IN THE HIGH COURT FOR ZAMBIA **2026/HP/EP/041**
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction)

IN THE MATTER OF:	**ARTICLE 73(1) OF THE CONSTITUTION OF ZAMBIA (AMENDMENT) ACT NO. 2 OF 2016 OF THE LAWS OF ZAMBIA**
IN THE MATTER OF:	**SECTIONS 81, 83, 84, 97, 98 AND 100 (1) (a) OF THE ELECTORAL PROCESS ACT NO. 35 OF 2016 OF THE LAWS OF ZAMBIA.**
IN THE MATTER OF:	**REGULATION 15 OF THE ELECTORAL CODE OF CONDUCT, 2016**
IN THE MATTER OF:	**THE HIGH COURT ELECTION PETITION RULES, 2026 S.I NO. 31 OF 2026**
IN THE MATTER OF:	**AN ELECTION PETITION RELATING TO CHAMA SOUTH CONSTITUENCY PARLIAMENTARY ELECTIONS HELD ON THURSDAY, 13TH AUGUST, 2026**

BETWEEN:

DANIEL PHIRI	**PETITIONER**
AND	
NKHATA JERIX	**1ST RESPONDENT**
ELECTORAL COMMISSION OF ZAMBIA	**2ND RESPONDENT**

REPUBLIC OF ZAMBIA HIGH COURT OF ZAMBIA 15 SEP 2026 PRINCIPAL REGISTRY P.O. BOX 50067, LUSAKA

NOTICE OF MOTION FOR AN ORDER TO DISMISS THE PETITION DATED 2ND SEPTEMBER,2026 FOR WANT OF JURISDICTION PURSUANT TO SECTION 100 (3) OF THE ELECTORAL PROCESS ACT, NO. 35 OF 2016 OF THE LAWS OF ZAMBIA AS READ TOGETHER WITH RULE 9 (2(d), 9(3(c) and 9(6&7) OF THE HIGH COURT (ELECTION PETITION) RULES STATUTORY INSTRUMENT NUMBER 31 OF 2026 OF THE LAWS OF ZAMBIA.

TAKE NOTICE that the 1st Respondent shall at the hearing of the matter move this Honourable Court for the determination of the preliminary issues raised hereunder: -

(a) Whether this Honourable Court has jurisdiction to determine and render a judgment where an Election Petition is filed after the expiration of 14 days after declaration of the results as stipulated by the law?

(b) Whether this Honourable Court has jurisdiction to hear and determine the Petition without the Petitioner having deposited Security for Costs within 5 days of filing an Election Petition?

(c) Whether this Honourable Court has jurisdiction to hear and determine the Petition herein without the Petitioner filing into Court a list of authorities and copies of those authorities?

(d) Whether this Honourable Court has jurisdiction to hear and determine Petition where the Petitioner fails to disclose the date of declaration of the results of an election being challenged?

That if the above questions are answered in the negative, then the Petitioner's Petition should be dismissed for want of jurisdiction on the part of the Court with costs to the 1st Respondent and that if the questions are answered in the positive, then this matter should proceed to trial as if the herein application was never filed.

Dated at Lusaka this.....day of.....2026

This Notice was taken out by:

Messrs. Kamwi Andeleki Legal Practitioners
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ADVOCATES FOR THE 1ST RESPONDENT

IN THE HIGH COURT FOR ZAMBIA **2026/HP/EP/041**

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HOLDEN AT LUSAKA

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DANIEL PHIRI **PETITIONER**

AND

NKHATA JERIX **1ST RESPONDENT**

ELECTORAL COMMISSION OF ZAMBIA **2ND RESPONDENT**

LIST OF AUTHORITIES AND SKELETON ARGUMENTS

STATUTES

(i) The High Court (Election Petition) Rules 2026.

(ii) The High Court Act Rules, Chapter 27 of the Laws of Zambia.

(iii) The Electoral Process Act No. 35 of 2016.

CASES

1. Wilfred Mweene v the Attorney General and The Electoral Commission of Zambia, (Appeal No. 11 of 2026); and
2. Gift Luyako Chilombo v Biton Manje Hamaleke (Appeal 2 of 2016) [2018] ZMCC 1.

[1] MAY IT PLEASE THIS HONOURABLE COURT, these are the 1st Respondents Skeleton Arguments in support of his application to dismiss the election Petition for want of Jurisdiction on the part of the Court.

