IN THE HIGH COURT FOR ZAMBIA 2026/HP/EP/037

AT THE PRINCIPAL REGISTRY

HOLDEN AT LUSAKA

*(Civil Jurisdiction)*

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|---|---|
| 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 ZAMBIA 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: | THE SCHEDULE TO THE ELECTORAL PROCESS ACT No. 35 OF 2016 |
| IN THE MATTER OF: | THE ELECTORAL (CODE OF CONDUCT) REGULATIONS 2011 STATUTORY INSTRUMENT No. 52 OF 2011 |
| IN THE MATTER OF: | THE ELECTORAL COMMISSION OF ZAMBIA ACT No. 25 OF 2026 |

BETWEEN:

| | |
|---|---|
| KATAYI CHIBESA | PETITIONER |
| AND | |
| KALOBO PAVYUMA | 1st RESPONDENT |
| THE ELECTORAL COMMISSION OF ZAMBIA | 2nd RESPONDENT |

## 2nd RESPONDENT'S ANSWER TO PETITION

The 2nd Respondent's Answer to the Petition herein SHOWETH as follows;

1. The 2nd Respondent agrees with the contents of **Paragraphs 1, 2 and 4 of the Petition** as the same are based on facts.
2. In response to **Paragraph 3 of the Petition,** the 2nd Respondent will dispute the contents therein and will put the Petitioner to strict proof as to its assertions.
3. The 2nd Respondent will in response to paragraph 5 of the Petition, state that the election timetable was adopted with the consent of all political parties at a meeting, and that Wusakile Constituency recorded no breaches of the said election timetable. The 2nd Respondent will prove at trial that there is no record of the allegations of violence levelled by the 1st Respondent against the Petitioner.
4. In response to **Paragraph 6 and 7 of the Petition,** the 2nd Respondent disputes the assertion that intimidation or bullying affected the majority of voters or otherwise materially affected the outcome of the election and will put the Petition to strict proof of the identity of the affected voters, the affected polling stations and the number of voters allegedly intimidated to vote for the 1st Respondent.
5. In response to **Paragraphs 8 and 9 of the Petition,** the 2nd Respondent will state that it has no knowledge of the alleged acts and will put the Petitioner to strict proof thereon.
6. The contents of **Paragraph 11 of the Petition** are denied. The 2nd Respondent will state that no alleged violence was reported by way of formal complaint. Moreover, the center of this Petition is the Wusakile Constituency, mention of other wards has no bearing on these proceedings.
7. The contents of **Paragraph 12 (a) to (e) of the Petition** are allegations that were never formally lodged as complaints before the 2nd Respondent, as such, the same are within the exclusive knowledge of the Petitioner who will be put to strict proof thereof.

8. In response to **Paragraph 13 of the Petition,** the 2nd Respondent denies that violence affected 80% of voters in the Wusakile Constituency as alleged at all. The Petitioner shall be put to strict proof of its assertions therein.
9. The 2nd Respondent will further deny that any alleged acts of violence perpetrated by third parties are attributable to a breach of its statutory duty merely by virtue of its statutory responsibility for the conduct and administration of elections.
10. The 2nd Respondent denies the assertions in **Paragraphs 14, 15, 16, 17 and 18 of the Petition** and will prove at Trial that no incidents of violence were recorded in Wusakile Constituency and the Petitioner will be put to strict proof thereof.
11. The contents of **Paragraphs 19, 20 and 21 of the Petition** are also denied and the Petitioner will be put to strict proof of its assertions thereof.
12. In response to **Paragraph 22 of the Petition,** the 2nd Respondent will prove at Trial that a request for a re-count can only be made at a polling station at the time of counting and that no agent of the Petitioner made a request for a re-count at any polling station. Furthermore, the 2nd Respondent avers that the totaling center only receives votes that have already been counted, verified and signed for by relevant parties at the polling stations.
13. The contents of **Paragraph 23 of the Petition** are denied. The 2nd Respondent avers that the GEN20 Form is valid, notwithstanding the absence of the signature of one party. The 2nd Respondent does not require all political party representatives to sign the GEN20 Form before results can be announced.
14. In response to **Paragraph 24 of the Petition,** the 2nd Respondent vehemently denies the assertions therein. The 2nd Respondent maintains the position that NO FORMAL COMPLAINTS were lodged with the District Electoral Officer as required. Consequently,

the 2nd Respondent cannot be said to have neglected or turned a blind eye to any complaint as it had no knowledge of the alleged complaints.

