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 10 SEP 2026 PRINCIPAL REGISTRY P.O. BOX 50067 LUSAKA

1ST RESPONDENT'S ANSWER

The Respondent responds as follows:

1. The contents of paragraph 1,2, 3 and 4 of the Petition are not in dispute.
2. The 1st Respondent makes no comment on paragraph 5 of the Petition as the content is within the Petitioner's peculiar knowledge.

Grounds Relied Upon by The Petitioner

Ground One

1. The contents of ground 1 are denied.
2. Furthermore, the contents of ground 1(1) and (2) of the Petitioner's particulars are denied and the 1st Respondent will state that at no point did he distribute K50 notes to residents within Chama South Constituency during the campaign period.
3. Furthermore, the contents of ground 1(3) and (4) of the Petitioner's particulars are denied, as the Petitioner did not either by himself, his agents or whomsoever, chase polling agents or disrupt the voting process.

Ground Two

1. The contents of Ground 2 are denied and the 1st Respondent will state that at no point did he utter or make any false statement against the Petitioner. Further, the 1st Respondent had no knowledge of the Petitioner's involvement in a road traffic accident on the named date and in fact it was the 1st Respondent who was involved in a road traffic accident during campaign period.

Ground Three

1. The first Respondent denies the contents of ground 3.
2. Furthermore, ground 3(1) of the Petitioner's particulars is denied, and the 1st Respondent states that he did not collect National Registration Cards from any persons within Chama South Constituency.
3. Furthermore, ground 3(2) of the Petitioners particulars is denied and the Petitioner will be put to strict proof thereof. The 1st Respondent will aver

at trial that he did not commit any illegal practices before, during and after the elections.

4. The 1st Respondent makes no Comment to the contents of ground 3(3) of the Petitioners particulars save to say that the Petitioner shall be put to strict proof.

5. The Petitioner is not entitled to any of the reliefs sought before this Honourable Court.

Dated at Lusaka this day of 2026

1ST RESPONDENT'S SIGNATURE

Drawn by: .....

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ADVOCATES FOR THE 1ST RESPONDENT

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HOLDEN AT LUSAKA

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REPUBLIC OF ZAMBIA
HIGH COURT OF ZAMBIA
10 SEP 2026
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P.O. BOX 50067, LUSAKA.

BETWEEN:

DANIEL PHIRI **PETITIONER**

AND

NKHATA JERIX **1ST RESPONDENT**

ELECTORAL COMMISSION OF ZAMBIA **2ND RESPONDENT**

1ST RESPONDENTS LIST OF AUTHORITIES

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BETWEEN:

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

1ST RESPONDENTS LIST OF AUTHORITIES

The following is a list of authorities to be relied on by the 1st Respondent:

LEGISLATION

1. Electoral Process Act No. 35 of 2016;
2. The Electoral Process (General) Regulations, 2016;
3. The High Court (Election Petition) Rules, 2026.

CASES

1. Anderson Kambela Mazoka & Others v Mwanawasa & 2 Others (SCZ EP 1 of 2002; [2018] ZMSC 391;
2. Nkandu Luo & Another v Mwamba & Another (Appeal No. 10 of 2016) [2018] ZMCC 254 (16th November 2018)

Dated at Lusaka this day of 2026

Drawn by: .....

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THE ELECTORAL PROCESS ACT, 2016

ARRANGEMNET OF SECTIONS

PART I

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2. Interpretation
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4. Administration, enforcement and prosecution
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REGISTRATION OF VOTERS AND REGISTER

7. Continuous voter registration
8. Qualification for registration as voters
9. Disqualification from registration as voter
10. De-registration of Voter
11. Notification by registration officer
12. Suspension of registration of voters
13. Provisional Register of Voters
14. Register of voters
15. Application to change registration details
16. Amendments to Register of Voters
17. Objections concerning details in provisional register of voters
18. Publication of register of Voters
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POLLING DISTRICTS AND BOUNDARIES

21. Establishment of polling districts
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23. Inspection and copies of maps of polling district
24. Establishment of polling station
25. Division of area of councils into wards
26. 26. Election in newly created Council
27. Relocation of polling station in emergencies

Single copies of this Act may be obtained from the Government Printer, P.O. Box 30136, 10101 Lusaka. Price K144.00 each.

GOVERNMENT OF ZAMBIA

ACT

No. 35 of 2016

Date of Assent: 6th June, 2016

An Act to provide for a comprehensive process for a general election; provide for the conduct of elections by the Electoral Commission of Zambia and empower the Commission to make regulations in matters relating to elections; provide for the registration of voters and the keeping of voters registers; prescribe the procedures for nominations for elections; provide for the role of presiding officers, election officers and conflict management officers; prescribe the procedure for voting during an election; provide for the accreditation and roles of observers and monitors; criminalise corrupt practices and other illegal practices related to elections and provide for penalties in connection with an election; provide for election petitions and the hearing and determination of applications relating to a general election; provide for voter education; prescribe the electoral code of conduct; repeal and replace the Electoral Act, 2006; and provide for matters connected with, or incidental to, the foregoing.

[7th June, 2016

ENACTED by the Parliament of Zambia. Enactment

PART I

PRELIMINARY PROVISIONS

1. This Act may be cited as the Electoral Process Act, 2016. Short title

2. In this Act, unless the context otherwise requires— Interpretation

"area" has the meaning assigned to it in section *two* of the Local Government Act; Cap. 281

"ballot box" means a box prescribed by the Commission for the purpose of an election;

"ballot paper" means the document prescribed by the Commission in respect of an election;

"ballot paper account" means a document prescribed by the Commission for purposes of recording the ballot papers issued to a returning officer and completed by a presiding officer at the close of a poll;

Cap. 1 "by-election" has the meaning assigned to it in the Constitution;

"campaign material" means party or candidate manifestos, advertisements, billboards, posters, tshirts, cloth or other material depicting colours regarding symbols, and other designs of a party or pictural images of a candidate;

"campaign period" means a period of three months before the holding of an election;

"candidate" means a person contesting a presidential, parliamentary or local government election;

"caricature" means the exaggerated imitation of a cartoon, effigy, picture, drawing or sketch of a person or literary style for comic or satirical effect;

"casual vacancy" means a vacancy in the office of councillor
Cap. 281 as specified in the Local Government Act;

"Chief Electoral Officer" has the meaning assigned to it in
Act No. 25 of 2016 the Electoral Commission of Zambia Act, 2016;

"Code" means the Electoral Code of Conduct set out in the Schedule;

"Commission" means the Electoral Commission of Zambia
Cap. 1 established by the Constitution;

"conflict management officer" means an officer appointed as a conflict management officer in accordance with section *one hundred* and *thirteen;*

"constituency" has the meaning assigned to it in the
Cap. 1 Constitution;

"Constitutional Court" has the meaning assigned to it in the
Cap. 1 Constitution;

"corrupt practice" means any conduct which is declared to be a corrupt practice in accordance with section *eighty-one;*

"costs"includes charges and expenses;

Cap. 1 "council"has the meaning assigned to it in the Constitution;

"council chairperson" has the meaning assigned to it in the Constitution; Cap. 1

"councillor" has the meaning assigned to it in the Constitution; Cap. 1

"designated person" means a person or officer appointed by the Chief Justice for the purpose of receiving election petitions filed before a tribunal and attending to such other matters regarding petitions before a tribunal as are assigned to the Registrar under this Act;

"election" has the meaning assigned to it in the Constitution; Cap. 1

"election agent" means a person appointed as an agent of a candidate for the purpose of an election and who is specified in the candidate's nomination paper;

"election officer" means a person appointed by the Commission as—

(a) a registration officer;

(b) an assistant registration officer;

(c) a district electoral officer;

(d) a returning officer;

(e) a presiding officer;

(f) an assistant presiding officer; or

(g) a polling assistant;

and includes a person appointed to assist the Chief Electoral Officer in the performance of the functions of the Chief Electoral Officer as specified in this Act;