LAW

[2] My Lord/ Lady, section 100 of the Electoral Process Act No. 32 of 2016 provides for the presentation of an Election Petition not later than 14 days and provides as follows;

> ***.... (3) An election petition shall be signed by the Petitioner or by all the petitioners, if more than one, and shall be presented not later than fourteen days after the date on which the result of the election to which it relates is duly declared.***

My Lord/ Lady, it is trite law that where a petitioner fails to abide by the above cited provision, the court should not entertain such an action. This position was clearly stated in the case of **Wilfred Mweene v The Attorney General and the Electoral Commission of Zambia**, where the court held that;

> ***.... "Once Electoral or Nomination disputes arise, candidates must strictly follow election laws and timelines without exception even when external forces (such as state or Police actions) create an impediment, filing out of time makes the case incompetent and improperly before it".***

My Lord/ Lady, the law is quite clear from these cited authorities as to the strictness placed on compliance with election petition laws and failure by the Petitioner to pay particular attention to the rules and procedure renders the petition defective and irregular before this Court. The Petition brought before

this Honourable Court was filed outside the 14 days stipulated by law hence depriving this Court of its Jurisdiction.

Furthermore, the Petitioner did not seek leave of Court to file out of time as provided in the laws of Zambia where a party wants to file an action but has failed to comply with the provided period within which to file the said action.

[3] My Lord/ Lady, in dealing with the second point of contention, we refer this Honourable Court to Section 102 (2) of the Electoral Process Act No. 35 of 2016, which provides for the Rules of Practice and Procedure, Security for Costs etc. This Section provides that;

> ***.... (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 the rules under this section or, in the absence of the rules, as the High Court or a Tribunal may order.***

My Lord/ Lady, the case of **Gift Luyako Chilombo v Biton Manje Hamaleke (Appeal 2 of 2016) [2018] ZMCC 1** the Constitutional Court of Zambia addressed a situation where a Local Government Election Tribunal proceeded to hear a petition without the payment of security for costs. The court emphasized that;

> ***... "the requirements under Section 102 of the Electoral Process Act No. 35 of 2016 are couched in mandatory terms. Proceeding without the security payment constitutes a severe misdirection in law, and the court cannot hear or determine the petition".***

From the above, it's quite clear that the law with regard to election petitions, in particular Section 102 is couched in mandatory terms and with this comes strictness to its compliance and the failure by the Petitioner to abide by these rules renders the Petition defective and the court should not proceed to determine it but dismiss it for lack of jurisdiction.

Furthermore, the **High Court (Election Petition) Rules 2026,** Rule 9 subrule 6 states that;

... (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.

Furthermore, subrule 7 states that;

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

These rules respectively stipulate that a Petitioner must deposit security for costs within five days of filing an Election Petition and that under subrule 7, if the Petitioner fails to comply, the court is legally prohibited from hearing the Petition or any related proceedings.

[4] My Lord/ Lady, the third point of contention is with regard to the failure by the Petitioner to Comply with the provisions of the **High Court (Election Petition) Rules 2026**, Rule 9 Subrule 3 which provides that;

> ***... (3) An election petition referred to under subrule (1) 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 the documents to be relied on, if any; and***
> ***(e) A bundle of Documents, if any.***

In the case in casu, the Petitioner has not complied with ***Clause c*** of the High Court (Election Petition) Rules 2026, and due to the mandatory nature of this clause, failure to comply makes the petition defective.

It is our contention therefore that this Honourable Court dismiss this Election Petition as the Petitioner has failed to comply with the stipulated rules and procedure provided for in the above cited laws. Particular attention is drawn to section 100 (3) and 102 of the Electoral Process Act No. 35 of 2016 and Rule 9 subrule 3, 6 and 7 of the High Court (Election Petition) Rules 2026. These provisions are couched in mandatory terms and parties should adhere to these provisions.

CONCLUSION

[5] My Lord/ Lady, in view of the foregoing we humbly beseech this Honourable Court to dismiss this Election Petition filed on the 2nd day of September, 2026 as the Court lacks jurisdiction to hear and determine a Petition that was filed outside the 14-day time frame as stipulated in section 100 (3) of the Electoral Process Act and furthermore that the Petition before this Honourable Court is defective and incompetently before this Court.