15. **Paragraph 25 of the Petition** is based on facts and materially not in dispute.

16. In response to **Paragraph 26 of the Petition**, the 2nd Respondent denies the assertions therein and will prove that the Parliamentary Elections held on **13th August, 2026** were held freely and fairly and in compliance with the Electoral Process Act. The declaration of the 1st Respondent as the Member of Parliament for Wusakile Constituency was valid and in accordance with verified results.

17. The 2nd Respondent denies that the Petitioner is entitled to the reliefs sought in (i) to (iv) and will aver that the Petition has no merit.

18. **SAVE** for any admissions contained herein, the 2nd Respondent contends that the Petition ought to be dismissed with costs for lack of merit and that Declaration of the 1st Respondent as Member of Parliament for Wusakile Constituency was valid and should be upheld by this Honourable Court.

Dated this _____ day of _____ 2026.

**PER: Messrs. Freddie and Company**
Stand No. 234, KPF Business Park
Buchi-24, Kwacha Road
P.O Box 22760
**KITWE**
freddieandcompany236@gmail.com
freddieandcompany@zamtel.zm
**Advocates for the 2nd Respondent.**

**To: Messrs. L.M. Chikuta Legal Practitioners**
Plot No. 4880, Elm Road Woodlands
P.O Box RW 50896
**LUSAKA**
office@lmclegal.co.zm
**Advocates for the Petitioner**

To: **Messrs. James and Doris Legal Practitioners**
9th Floor, Premium House
Independence Avenue
P.O Box 32402
**LUSAKA**
jamesdoris.lus@gmail.com
**Advocates for the 1st Respondent.**

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

2026/HP/EP/037

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## 2nd RESPONDEDNTS SKELETON ARGUMENTS

## LIST OF AUTHORITIES

1. Mbikusita Lewanika & Others v Chiluba [1997] ZMSC 56
2. Sunday Chitungu Maluba v Rodgers Mwewa and Another [2017] ZMCC 83
3. Steven Masumba v Elliot Kamondo [2017] ZMCC 88
4. Jonathan Kapaipi vs Newton Samakayi [2020] ZMCC 13

Legislation referred to:

1. The Electoral Process Act No. 35 of 2016
2. The Schedule to the Electoral Process Act No. 35 of 2016

**IF IT MAY PLEASE THIS HONOURABLE COURT,** these are the 2nd Respondent's Skeleton Arguments to be relied on filed by **Messrs. Freddie and Company Legal Practitioners** for and on behalf of **Electoral Commission of Zambia,** the 2nd Respondent, in this matter, in fulfilment of **Rule 10 (2) (b) of the Hight Court (Election Petition) Rules, Statutory Instrument No.31 of 2026** of the **Electoral Process Act No. 35 of 2016.**

## BACKGROUND

On **31st August 2026,** the Petitioner filed this Petition in this Honourable Court challenging the election of the **1st Respondent** herein as Member of Parliament for Wusakile Constituency. The Petitioner alleges that the 1st Respondent and his agents engaged in acts of violence, bullying, bribery, intimidation corruption and illegal practices during and after the elections contrary to **part VIII** of the **Electoral Process Act No. 35 of 2016.**

Further, the Petitioner alleges that the 2nd Respondent was in breach of its own rules and regulations by refusing and/or neglecting to attend to the complaints raised by the Petitioner and/or his agents, and thereafter proceeding to declare the 1st Respondent as the duly elected Member of Parliament.

In support of the said allegations, the Petitioner filed an Affidavit Verifying Facts in the Petition.

The 2nd Respondent strongly opposes the Petition on the grounds that it lacks merit, that the reliefs being sought are not tenable at law and that the 1st Respondent was validly elected by the voters of Wusakile Constituency.

## ARGUMENTS

The point of departure for the 2nd Respondent is that the 2nd Respondent is constitutionally and statutorily mandated to conduct elections are in an equal, transparent and credible manner.

