceed to

determination on its merits. Accordingly, the Notice of Motion to raise a preliminary issue ought to be dismissed.

WE HUMBLY SUBMIT.

Dated at Lusaka this _____ day of _____ 2026

Per: _____

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