"election petition" means an election petition related to a presidential, parliamentary or local government election as specified in the Constitution; Cap. 1

"election timetable" means a timetable for an election published by the Commission in accordance with section *twenty-eight;*

"employee" has the meaning assigned to it in section *two* of the Local Government Act; Cap. 281

"general election" has the meaning assigned to it in the Constitution; Cap. 1

"illegal practice" means an offence which is declared under this Act to be an illegal practice;

"interim period" means the period commencing at the commencement of this Act and expiring on such date as the President may prescribe by statutory order;

"media" includes publicly or privately operated print and electronic media;

"Member of Parliament" has the meaning assigned to it in the Constitution; Cap. 1

"monitor"means a person accredited as such by the Commission;

"national registration card" means a national registration card issued under and in terms of the National Registration Act; Cap. 126

"national registration number"means the serial number inserted on a national registration card issued in accordance with the National Registration Act; Cap. 126

"nomination day" means the day appointed by the Commission as the day on which a candidate files that candidate's nomination paper with the Commission;

"nomination centre" means a place prescribed by the Commission as a nominating office;

"nomination paper" means a document prescribed by the Commission for the purpose of a candidate registering that candidate's intention to contest an election under this Act;

"observer" means a person accredited as such by the Commission;

"petitioner" in relation to an election petition, means a person who signs and presents an election petition under section *ninety-eight*, and includes a person substituted for a petitioner;

"political party" has the meaning assigned to it in the Constitution; Cap. 1

"polling agent" means an agent appointed by a candidate in respect of a polling station;

"polling assistant" means a person appointed as polling assistant by the Commission;

"polling day" means—

(a) in relation to a general election, the day specified in accordance with the Constitution for the taking of the poll in a general election; and Cap. 1

(b) in relation to a by-election, a day appointed by the Commission for the taking of the poll in a by-election;

"polling district" means a district established by the Commission as a polling district under section *twenty-one;*

"polling station" means a place established as a polling station by the Commission under section *twenty-four;*

"public officer" has the meaning assigned to it in the Constitution; Cap. 1

"presidential election" has the meaning assigned to it in the Constitution; Cap. 1

"presiding officer" means a person appointed as a presiding officer by tbe Commission under section *thirty-seven;*

"Register of Voters" means the Register of Voters prepared and certified by the Commission under section *fourteen;*

"registration officer" means a person appointed as a registration officer by the Commission;

"Registrar" means the Chief Registrar of the High Court, and includes the Deputy Registrar, District Registrar and Assistant Registrar;

"respondent" means a person against whom an election petition is filed in accordance with section *ninety-eight;*

"Returning Officer" has the meaning assigned to it in the Constitution; Cap. 1

"returning officer" has the meaning assigned to it in the Constitution; Cap. 1

"traditional leader" means a paramount chief, senior chief, chief or village headman;

"tribunal" means a local government elections tribunal established in accordance with Article 159 of the Constitution; Cap. 1

"voter" means a person who is registered as a voter and whose name appears in the Register of Voters;

"voter's card" means a voter's card prescribed and issued by the Commission; and

"ward" means any of the divisions into which a council area is divided under section *twenty-five.*

Principles of electoral system and process

3. Subject to the Constitution, the principles applied in 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.

Administration, enforcement and prosecution

Cap. 1

4. (1) This Act shall be administered and enforced by the Commission and the Commission shall not be subject to the direction or control of any person or authority in the exercise of its functions under the Constitution and this Act.

(2) The Commission shall, in order to ensure compliance with the provisions of this Act, appoint such number of officers as it may consider necessary for purposes of this Act.

(3) An officer appointed pursuant to subsection (2) shall be provided with a letter of appointment which shall be *prima facie* evidence of that person's appointment.

(4) An officer shall, on demand by a person affected by the exercise of the powers of that officer under this Act, produce for inspection the letter referred to in subsection (3).

(5) The Anti-Corruption Commission shall investigate and prosecute any corrupt practice committed under this Act in accordance with the Anti-Corruption Act, 2012. Act No. 3 of 2012

(6) The Zambia Police Service shall enforce law and order at polling stations and undertake any criminal proceedings, subject to subsection (2), in respect of an offence committed by any person in contravention of this Act.

Delegation of powers and duties by Commission

5. (1) The Commission may—

(a) delegate any of its powers under this Act to a member, employee or officer of the Commission excluding the power to prescribe anything under this Act or make an appointment under this Act or any other written law; and

(b) instruct a member, employee or officer of the Commission to perform any of its duties under this Act or any other written law.

(2) A delegation or instruction made under subsection (1)—

(a) shall be subject to any limitations and conditions that the Commission may impose; and

(b) does not prevent the Commission from exercising or performing the assigned power or duty.

(3) The Commission may, by statutory order, confer powers or impose duties on an officer or authority of the Government or council for the purpose of discharging its functions under this Act.

Delegation of powers and duties by Chief Electoral Officer

6. (1) The Chief Electoral Officer may—

(a) delegate any of the powers of the Chief Electoral Officer under this Act or any other law to an employee or officer of the Commission; or

(b) instruct an employee or officer of the Commission to perform any of the duties of the Chief Electoral Officer under this Act or any other written law.

(2) Subsection (2) of section *five* with the necessary modification, shall apply to a delegation or instruction of the Chief Electoral Officer under subsection (1).

PART II

REGISTRATION OF VOTERS AND REGISTERS

Continuous voter registration

7. The Commission shall conduct a continuous registration of voters.

Qualification for registration as voter

8. (1) A person qualifies for registration as a voter if that person—

(a) is a citizen of Zambia;

(b) has attained the age of eighteen years; and

(c) is in possession of a national registration card.

(2) The Commission shall register a person as a voter as prescribed.

(3) A person who has been registered in the Register of Voters shall be issued with a voter's card.

(4) A person shall not register as a voter in more than one constituency.

Disqualification from registration as voter

9. (1) The Commission shall not register a person as a voter if that person

(a) is not a citizen of Zambia;

(b) is not in possession of a national registration card;

(c) suffers from a mental disability which makes the person unable to exercise their right to vote;

Cap. 88

(d) is detained under the Criminal Procedure Code during the pleasure of the President;

(e) is disqualified from voting under section *forty-seven*;

(f) is under a sentence of death imposed by a competent court, or a sentence of imprisonment imposed by a court or substituted by a competent authority for some other sentence imposed by that court; or

(g) does not qualify to be registered as a voter as may be prescribed;

(2) In this section, the reference to a sentence of imprisonment shall not be construed as including a sentence of imprisonment the execution of which is suspended or a sentence of imprisonment imposed in default of payment of a fine.

De-registration of voter

10. A registration officer shall de-register a voter if the registration officer is satisfied that the voter—

(a) does not qualify to be registered as a voter;

(b) no longer meets the qualifications for registration as specified in section *eight*;

(c) has been fraudulently registered; or

(d) obtained the registration through submission of false information or making of a misleading statement.

Notification by registration officer

11. (1) A registration officer shall notify a person—

(a) whose registration as a voter has been refused;

(b) whose application to have a change of name or ordinary place of residence recorded has been refused;

(c) who has been disqualified from registration as a voter under section *ten*; or

(d) whose registration details have been changed.

(2) A notification given under subsection (1) shall give reasons for the refusal or action taken.

Suspension of registration of voters

12. (1) The Commission may suspend the registration of voters whenever an election is due for the purposes of the conduct of the election.

(2) The Commission shall, where it prescribes the polling day for a byelection, immediately suspend the registration of voters in the district in which the byelection is to take place until the byelection is concluded.

Provisional Register of Voters

13. (1) The Commission shall establish a Provisional Register of Voters as prescribed.