These principles are enshrined under **Section 3 of the Electoral Process Act No. 35 of 2016,** and are set out hereunder:

*'Subject to the Constitution, the principles applied to the electoral system and process shall ensure the following:*

*a. Equal and universal suffrage*

*b. No discrimination based on gender or disability when providing electoral services;*

*c. Transparent and credible electoral process;*

*d. No special privileges accorded to a political party or social group, except for persons with special needs;*

*e. No impediments to lawful inclusion in the electoral register;*

*f. Impartial voter-education programmes;*

*g. Access to polling stations for representatives of political parties, accredited local or international election monitors, observers and the media;*

*h. Secrecy of the vote;*

*i. Design of the ballot paper that promotes easy use;*

*j. Transparent and secure ballot boxes;*

*k. Impartial assistance to voters at the polling station;*

*l. Transparent, accurate and reliable vote counting procedure;*

*m. Proper management of invalid ballot papers;*

*n. Precautionary measures for transporting of election materials;*

*o. Impartial protection of polling stations;*

*p. Established procedures for lodging and dealing with complaints;*

*q. Impartial handling of election complaints;*

*r. Impartial delimitation of electoral boundaries and*

*s. Timely resolution of electoral disputes.*

**[underlined for our own emphasis]**

My Lord/Lady, it is evident that the **Electoral Process Act No. 35 of 2016** places obligations upon the 2nd Respondent to ensure a transparent and credible electoral process. These obligations include the impartial protection of polling stations and the establishment of procedures for the lodging and determination of complaints.

We submit that the Petitioner's contention that the elections in the Wusakile Constitueney were marred by violence, intimidation, bullying, bribery and manipulation. The Petitioner further alleges that he reported these incidences to the 2nd Respondent, which allegedly disregarded the concerns raised and proceeded to declare the 1st Respondent as the duly elected Member of Parliament for the Wusakile Constituency.

It is our submission that the allegations raised by the Petitioner lack merit. This is because no formal complaint was lodged during the election campaign period or the election day itself.

My Lord/Lady, the **Electoral Process Act No. 35 of 2016** provides for lodging and determination of complaints arising during the electoral process. The Act further establishes a Conflict Management Committee pursuant to **Section 113 thereof.** The mandate of the said Committee is to resolve electoral disputes. The Committee is composed of members appointed by the 2nd Respondent. **Section 113** further provides that the determination of any conflict shall be by majority votes of the members present at the meeting and that minutes of the such proceedings shall be duly recorded

Furthermore, the **Electoral Process Act No. 35 of 2016**, under the **Schedule** thereto being the **Code of Conduct** at **Rule 12 (2)** provides as follows:

*'Complaints arising during campaigns and elections may be made to an election officer or a conflict management committee at the place where the conduct complained against occurred.'*

Further, **Rule 13 (3) of the Schedule** states as follows:

*'Conflict Management Committees shall mediate in electoral disputes and shall encourage amicable settlement of electoral disputes within 24 hours of receipt of a formal complaint.'*

My Lord/Lady, the position of the law is clear. Where a complaint arises during the electoral process, a party is required to lodge a formal complaint with the election officer, who in this case, is the District Electoral Officer **OR** alternatively, with the complaint to a Conflict Management Committee.

We submit that at no point did the Petitioner lodge any formal complaint, either with the District Electoral Officer or with the Conflict Management Committee, in respect of the allegations made against the 1st Respondents. Had such complaints been lodged, the Petition would have been accompanied by evidence thereof, such as copies of the complaints lodged or minutes of the proceedings of the Conflict Management Committee.

It is our contention that in the absence of such formal complaints, any alleged acts of violence perpetrated by the 1st Respondent or by third parties against the Petitioner and his team cannot be attributed to a breach of the 2nd Respondent's Rules and Regulations.

We further submit that **the mere existence of an unlawful act during the electoral process does not, without more, establish that the 2nd Respondent breached its statutory duties.**

With respect to the assertions that the 2nd Respondent's Returning Officer for Wusakile Constituency announced the election results at the totaling center despite a request for a recount

by the Petitioner's agents, **AND** despite the Petitioner's agents declining to sign the GEN20 Form, it is submitted that such assertions are unfounded.

It is an established principle that a request for a re-count can only be made at a polling station and at the time of counting votes. The totaling center only receives votes that have been counted, verified and signed for by the relevant parties at the polling stations. We submit that no request for a re-count was made by the Petitioner's agents at any polling station within the Wusakile Constituency.

With respect to the GEN20 Form, we submit that the absence of the signature of one party does not invalidate the form. Further, it is established practice that the 2nd Respondent is not required to obtain the signatures of all political party representatives on the GEN20 Form prior to the announcement of results.

It is our humble submission that there was substantial compliance with the provisions of the **Electoral Process Act No. 35 of 2016** in the conduct of the elections relating to Wusakile Constituency. We further submit that the election was conducted in accordance with the principles enshrined in law, and that the allegations raised by the Petitioner **DID NOT** affect the outcome of the said elections.