Dated at Lusaka this day of 2026

Drawn by :.....

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LUSAKA
ADVOCATES FOR THE 1ST RESPONDENT

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BETWEEN:
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AND
NKHATA JERIX **1ST RESPONDENT**
ELECTORAL COMMISSION OF ZAMBIA **2ND RESPONDENT**

AFFIDAVIT IN SUPPORT OF NOTICE OF MOTION FOR AN ORDER TO DISMISS THE ELECTION PETITION FOR WANT OF JURISDICTION

I, NKHATA JERRIX a Zambian national of Plot number 506, kudu Road, Kabulonga in the Lusaka District and Province of the Republic of Zambia **DO HEREBY MAKE OATH** and **SAY** as follows:

1. That my name and address are as stated above.

2. That I am the 1st Respondent herein and therefore competent to swear to this my Affidavit from facts within my knowledge, believe and information.

3. That as the Court's record will show, I was duly elected Member of Parliament for Chama South on 16th August,2026 after polling 4,338 votes while the Petitioner came out second with 3,220 votes. Now produced and shown to me marked **"NJ1"** is a copy of the declaration of the results of the poll.

4. That as the Court's record will show, the Petitioner herein, filed the Petition to challenge my election as Member of Parliament for Chama South on 2nd September,2026. Now produced and shown to me marked **"NJ2"** is a copy of the Election Petition to that effect.

5. That I am advised by my Advocates and believe the same to be true that the Petitioner had 14 days from the date of the declaration of the results for Chama South within which to file an election Petition before this Honourable Court.

6. That I am advised by my Advocates and believe the same to be true that by way of due diligence, a search was conducted at the High Court Principal Registry so as to establish whether there was leave obtained by the Petitioner to file the Petition out of time and the said search revealed that no such leave obtained. Now produced and shown to me marked **"NJ3"** is a copy of the Search Form to that effect.

7. That I am advised by my Advocates and believe the same to be true that a perusal of the Petition reveals that the Petitioner did not disclose the date on which I was declared Member of Parliament for Chama South in the 13th August,2026 General Elections as mandated by law.

8. That I am advised by my Advocates and believe the same to be true that under the High Court (Election Petition) Rules, Statutory Instrument number 31 of 2026, it is mandatory that a Petitioner who wishes to

challenge a Parliamentary Election should file a List of Authorities together with copies thereof, of which the Petitioner did not file.

9. That further to paragraph 8 above, I am advised by my Advocates and believe the same to be true that the failure by the Petitioner to deposit Security for Costs within 5 days of filing the Election Petition renders the Petition undeterminable and deprives the Court of its jurisdiction to render any reliefs sought therein.

10. That I have been advised by my Advocates and believe the same to be true that the defects enumerated above are fundamental as they go to the jurisdiction of this Honourable Court and cannot be cured by an amendment or otherwise.

11. That I have been advised by my Advocates and believe the same to be true that the Petition filed before this Court on 2nd September, 2026 is ill conceived and incompetently before the Court.

12. That I am advised by my Advocates and believe the same to be true that this Honourable Court has been deprived of jurisdiction to determine this matter due to the lapse of time. The Petition was filed 3 days late without seeking Leave of Court before filing the Petition.

13. That I have been advised by my Advocates and believe the same to be true that the Petitioner's Petition has no leg to stand on and as such must be dismissed.

14. That I depose to the above facts verily believing the same to be true and correct to the best of my knowledge and believe.

SWORN by the said)
NKHATA JERRIX at Lusaka)
on this.....15.....day of.....Sept.....2026)

BEFORE ME.....

COMMISSIONER OF OATHS

MAJOR PATRICK MPUNDU
LLB,LEI UNZA/ASCZ
Legal Practitioner
COMMISSIONER OF OATHS

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15 SEP 2026
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CERTIFICATE OF EXHIBITS

These are the exhibits marked **"NJ1-NJ2"** referred to in the Affidavit sworn by **NKHATA JERRIX** filed herein.

Dated at Lusaka this 15th day of September 2026.

BEFORE ME: _____

COMMISSIONER FOR OATHS

MAJOR PATRICK MPUNDU
LLB,LLM,AHCZ,AAT
Legal Practitioner
COMMISSIONER OF OATHS