(2) The Provisional Register of Voters shall include the details of persons entitled to vote in an election or referendum under this Act or the Referendum Act. Cap. 14

Register of Voters

14. (1) The Commission shall compile and maintain the Register of Voters as prescribed.

(2) The Register of Voters shall include the details of persons entitled to vote in an election or referendum under this Act or the Referendum Act. Cap. 14

(3) The Register of Voters shall not preclude any person from voting in a referendum in accordance with the Constitution. Cap. 1

Application to change registration details

15. A voter whose name or ordinary place of residence has changed may apply, in the prescribed manner, to have that change recorded in the Register of Voters, except that a person shall not apply when a change of name is due to change in marital status.

Amendments to Register of Voters

16. (1) A registration officer shall—

(a) change the registration details of a voter if the registration officer is satisfied that the details of a voter as reflected in the Register of Voters are incorrect or have changed;

(b) add the name and other particulars of a voter resulting from a new registration, as prescribed; or

(c) delete the name of a voter who is deceased.

(2) A registration officer shall record, in the Register of Voters, a change in a polling district for which a person is registered as a voter if that person's place of ordinary residence after a change in the boundaries of the polling district falls in another polling district.

Objections concerning details in Provisional Register of Voters

17. (1) A person whose name appears in the Provisional Register of Voters may object to an error or omission regarding the person's details, in the prescribed manner, within ninety days' of the publication of the Provisional Register of Voters.

(2) A person may object to an error or omission to the exclusion or regarding the registration details of another person.

(3) A person who objects to another person's registration details shall serve notice of the objection on that person.

(4) The Commission shall consider an objection to the Provisional Register of Voters within fourteen days from the date the objection was made and shall notify the person who made the objection and the registration officer.

(5) A registration officer shall give effect to a decision of the Commission, made under this section, within three days of the decision.

Publication of Register of Voters

18. (1) A copy of the Register of Voters, as it exists at any time, shall be available for inspection during office hours at the Commission's head office.

(2) A person who requires a copy or extract of the Register of Voters may, upon payment of a prescribed fee, obtain the copy or extract which shall be certified by the Chief Electoral Officer.

(3) A document purporting to be a copy or extract of the Register of Voters, which is duly certified by the Chief Electoral Officer, shall be received in evidence in any legal proceedings as to the matters stated in the Register of Voters.

Inspection of Register of Voters before election

19. (1) The Register of Voters or the segments of the Register of Voters that shall be used for an election shall be the register certified for the purposes of that election.

(2) The Chief Electoral Officer shall certify the Register of Voters, or segments of the Register of Voters, and publish the Register of Voters or the segments of the Register of Voters and make the Register of Voters or the segments of the Register of Voters available for inspection at the following venues:

(a) at the Commission's head office;

(b) at the polling station in each polling district; and

(c) at the office of each council.

Cut-off dates for registration of voters and Register of Voters

20. (1) The Commission may prescribe cut-off dates with respect to the registration of voters and the compilation of the Register of Voters, including the date by which—

(a) a person may apply to be registered as a voter or change the person's registration details;

(b) a registration officer shall give notice of the venue and dates on which the Provisional Register of Voters may be inspected;

(c) the Commission shall consider an objection made under section *seventeen* and notify the objector and the registration officer and a person other than the objector whose name or registration details are involved; and

(d) a registration officer shall complete the compilation of the Register of Voters and publish it.

PART III

POLLING DISTRICTS AND BOUNDARIES

Establishment of polling districts

21. (1) The Commission shall—

(a) establish polling districts for the whole of the territory of the Republic;

(b) determine the boundaries of each polling district in accordance with the criteria provided in section *twenty-two*; and

(c) keep a map of each district.

(2) The polling districts for an election shall be those polling districts which, on the date on which an election is called, are within the area in which the election is called.

Criteria for determining polling district boundaries

22. The Commission shall determine the boundaries of a polling district by taking into account any factor within the proposed polling districts that could affect the free, fair and orderly conduct of elections, including—

(a) the availability of a suitable venue for a polling station;

(b) the number and distribution of eligible voters;

(c) the accessibility of a polling station to voters given—

(i) the radius of the proposed polling district;

(ii) the availability of transport;

(iii) telecommunications facilities; and

(iv) any geographical or physical feature that may impede access to the polling station;

(d) district and provincial boundaries; and

(e) cultural diversity.

Inspection and copies of maps of polling district

23. (1) As soon as practicable after the polling districts have been established, the Chief Electoral Officer shall give notice that copies of the map of each polling district are available for inspection.

(2) The notice referred to in subsection (1) shall be published in the *Gazette* and publicised in the media so as to ensure wide publicity of the maps.

(3) The notice shall state, and the Chief Electoral Officer shall ensure, that copies of—

(a) the maps are available for inspection at the Commission's head office; and

(b) the maps of the polling districts are available for inspection at the office of the person administering the district.

(4) A person may inspect a copy of a map provided for in subsection (1).

(5) The Chief Electoral Officer shall provide a certified copy of a map of a polling district to any person who pays the prescribed fee for that purpose.

Establishment of polling station

24. (1) The Commission shall establish a polling station for an election, in each polling district, as the Commission may prescribe.

(2) The Commission shall, when determining the location of a polling station, take into account any factor that could affect the free, fair and orderly conduct of elections, including—

(a) the number and distribution of eligible voters in the polling districts;

(b) the availability of suitable venues for polling stations;

(c) the distance to be travelled to reach the polling station;

(d) access routes to the polling station;

(e) the availability of transport to the polling station;

(f) traffic density at or near the polling station;

(g) telecommunications facilities at the polling station;

(h) general facilities at the polling station;

(i) the safety and convenience of voters;

(j) any geographical or physical feature that may impede access to or at the polling station; and

(k) the accessibility of the polling station.

(3) The Commission may, before determining the location of a polling station, consult on the proposed location of that polling station with the council for the area in which that polling station shall fall.

(4) The Chief Electoral Officer shall, not later than the date stated in the election timetable, publicise a list containing the addresses of the established polling stations available for inspection.

(5) Section *twenty-three* shall apply, with the necessary modifications, to the inspection and obtaining of copies of the established polling stations.

Division of area of councils into wards

25. (1) The Commission shall, after consultation with every council, by statutory order, divide the area of each council into wards, defining the boundaries of the wards by reference to polling districts, and assigning names to the wards and polling districts.

(2) The number of wards into which the area of a council is divided shall be equal to the number of elected councillors prescribed in respect of that council by the Minister under the Local Government Act. Cap. 281

(3) The Commission shall exercise its powers under this section so that each ward comprises one or more complete polling districts.

(4) Whenever the Minister alters the area of a council or the number of councillors of a council, the Commission shall, after consultation with such council, by statutory order, make such alterations to the boundaries of the wards of such council or to the division of the area of such council into wards as may be necessary to give effect to the provisions of this section.

(5) Whenever the Commission is satisfied that there has been a material alteration in the number of registered voters in the area of a council or of any of the wards into which such area is divided, the Commission may, after consultation with the council concerned, exercise in respect of the area of that council or any part of the council the powers conferred by this section.

Election in newly created Council

26. (1) The Commission may, by statutory order, whenever—

(a) a new council is established; or

(b) an alteration is made in the division of the area of an existing council into wards or in the definition of the boundaries of any ward;

direct that an ordinary election of councillors in every ward or in any particular ward of that council shall be held on such date as may be appointed by the statutory order.

(2) A statutory order made under this section shall specify the day or days on which, and the hours within which, returning officers may receive nominations of candidates for election in any ward to which such order relates.

Relocation of polling station in emergencies

27. (1) Despite section *twenty*, the Commission may relocate a polling station if it is necessary to do so for the conduct of a free and fair election.

(2) The Chief Electoral Officer shall publicise the relocation of a polling station among voters in the polling district concerned.