***Burden of Proof***

My Lord/Lady, the burden of proof in an election petition lies upon the Petitioner to prove the allegations. The standard of proof in an election petition is higher and distinct from that required in an ordinary civil matter. Parliamentary election petitions are required to be proved to a standard higher than the mere balance of probabilities and the issues raised are to be established to a fairly high degree of convincing clarity.

We rely on the reasoning of the Court in the case of **Mbikusita Lewanika & Others v Chiluba [1997] ZMSC 56,** wherein the Supreme Court stated as follows:

*'Parliamentary election petitions have generally long required to be proved to a standard higher than on a mere balance of probabilities. It follows, therefore that in this case where the petition has been brought under constitutional provisions and would impact upon the governance of the nation and the deployment of the constitutional power and authority, no less a standard of proof is required. It also follows that the issues raised are required to be established to a fairly high degree of convincing clarity'* **[underlined for our own emphasis]**

In response to the Petitioner's allegations, we contend that the Petitioner has failed to discharge his burden of proof to the required standard regarding the nullification of the election results, having failed to produce any evidence in support of the said allegations.

The legal framework for challenging election results is clearly set out in **Section 97(2)(a) of the Electoral Process Act No. 35 of 2016,** which provides as follows:

*'The election of a candidate as a Member of Parliament, Mayor, Council Chairperson or Councilor can be void if, on the trial of an election petition, it is proved to the satisfaction of the High Court or a Tribunal, as the case may be that;*

*a. A corrupt practice, illegal practice or other misconduct has been committed in connection with the election-*

*i. By a candidate; or*

*ii. With the knowledge and consent or approval of a candidate or of that candidate's election agent or polling agent;*

*And the majority of voters in a constituency, district or ward were or may have been prevented from electing the candidate in that constituency, district or ward whom they preferred;*

b. *Subject to the provisions of subsection (4), there has been non-compliance with the provisions of this Act relating to the conduct of elections and it appears to the High Court or Tribunal that the election was not conducted in accordance with the principles laid down in such provisions and that such non-compliance affected the result of the election; or*

c. *The candidate was at the time of the election a person not qualified or a person disqualified for election.'*

It is submitted that the aforesaid provision codifies the principle that he who alleges must prove and by virtue thereof, the Petitioner bears the obligation to demonstrate that his Petition falls within the ambit of **Section 97 of the Electoral Process Act No. 35 of 2016,** and that evidence to the required standard has been adduced to warrant the nullification of the election.

My Lord/Lady, it is our contention that the Petitioner has failed to demonstrate that the 2nd Respondent breached its obligations under the **Electoral Process Act No. 35 of 2016** by declaring the 1st Respondent the duly elected Member of Parliament for Wusakile Constituency, in respect of the elections conducted on 13th August, 2026. The Petitioner alleges that the said elections were marred by violence, bribery, manipulation, inter alia. We say so because the Petitioner has not produced any evidence to show that steps were taken, in the form of complaints, to bring the said allegations to the attention of the 2nd Respondent. In the absence of such complaints, the allegations appear to be an afterthought.

We place reliance on the case of **Sunday Chitungu Maluba v Rodgers Mwewa and Another [2017] ZMCC 83** where it was stated that:

*'Elections will not be voided unless the Petitioner shows that the illegal practice that has been proved with the aid of cogent evidence, was so widespread that it had or may have prevented the majority of voters from electing the candidate of their choice.'*

It was further held in the case of **Steven Masumba v Elliot Kamondo [2017] ZMCC 88** that;

*'A petitioner has a duty to adduce credible or cogent evidence to prove his allegation to the required standard of proof. The evidence must be of a kind that is free from contradictions and truthful so as to convince a reasonable tribunal to give Judgment in a party's favour.*

In the case of **Jonathan Kapaipi vs Newton Samakayi [2020] ZMCC 13**, the Constitution Court stated as follows:

*'The provision for declaring an election of a Member of Parliament void is only where, whatever activity is complained of, it is proved satisfactorily that as a result of that wrongful conduct, the majority of voters in constituency were, or might have been prevented from electing a candidate of their choice, it is clear that when facts alleging misconduct are proved and fall into the prohibited category of conduct, it must be shown that the prohibited conduct was widespread in the constituency to the level where registered voters in greater numbers <u>were influenced so as to change their selection of a candidate for that particular election inn that constituency</u>;* **[underlined for our own emphasis]** *only then can it be said that a greater number of registered voters were prevented or might have been prevented from electing their preferred candidate'*

Therefore, it is our submission that the Petitioner, having failed to demonstrate that the alleged irregularities was so widespread as to directly affect the outcome of the elections in the Wusakile Constituency, and that the said acts where not addressed by the 2nd Respondent thereby resulting in a breach of statutory duty, **has failed to prove his case to the required standard to warrant the nullification of results.**

It is further submitted that the allegations of violence, bribery, bullying, manipulation and intimidation, *inter alia*, and the alleged neglect by the 2nd Respondent have not been supported by credible evidence to the high standard required in election petitions.