PART IV

Nominations for Elections

Election timetable

28. (1) Subject to the Constitution, the Commission shall, before the polling day—

(a) compile an election timetable for each election to provide for the following:

(i) the closing date of the registration of voters;

(ii) the dates for inspection of the Provisional Register of Voters;

(iii) the date and method for the submission of nominations;

(iv) the date and method for the acceptance of nominations;

(v) the opening and closing dates of the campaign period;

(vi) the date of the election and voting hours for the election;

(vii) any cut-off time for any act to be performed; and

(viii) any other relevant information; and

(b) publish the election timetable in the *Gazette*.

(2) The Commission may amend the election timetable by notice in the *Gazette* if—

(a) it considers it necessary for a free and fair election; or

(b) the polling day is postponed under section *fifty-six*.

(3) The campaign period shall commence and close on such date as the Commission may determine.

Electoral campaign

29. (1) A public officer and public entity shall give equal treatment to candidates.

(2) A candidate and political party has the right to have the content of the candidate's or political party's campaign message reported in public media in a fair and balanced manner.

(3) A candidate or political party may, during an electoral campaign, publish or distribute campaign materials of such a nature and in such a manner as may be prescribed by the Commission.

(4) For the purposes of this section "campaign messages" means an activity, statement or any other form of expression aimed at promoting particular political ideas, policies and strategies for purposes of obtaining votes for a candidate or political party contesting an election.

Nomination of Presidential and Vice-Presidential candidates

30. (1) A candidate for election as President or Vice-President shall deliver to the Returning Officer—

(a) the candidate's nomination paper;

(b) the prescribed election fee, except that a candidate for election as a Vice-President shall not pay the prescribed fee;

(c) the prescribed statutory declaration of the candidate's assets and liabilities; and

(d) an affidavit attesting that the person is qualified for election as President or Vice-President, as the case may be.

(2) A person who swears or affirms falsely under this section commits an offence and is liable, upon conviction, to imprisonment for a term of seven years without the option of a fine.

(3) A candidate delivering a nomination paper, referred to in subsection (1), to the Returning Officer shall be supported by one hundred supporters from each Province who are registered voters in that Province.

Nomination for election in constituency

31. (1) A person who applies to be a candidate for election in any, constituency shall lodge with the returning officer for that constituency that person's nomination paper and an affidavit in the prescribed manner and form.

(2) A nomination submitted under subsection (1) may be withdrawn at any time, before the expiry of the period appointed for lodging nomination papers in respect of the constituency concerned, if the candidate delivers to the returning officer a written notice to that effect.

Conduct of local government elections

32. Subject to the other provisions of this Act, the Commission shall conduct local government elections.

Nomination of candidates in district or ward

33. (1) Subject to subsection (2), a candidate for election in a district or ward of a council shall be nominated by means of a nomination paper in such form as may be prescribed and such nomination paper shall be subscribed, in the presence of the returning officer for that council, by a proposer and a seconder and not less than seven other persons, each of whom shall be a voter registered in a polling district in such ward.

(2) A person appearing before a returning officer for the purpose of subscribing a nomination paper under subsection (1) shall produce a voter's card and a national registration card to the returning officer for inspection as proof of identity.

(3) A person qualifies to be a mayor or council chairperson if that person—

(a) possesses the same qualifications as those specified for a Member of Parliament in Article 70 of the Constitution; Cap. 1

(b) is not a Member of Parliament; and

(c) has a certificate of clearance showing the payment of council taxes, where applicable.

Restriction on nomination papers

34. (1) In an election, a person shall lodge nomination papers in only one constituency, district or ward.

(2) Where, upon the expiry of the period for lodging nomination papers in any constituency, district or ward a person is found to have lodged, and not withdrawn, nomination papers in more than one constituency, district or ward then every one of those nominations shall be invalid.

Appointment of election agents and polling agents

35. (1) A candidate may appoint—

(a) two polling agents for each polling station; and

(b) two election agents for each venue where counting of the votes will take place.

(2) An election or polling agent—

(a) shall be a Zambian citizen or resident permit holder; and

(b) shall not be a candidate in an election.

(3) The appointment and revocation of appointment of a person as an election or polling agent shall be effected in the prescribed manner.

Powers and duties of election or polling agents

36. (1) An election or polling agent may observe the proceedings during—

(a) voting;

(b) the counting of votes; and

(c) the announcement and declaration of the result of an election.

(2) The absence of an election or polling agent from a gazetted or prescribed place where an electoral proceeding is being conducted shall not invalidate those proceedings.

(3) An election or polling agent shall, while at a polling station or venue where the proceedings are taking place—

(a) wear the prescribed identification indicating—

(i) that the person is an election or polling agent; and

(ii) the candidate represented by that election or polling agent; and

(b) comply with any lawful order issued by—

(i) an election officer; or

(ii) a police officer acting on the instructions of an election officer.

PART V
Election Officers

Appointment of presiding officer

37. The Commission shall, after prescribing a date for an election, appoint a presiding officer for each polling station at which the election is conducted.

Powers and duties of presiding officer

38. (1) A presiding officer shall coordinate and supervise the voting at a polling station so as to ensure that the election at the polling station is free and fair.

(2) A presiding officer—

(a) shall exercise the powers and perform the duties assigned to a presiding officer by or under this Act;

(b) shall ensure orderly conduct at a polling station; and

(c) may order a police officer to assist in ensuring orderly conduct at that polling station and the police officer shall comply with the order.

(3) A presiding officer for a polling station or venue for the counting of votes shall coordinate and supervise the counting of votes and announcement of the result of the election at the polling station or venue.

(4) A presiding officer shall exclude from the area within the boundary of a polling station any person other than—

(a) a member, employee or officer of the Commission;

(b) an election or polling agent who is entitled under this Act to be present at a polling station;

(c) a candidate in that election;

(d) an accredited observer or monitor;

(e) a voter present for the purpose of casting a vote; and

(f) a person or category of persons authorised by the Commission to be present at the polling station.

(5) Despite subsection (4), a presiding officer may order a person referred to in paragraphs *(b)* to *(f)* of subsection (4), to leave the area within the boundary of the polling station if that person's conduct is not conducive to a free and fair election at that polling station and shall give that person the reasons for making the order.

(6) If a person refuses to comply with an order under subsection (5), a presiding officer may direct a police officer to forcibly remove that person, and the police officer shall comply with that order.

Appointment of polling assistant

39. The Commission shall appoint for each polling station as many polling assistants as it considers necessary to conduct an election.

Powers and duties of polling assistant

40. A polling assistant shall—

(a) assist the presiding officer in the exercise of the presiding officer's powers and the performance of the presiding officer's duties; and

(b) exercise the powers and perform the duties assigned to a polling assistant by or under this Act.

Appointment of additional persons as election officers

41. (1) The Commission may appoint as many additional persons as election officers as may be necessary to enable the Commission to exercise its powers and perform its duties effectively during an election.

(2) A person appointed by the Commission under this section shall exercise any power and perform any duty assigned to an election officer by or under this Act.

(3) An appeal shall not be brought against a decision by the Commission to appoint a person as an election officer or to dismiss an election officer.

(4) Despite subsection (3), a person may object to the appointment of an election officer under this section if the person appointed is disqualified under section 42 (3).

General provisions concerning appointment of election officer

42. (1) The Commission shall determine, in writing, the terms and conditions of appointment of an election officer.

(2) The assignment of a power or duty to an election officer shall not prevent the Chief Electoral Officer from exercising that power or performing that duty.

(3) A person shall not be appointed as an election officer or remain in that office if that person—

(a) is a candidate contesting an election;

(b) is an election or polling agent in an election;

(c) holds political office in a registered party or is affiliated to a political party; or

(d) was convicted of an offence or reported of any corrupt practice or illegal practice, under this Act, within a period of five years preceding an election.

(4) A person shall not be appointed as an election officer unless that person signs a prescribed undertaking which shall include an undertaking to be bound by—

(a) the Code; and

(b) a declaration of secrecy.

(5) An election officer shall exercise the powers and perform the duties assigned to that election officer subject to the direction, control and discipline of the Commission.

(6) An election officer shall not place in jeopardy that officer's independence or harm the credibility, impartiality, independence or integrity of the Commission by any membership, association, statement or conduct.

(7) An appointment as an election officer does not constitute an employment relationship.

(8) The Commission may dismiss an election officer for—

(a) misconduct, incompetence or incapacity;

(b) absence from duty without leave of the Chief Electoral Officer;

(c) a material contravention of this section;

(e) a material contravention of the declaration of secrecy; or

(f) any other consideration related to a free and fair election.

Immunity of election nfficer

43. An election officer shall not be liable for any loss suffered by a person as a result of an act performed or omitted in good faith in the exercise of a power or the performance of a duty under this Act.

PART VI
VOTING

Qualifications for voting

44. A voter is entitled to vote at an election held in a district, constituency or ward.

Identification of voter

45. A voter shall produce identification documents to a presiding officer as may be prescribed.

One vote and secrecy

46. (1) A voter shall not be entitled to vote more than once in the same election.

(2) A poll shall be taken by means of a secret ballot in accordance with the Constitution, this Act and as may be prescribed.

Dis-qualification from voting

47. A person shall not be entitled to vote at an election if, at the date of the election, that person is in lawful custody or the person's freedom of movement is restricted under any written law.

Special vote

48. (1) The Commission may allow a person to apply for a special vote if that person cannot vote at a polling station in the polling district in which the person is registered as a voter due to that person's—

(a) physical infirmity or disability;

(b) pregnancy;

(c) absence from that polling district while serving as an election officer in the election concerned; or

(d) while on duty as a member of the security services in connection with the election.

(2) The Commission shall prescribe the procedure and conditions under which a voter who is unable to vote in the polling district in which that voter is registered may apply for a special vote.

Election officers at polling stations

49. On polling day each polling station shall be staffed by the—

(a) presiding officer appointed for that polling station;

(b) polling assistants appointed for that polling station; and

(c) other officers appointed by the Commission.

Hours of voting

50. (1) The Commission shall prescribe the voting hours for an election.

(2) The Commission may, where it is necessary to do so, prescribe different voting hours for different polling stations.

(3) The Commission shall publish the prescribed voting hours in the media.

(4) A polling station shall—

(a) open for voting at the prescribed time; and

(b) subject to subsection (7)*(b)*, remain open for voting until the prescribed time or such later time as the Commission may determine under subsection (7)*(a)*.

(5) A person shall not be admitted to a polling station for the purpose of voting after the polling station has closed for voting.

(6) Voting at a polling station shall continue until every voter who had reported at a polling station to vote at the time prescribed for voting hours has voted.

(7) The Commission—

(a) may extend voting hours at a polling station after the voting day or prescribed time; and

(b) may temporarily close a polling station for part of a polling day if it is temporarily impossible to conduct an election at that voting station.

Ballot paper

51. Subject to the other provisions of this Act and section *fifty-two*, the Commission shall prescribe the form and design of a ballot paper and the manner in which ballot papers issued shall be accounted for.

Design of ballot paper

52. (1) Despite section *fifty-one*, a ballot paper shall be designed in a way that prevents fraudulent voting.

(2) A ballot paper shall include—

(a) a portrait of the candidate nominated for elections to the office of President, Member of Parliament, mayor, council chairperson and councillor; and

(b) the symbol of a political party registered with the Commission under which a candidate shall stand for elections and where the candidate is an independent candidate, the symbol the Commission shall allocate to the independent candidate.

(3) A ballot paper shall be colour coded so as to differentiate the ballot paper for use in a presidential, parliamentary or local government elections.

Ballot boxes

53. (1) The Commission shall use in an election transparent ballot boxes capable of being securely closed.

(2) The Commission shall prescribe the manner in which ballot boxes shall be—

(a) numbered and labelled; and

(b) closed, secured, opened, sealed and unsealed.

Voting compartments

54. (1) Subject to subsection (2), the Commission shall prescribe the design and material of voting compartments to be used in an election.

(2) A voting compartment shall, while screening a voter from observation by other persons when marking a ballot paper, be designed and placed in such a manner as to ensure that a clear view of the voters' back can be observed from the outside.

Conduct of general election Cap. 1

55. A general election shall be held in accordance with the Constitution, this Act and as may be prescribed.

Postponement of voting at polling station

56. (1) If it is not possible to conduct a free and fair election at a polling station on a prescribed polling day, the Commission may, at any time before voting at the polling station has commenced, postpone voting at that polling station.

(2) A postponement under subsection (1) shall be—

(a) effected in the prescribed manner;

(b) to a day that would fall within the period referred to in section *twenty-eight;* and

(c) publicised in the media so as to ensure wide publicity of the postponement of the polling day at the polling station.

Postponement of by-election

57. The Commission may postpone the polling day of a by-election if it is satisfied that—

(a) the postponement is necessary for ensuring a free and fair election; and

(b) the polling day for the election shall fall within the period required by the Constitution.

Cap. 1

Voting materials

58. (1) The Commission shall supply, before voting opens at a polling station, the voting materials necessary for the election at that station including—

(a) ballot papers;

(b) ballot boxes;

(c) voting compartments;

(d) a certified register of voters for the polling district concerned; and

(e) a document to be signed by the presiding officer detailing the voting materials entrusted to that presiding officer.

(2) A presiding officer shall be responsible for the safe-keeping of all the voting materials supplied to that presiding officer.

Initial procedures

59. A presiding officer shall, immediately before opening a polling station for voting—

(a) show all accredited observers, monitors, election and polling agents present, that each ballot box to be used at that polling station is empty; and

(b) in the presence of the accredited observers, monitors, election and polling agents, close, seal and secure the ballot boxes in the prescribed manner.

Voting procedure

60. (1) Subject to section *forty-eight*, a voter shall only vote at the polling station in the polling district for which that voter is registered.

(2) A voter is entitled to vote at a polling station—

(a) on production of that voter's national registration card and voter's card to the presiding officer or election officer at the polling station; and

(b) if that voter's details are in the certified segment of the Register of Voters for the polling district concerned.

(3) When a voter produces a national registration card to the presiding officer or election officer as required by subsection (2), the presiding officer or election officer shall examine the identity document and determine whether—

(a) the voter is the person described in that national registration card;

(b) the voter's details are in the certified segment of the Register of Voters for the polling district concerned; and

(c) the voter has not already voted in the election.

(4) For the purposes of subsection (3) (c), the presiding officer or election officer shall examine the voter's hands to ensure that the voter does not possess the mark indicating that the voter has already voted.

(5) If the presiding officer or election officer is satisfied in respect of all the matters referred to in subsection (3), the presiding officer shall—

(a) record that the voter is treated as having voted in the election;

(b) mark the hand of the voter in the prescribed manner;

(c) mark the back of a ballot paper for that election; and

(d) hand the ballot paper to the voter.

(6) A voter shall, once the voter has received a ballot paper marked under subsection (5)(c) —

(a) enter an empty voting compartment;

(b) mark the ballot paper in a way that indicates the candidate the voter wishes to vote for;

(c) fold the ballot paper to conceal the voter's vote;

(d) cast the ballot paper in the ballot box; and

(f) without delay leave the voting station.

Assistance to voters with disabilities

61. (1) A person may assist a voter to vote where—

(a) the voter requires assistance due to a physical disability;

(b) the voter has requested to be assisted by that person; and

(c) the presiding officer is satisfied that the person assisting the voter has attained the age of eighteen years.

(2) In the absence of a person referred to in subsection (1), the presiding officer or another election officer, at the request of a voter who is unable to read, shall assist that voter to vote.

(3) Subject to subsection (2), the presiding officer or election officer shall assist voters in the presence of—

(a) a person appointed by the presiding officer or an accredited observer or monitor, if available; or

(b) two election agents of different candidates, if available.