**PRAYER**

We humbly pray that this Honourable Court dismisses the Petition in its entirety, with costs to the 2nd Respondent as it is in the interests of justice to do so.

We are most obliged.

Dated at Lusaka this _____ day of _____ 2026.

Drawn by: _____

**Messrs. Freddie and Company**
Stand No. 234, KPF Business Park
Buchi-24 Kwacha Road
P.O Box 22760
**KITWE**
freddieandcompany236@gmail.com
**Advocates for the 2nd Respondent**

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## 2nd RESPONDEDNT'S LIST OF AUTHORITIES

**LIST OF AUTHORITIES**

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2. Sunday Chitungu Maluba v Rodgers Mwewa and Another [2017] ZMCC 83
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4. Jonathan Kapaipi vs Newton Samakayi [2020] ZMCC 13

**LEGISLATION REFERRED TO:**

1. The Electoral Process Act No. 35 of 2016
2. The Schedule to the Electoral Process Act No. 35 of 2016

Dated the _____ day of _____ 2026

Drawn by: _____

**Messrs. Freddie and Company**
Stand No. 234, KPF Business Park
Buchi-24 Kwacha Road
P.O Box 22760
**KITWE**
freddieandcompany236@gmail.com
**Advocates for the 2nd Respondent**

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| THE ELECTORAL COMMISSION OF ZAMBIA | 2nd RESPONDENT |

## 2nd RESPONDEDNT'S LIST AND DESCRIPTION OF DOCUMENTS

| ITEM | DESCRIPTION | DATE |
|---|---|---|
| 1. | Declaration Form | 17/08/2026 |

**Messrs. Freddie and Company**
Stand No. 234, KPF Business Park
Buchi-24 Kwacha Road
P.O Box 22760
**KITWE**
freddieandcompany236@gmail.com
**Advocates for the 2nd Respondent**

REPUBLIC OF ZAMBIA

ELECTORAL COMMISSION OF ZAMBIA

THE Electoral Process Act, 2016

(Act No. 35 of 2016)

The Electoral Process (General) Regulation, 2021

GEN 200

[Regulation 50(2)]

(complete in triplicate)

6

## DECLARATION OF THE RESULTS OF THE POLL - Member of Parliament

I, Chongo Emmanuel being the Returning Officer for WUSAKILE Constituency, KITWE District, do hereby declare that I have, inaccordance with the law, ascertained the results of the poll in the said constituency and that they have been given to:

| Name of Candidate | Political Party | Votes | Votes (in words) |
|---|---|---|---|
| KALOBO Pavyuma | NRPUP | 17,849 | Seventeen Thousand Eight Hundred and Forty-Nine |
| CHIBESA Katayi | UPND | 8,836 | Eight Thousand Eight Hundred and Thirty-Six |
| KAMBOYI Ricky | IND | 1,519 | One Thousand Five Hundred and Nineteen |
| CHIZINGA F Noah | IND | 639 | Six Hundred and Thirty-Nine |
| MUMBA Ernest | CF | 95 | Ninety-Five |

I further declare that a total of 496 ballot papers have been rejected as invalid and that a total of 29,434 Votes were cast.

I therefore declare that the said KALOBO Pavyuma to be this day duly elected as Member of Parliament for WUSAKILE Constituency.

Dated this 17 day of August, 2026 Signature: .....

**Witnessed by:**

| Name | Organisation | Signature | Name | Organisation | Signature |
|---|---|---|---|---|---|
| JULIUS KALOBO | NRPUP | | | | |
| [illegible] | CAP | | | | |
| PHILLIMON | NRPUP | | | | |
| JOACHIM M | AVAD | | | | |
| BANDA H | 9 YEARS | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

1. This form must be completed in sufficient quantities to give one copy to each candidate or their polling agent by the Returning Officer. The Returning Officer must read out aloud the text from the original to the public at the place where the totalling of the votes takes place.
2. The full names of the candidates, party and votes received in figures and words must be inserted in the columns above, with the successful candidate's name at no. 1.
3. The original of this form must be delivered to the Electoral Commission of Zambia by the quickest possible means and a copy must be retained by the Returning Officer.



CamScanner