(4) A presiding officer shall record in a copy of the Register of Voters, by means of a mark placed next to the name of the voter concerned, that the presiding officer or another person has assisted the voter as provided under this section and give the reasons for doing so.

(5) A person assisting another person under subsection (2) shall maintain the secrecy of the vote cast by the person being assisted.

Issuance of new ballot paper

62. (1) If a voter accidentally marks a ballot paper in a way that does not indicate for whom the voter wishes to vote and the ballot has not yet been placed in the ballot box—

(a) the voter may return that ballot paper to the presiding officer or a polling assistant;

(b) the presiding officer or polling assistant shall deal with the ballot paper in accordance with subsection (2), and shall give the voter a new ballot paper in accordance with this section; and

(c) the voter may vote in accordance with section *sixty*.

(2) Upon receiving a ballot paper from a voter under subsection (1), the presiding officer or a polling assistant shall mark "cancelled" on the back of the ballot paper and file it separately to be dealt with in accordance with section *sixty-three*.

Spoilt ballot papers

63. Where a voter inadvertently deals with a ballot paper in such manner that it cannot be used as a valid ballot paper, the voter shall deliver that ballot paper to the presiding officer and, if the presiding officer is satisfied that the ballot paper has been spoilt inadvertently, the presiding officer shall issue another ballot paper to the voter, and shall cancel the spoilt ballot paper and the counterfoil to which it relates.

Objections concerning voting

64. (1) A person may, at any time before a voter is handed a ballot paper, object to that voter being entitled to vote or to vote at the polling station concerned.

(2) A person may object to a voter's vote where the voter—

(a) has already voted;

(b) is not the owner of the voter's card;

(c) is not registered at the polling station;

(d) is not a citizen; or

(e) is disqualified from voting.

(3) An election agent or a voter may object to any conduct of an election officer or any other person present at a polling station.

(4) An objection under this section shall be made to the presiding officer in the prescribed manner.

(5) A presiding officer shall make a decision on the objection and notify the objector and any other parties involved in the objection of the presiding officer's decision in the prescribed manner.

(6) An appeal against the decision of a presiding officer may be made to a returning officer in the prescribed manner.

(7) A presiding officer or returning officer shall keep a written record of each objection and decision made under this section in the prescribed manner .

Sealing of full ballot boxes

65. (1) As soon as a ballot box is full, a presiding officer, in the presence of an accredited observer, monitor or polling agent, shall seal the ballot box and allow the agents to affix their seals to the ballot box.

(2) Immediately after the last vote has been cast, every remaining used ballot box shall be similarly dealt with.

(3) A sealed ballot box shall remain—

(a) sealed until opened for the counting of votes; and

(b) in the polling station until the commencement of the counting of the votes.

Completion of ballot paper account form and sealing of voting materials

66. (1) A presiding officer shall, at the close of a polling station, in the presence of an accredited observer, monitor or election agent

(a) complete a ballot paper account form reflecting the number of—

(i) ballot boxes entrusted to that presiding officer;

(ii) used ballot boxes;

(iii) unused ballot boxes;

(iv) ballot papers entrusted to that presiding officer;

(v) issued ballot papers;

(vi) unissued ballot papers; and

(vii) cancelled ballot papers;

(b) seal each unused ballot box entrusted to that presiding officer; and

(c) seal in separate ballot boxes

(i) the certified segment of the Register of Voters for that polling district;

(ii) the unused ballot papers entrusted to that presiding officer;

(iii) the spoilt ballot papers; and

(iv) the written record of any objections concerning voting.

Place and time of counting of votes

67. (1) Votes shall be counted at the polling station at which those votes were cast.

(2) A presiding officer shall ensure that the procedures set out in this Part relating to the counting of votes commences immediately after the polling station is closed for voting and continue the counting of votes until completion.

(3) The procedures provided for in this Part relating to the counting of votes may be suspended only with the approval of the Commission and, if they are suspended, the presiding officer shall ensure the safekeeping of all the voting materials entrusted to the presiding officer until the counting of votes has been completed.

Counting of votes and announcement of provisional results

68. (1) A presiding officer shall open the ballot boxes and—

(a) cause the ballot papers to be sorted on the basis of the ballot papers for each election, if more than one election was held at a polling station on the same day;

(b) cause the ballot papers for each election to be sorted and compare them with the number of ballot papers issued in the prescribed manner;

(c) cause the votes cast in each election to be counted in the prescribed manner; and

(d) announce and publish the result of each count at that polling station in both figures and words in the prescribed manner.

(2) A presiding officer shall reject a ballot paper—

(a) that indicates the identity of the voter;

(b) on which a vote is cast for more than one candidate;

(c) that is unmarked;

(d) that is marked in such a way that it is not reasonably possible to determine the voter's choice;

(e) that does not bear the official mark required in terms of section *sixty* (5) (c); or

(f) that is not an official ballot paper.

(3) The presiding officer shall mark A for rejection on the back of each rejected ballot paper and file the rejected ballot paper separately.

Objections concerning sorting of ballot papers

69. (1) An election or polling agent may object to any alleged irregularity in the sorting of the ballot papers.

(2) An objection under subsection (1) shall be made to a presiding officer, in the prescribed form, at any stage before the presiding officer has commenced the count.

(3) Section *sixty-four,* with the necessary modifications, applies to an objection under this section.

Objections concerning counting of votes and announcement of provisional result

70. (l) An election or polling agent may object to an alleged inaccuracy in the counting of the votes or the announcement of a result under section *seventy-one.*

(2) An objection under subsection (l) shall be made to a presiding officer, in the prescribed form, at any stage before the presiding officer has announced the result.

(3) A presiding officer shall determine the objection and decide whether to order a recount.

(4) A presiding officer shall notify the objector and any other party involved in the objection, of the decision made under subsection (3).

(5) If a presiding officer orders a recount, the presiding officer shall announce the result afresh.

(6) An appeal against the decision of a presiding officer may be made to the returning officer in the prescribed form.

(7) A presiding officer shall keep a written record, in the prescribed form, of each objection under subsection (l) and each decision under this section.

Procedure concerning provisional results and voting materials

71. (1) After announcing the result at a polling station, a presiding officer shall complete a form, as may be prescribed, reflecting—

(a) the number of ballot papers supplied to the polling station;

(b) the result at the polling station;

(c) the number of rejected ballot papers;

(d) the number of spoilt ballot papers; and

(e) the number of unused ballot papers.

(2) When a presiding officer has complied with subsection (1), the presiding officer shall publicly announce the result of the count at the polling station to members of the public, the accredited observers, monitors, election and polling agents present at the polling station.

(3) When the presiding officer has complied with subsection (2), the presiding officer shall inform the returning officer of the result of that count at the polling station.

(4) When the presiding officer has complied with subsection (3), the presiding officer shall—

(a) seal in separate ballot boxes each of the items mentioned in subsection (l) and the written record of any objections; and

(b) deliver the form, completed in terms of subsection (l), and the sealed ballot boxes to the returning officer.

Announcement and declaration of results by returning officer

72. (1) Upon receipt of the items mentioned in section *seventy-one*, a returning officer shall tally the results of the votes received from the polling station in the constituency, district and ward and shall—

(a) announce the results of the votes for the presidential and mayoral or council chairperson elections; and

(b) declare the results for the National Assembly and Ward election.

(2) The returning officer shall submit the results referred to in subsection (1) (a) and (b) to the Commission.

Announcement and declaration of results in Presidential election

73. (1) The Returning Officer shall tally, announce and declare the result of a presidential election as soon as they are received.

(2) The Returning Officer shall announce and declare the result of a presidential election without having received the results of all polling stations if—

(a) to wait for the receipt of the result from every polling station would unduly and unreasonably delay the determination and declaration of the result of that election; and

(b) the outstanding results are not likely to materially influence the overall result of that election.

Electronic transmission of results

74. The Commission may use electronic means to transmit results from polling stations.

Revoting at polling station

75. (1) If ballot papers used in an election at a polling station are lost, destroyed or unlawfully removed before the votes cast at the polling station have been counted and announced, the Commission shall allow a revote at that polling station.

(2) A revote at a polling station shall be—

(a) conducted on a date that would fall within the period referred to in section *twenty-eight;*

(b) publicised in the media so as to ensure wide publicity of the date determined for the revote; and

(c) conducted in accordance with a procedure prescribed by the Commission.

Correction of mistakes

76. The Commission may correct a mistake committed by an electoral officer in the tabulation of results within seven days after the declaration of the results.

PART VII

OBSERVERS, MONITORS AND VOTER EDUCATION

Accreditation of observers and monitors

77. (1) A juristic person may apply to the Commission, in the prescribed manner, for accreditation to observe or monitor an election.

(2) The Commission may require any information it may consider necessary in support of an application under subsection (1).

(3) The Commission shall, where it decides to to accredit an applicant—

(a) issue the applicant with a certificate of accreditation in the applicant's name, stating the period and other conditions of accreditation; and

(b) enter the applicant's name in the register of persons accredited as observers and monitors.

(4) The Commission may accredit an applicant, without the payment of a fee, to observe or monitor an election after considering the application and any other information provided by the applicant, and whether—

(a) the accreditation of the applicant shall promote conditions conducive to a free and fair election; and

(b) the persons appointed by the applicant shall—

(i) observe the election impartially and independently of any registered party or candidate contesting that election;

(ii) be competent and professional in observing the election; and

(iii) subscribe to a code governing observers and monitors issued by the Commission under this Act.

(5) The Commission shall, where it decides not to accredit the applicant, inform the applicant accordingly, in writing, and give the reasons for its decision.

(6) If a person accredited as an observer or monitor fails to comply, to a material extent, with the conditions of the accreditation, the Commission may cancel that accreditation and, in writing, notify the person concerned of the cancellation and state the reasons for such cancellation.

(7) Any person may inspect the register and copies of the certificates of persons accredited as observers and monitors.

(8) The register and copies of the certificate shall be kept at the Commission's head office.

(9) The Chief Elections Officer shall provide a certified copy of, or extract from, the register or a certificate to any person upon payment of the prescribed fee.

(10) A person representing an accredited observer or monitor shall abide by the Code.

(11) A person representing an accredited observer or monitor who is found guilty of violating any election law shall be disqualified from observing or monitoring an election.

(12) A register of juristic persons and institutions accredited as observers or monitors and copies of the certificates of the observers and monitors shall be kept at the Commission's head office.

(13) In this section "juristic person" includes an institution and organisation registered under the Non-Governmental Organisations Act, 2009.

Act No. 16 of 2009

Powers and duties of accredited observers and monitors

78. (1) An accredited observer or monitor may, in relation to an election for which that observer or monitor is accredited, observe the proceedings concerning voting, the counting of votes and the announcement and declaration of the election results.

(2) Whilst observing an election, a person appointed by an accredited observer or monitor shall wear the prescribed identification indicating that the person is representing an accredited observer or monitor.

(3) A person appointed by an accredited observer or monitor shall comply with any order issued by an election officer or a police officer acting on the instructions of an election officer.

Provision of voter education generally

79. (1) Any natural or juristic person may provide voter education for an election.

(2) Any natural or juristic person providing voter education shall do so in a manner that—

(a) is impartial and independent of any registered party or candidate contesting an election; and

(b) shall promote conditions conducive to free and fair elections.

Voter education

80. Despite section *eight*, the Commission shall provide voter education for an election.

PART VIII

Elections Offences

Bribery

81. (1) A person shall not, either directly or indirectly, by oneself or with any other person corruptly—

(a) give, lend, procure, offer, promise or agree to give, lend, procure or offer, any money to a voter or to any other person on behalf of a voter or for the benefit of a voter in order to induce that voter to vote or refrain from voting or corruptly do any such act as aforesaid on account of such voter having voted or refrained from voting at any election;

(b) give, lend or procure, offer, promise or agree to give, lend, procure, offer or promise, any money to a voter or for the benefit of a voter or to any other person or on behalf of that person on behalf of any voter or to or for any other person for acting or joining in any procession or demonstration before, during or after any election;

(c) make any gift, loan, offer, promise, procurement or agreement to or for the benefit of any person in order to induce the person to procure or to endeavour to procure the return of any candidate at any election or the vote of any voter at any election;

(d) upon or in consequence of any gift, loan, offer, promise, procurement or agreement, procure or engage, promise or endeavour to procure, the return of any candidate at any election or the vote of any voter at any election;

(e) advance or pay or cause to be advanced or paid any money to or for the use of any other person with the intent that such money or any part thereof shall be expended in bribery at any election, or knowingly pay or cause to be paid any money to any person in discharge or repayment of any money wholly or partially expended in bribery at any election;

(f) before or during any election, receive or contract for any money or loan for oneself or for any other person for voting or agreeing to vote or for refraining or agreeing to refrain from voting at any election;

(g) after any election, receive any money on account of any person having voted or refrained from voting or having induced any other person to vote or refrain from voting at any election; or

(h) convey or transfer or be concerned with the conveyance or transfer of any property, or pay or be concerned with the payment of any money, to any person for the purpose of enabling that person to be registered as a voter, thereby to influence that person's vote at any future election, or pay to or be concerned with the payment of any money on account of any voter for the purpose of inducing that person to vote or refrain from voting.

(2) A person who contravenes any provision of subsection (1) commits an offence.

(3) Nothing in this Act shall be construed as applying to any money paid or agreed to be paid for, or on account of, any expenditure *bona fide* and lawfully incurred in respect of the conduct or management of an election.

Impersonation

82. (1) A person shall not—

(a) at any election, apply for a ballot paper in the name of some other person, living or dead, or of a fictitious person;

(b) having voted once at any election, apply again at the same election for a ballot paper;

(c) vote at any election knowing that the person is not entitled to vote at that election or induce or procure any person to vote at any election knowing that person is not entitled to vote at that election;

(d) apply to be registered as a voter in the name of any other person, whether living, dead or fictitious; or

(e) impersonate—

(i) a representative of a registered political party;

(ii) a candidate in an election;

(iii) a member, employee or officer of the Commission; or

(iv) a person appointed by an accredited observer, or monitor.

(2) A person who contravenes any provision of subsection (1) commits an offence.

Undue influence

83. (1) A person shall not directly or indirectly, by oneself or through any other person—

(a) make use of or threaten to make use of any force, violence or restraint upon any other person;

(b) inflict or threaten to inflict by oneself or by any other person, or by any supernatural or non-natural means,or pretended supernatural or non-natural means, any physical, psychological, mental or spiritual injury, damage, harm or loss upon or against any person;

(c) do or threaten to do anything to the disadvantage of any person in order to induce or compel any person—

(i) to register or not to register as a voter;

(ii) to vote or not to vote;

(iii) to vote or not to vote for any registered political party or candidate;

(iv) to support or not to support any political registered party or candidate; or

(v) to attend and participate in, or not to attend and participate in, any political meeting, march, demonstration or other political event;

(d) interfere with the independence or impartiality of the Commission, any member, employee or officer of the Commission;

(e) prejudice any person because of any past, present or anticipated performance of a function under this Act;

(f) advantage, or promise to advantage, a person in exchange for that person not performing a function under this Act; or

(g) unlawfully prevent the holding of any political meeting, march, demonstration or other political event.

(2) Subject to the other provisions of this Act, a person shall not prevent another person from exercising a right conferred by this Act.

(3) A person, knowing that another person is not entitled to be registered as a voter, shall not—

(a) persuade that other person that, that other person is entitled to be registered as a voter; or

(b) represent to anyone else that the person is entitled to be registered as a voter.

(4) A person, knowing that another person is not entitled to vote shall not—

(a) assist, compel or persuade that other person to vote; or

(b) represent to anyone else that the other person is entitled to vote.

(5) A person who contravenes any of the provisions of subsections (l) to (4) commits an offence.

(6) A person who, by abduction, duress or any fraudulent device or contrivance, impedes or prevents the free exercise of the vote of any voter or thereby compels, induces or prevails upon any voter either to give or to refrain from giving the person's vote at any election, commits an offence.

Illegal practice of publishing false statements in respect of candidates

84. (1) A person shall not, before or during an election, publish a false statement of the illness, death or withdrawal from election of a candidate at that election for the purpose of promoting or procuring the election of another candidate, knowing that statement to be false or not believing it to be true.

(2) A person who, contravenes subsection (1) commits an illegal practice, unless that person had reasonable grounds for believing, and did believe, the statement to be true.

Illegal practice in respect of nomination of candidates

85. (1) A person shall not—

(a) forge or fraudulently destroy any written authority of a candidate or nomination paper; or

(b) deliver to a returning officer any written authority of a candidate or nomination paper or affidavit knowing the same to be forged.

(2) A person who knowingly makes a false statement relating to that person's nomination in that person's nomination paper or affidavit commits an offence.

Illegal practices in respect of public meetings

86. A person shall not, at a lawful public meeting held in connection with the election of any person between the day of the publication of a notice appointing a nomination day and the day on which the result of the election is published, act or incite others to act in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting is called.

Illegal practices relating to the poll

87. (1) A person shall not—

(a) forge, counterfeit or fraudulently deface or fraudulently destroy any ballot paper or the official mark on any ballot paper;

(b) without authority supply any ballot paper to any person;

(c) without authority put into any ballot box any ballot paper which that person is not authorised by law to put in;

(d) sell or offer to sell any ballot paper or voter's card to any person or purchase or offer to purchase any ballot paper or voter's card from any person;

(e) not being a person entitled under this Act to be in possession of a ballot paper or voter's card, have any such ballot paper or voter's card in that person's possession;

(f) without authority destroy, take, open or otherwise interfere with any ballot box or packet of ballot papers in use or intended to be used for the purpose of an election;

(g) without authority print or make any ballot paper or what purports to be or is capable of being used as a ballot paper or any identity document at an election;

(h) manufacture, construct, have in that person's possession, supply, or use for the purpose of an election, or cause to be manufactured constructed, supplied or used for the purposes of any election any appliance, device or mechanism by which a ballot paper may be extracted or manipulated after having been deposited in a ballot box in the course of polling at any polling station; or

(i) at an election obstruct a voter either at the polling station or on that voter's way thereto or therefrom.

Penalty for illegal practices

88. A person who engages in an illegal practice commits an offence and is liable, upon conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a period not exceeding five years, or to both.

Other election offences

89. (1) A person shall not—

(a) within a period prescribed for the receipt of nominations, under this Act, loiter in any public place within four hundred metres from the entrance to a nomination centre;

(b) having been required to leave a nomination office, fail to leave such nomination office or the precincts thereof;

(c) put into any ballot box anything other than the ballot paper which that person is authorised by law to put therein;

(d) without due authority take out of the polling station any ballot paper or be found in possession of any ballot paper outside a polling station;

(e) on any polling day, at the entrance to or within a polling station, or in any public place or in any private place within four hundred metres from the entrance to such polling station

(i) canvass for votes;

(ii) solicit the vote of any person;

(iii) induce any person not to vote; or

(iv) induce any person not to vote for a particular candidate;

(f) on any polling day loiter in any public place within four hundred metres from the entrance to any polling station;

(g) on any polling day exhibit in any public or private place within one hundred metres from the entrance to any polling station any notice or sign, other than an official notice or sign authorised by an election officer under this Act, relating to the election;

(h) not being a presiding officer, an election officer, candidate, an election agent or a polling agent in the course of their functions within a polling station, make any record showing that any particular person has voted in an election;

(i) without lawful authority, destroy, mutilate, deface or remove any notice which is exhibited in accordance with this Act or under any regulations issued under this Act, or any document made available for inspection under this Act and any such regulations;

(j) wilfully obstruct or interfere with a returning officer, presiding officer, or election officer in the execution of their duties;

(k) make a false answer to any question put to that person by a presiding officer or an election officer under this Act;

(l) have any communication with a voter while such voter is in the precincts of a polling station for the purpose of voting;

(m) fail to comply with any requirement or direction to leave a polling station or the precincts thereof; or

(n) being a candidate use a symbol in the course of an election other than the symbol registered with the Chief Electoral Officer in accordance with this Act and any regulations thereunder or, in the case of any other person, associate any candidate with, any symbol in the course of an election other than the candidate's registered symbol.

(2) A person who contravenes any of the provisions of subsection (1) commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

Property in certain election material

90. In a prosecution for an offence in relation to a nomination paper, ballot box or ballot paper, the property in such nomination paper, ballot box, as well as the property in the counterfoil of any ballot paper, shall be vested in the Commission at that election.

Secrecy and penalty for breach of secrecy

91. (1) A person in attendance at a polling station shall maintain, and aid in maintaining, the secrecy of the voting at such station and shall not communicate, except for some purpose authorised by law, to any person, any information as to the name or number on the Register of Voters of any voter who has or has not applied for a ballot paper or voted at such polling station, or as to the official mark or official seal at such polling station.

(2) A person other than a presiding officer or polling assistant in exercise of the presiding officer or polling assistants' functions under this Act shall not, obtain or attempt to obtain in a polling station information as to the candidate for whom any person in such polling station is about to vote or has voted or communicate at any time, to any person, any information obtained in a polling station as to the candidate for whom any person in such polling station is about to vote or has voted, or as to the number on the ballot paper issued to any person at such polling station.

(3) A person in attendance at the counting of the votes shall maintain, and aid in maintaining, the secrecy of the voting and shall not ascertain at the counting the number on any ballot paper or communicate any information obtained at the counting as to the manner in which any vote is given by any particular ballot paper.

(4) A person who contravenes any of the provisions of this section commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

Offences by election officers

92. An election officer who wilfully fails to perform the functions of that office under this Act commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

Offences by printers and publishers

93. (1) A bill, placard, poster, pamphlet, circular or other printed matter having reference to an election shall bear upon the face thereof the name and address of the printer and of the publisher.

(2) A person who prints, publishes or posts, or causes to be printed, published or posted any matter referred to in subsection (1), which does not bear upon the face thereof such name and address of the printer or publisher commits an offence.

(3) The proprietor and publisher of every newspaper shall cause the word advertisement to be printed as a headline to each article or paragraph appearing in that person's newspaper containing electoral matter, the insertion of which is or is to be paid for, and any proprietor or publisher who fails to comply with this provision commits an offence.

(4) For the purposes of this section—

(a) any process for producing copies of a document, other than by copying it by hand, shall be deemed to be printing, and the expression "printed" shall be construed accordingly; and

(b) "electoral matter" shall be deemed to include all matters which, on the face of them, are intended or calculated to affect the result of an election.

Obstruction of officer

94. (1) A person shall not—

(a) wilfully delay or obstruct an officer in the carrying out of that officer's duties and powers under this Act; or

(b) assault an officer in the lawful exercise of that officers duties and power under this Act.

(2) A person who contravenes a provision of subsection (1), commits an offence and is liable, upon conviction, to a fine not exceeding fifty thousand penalty units or to imprisonment for a term not exceeding six months, or to both.

Attempts to commit offence

95. A person who attempts to commit an offence under this Part commits an offence and is liable upon conviction to the penalty specified for that offence.

PART IX

ELECTION PETITIONS

Application to members and officers of Parliament

96. (1) A question which may arise as to whether—

(a) a person has been validly appointed or nominated as a Member of Parliament;

(b) the seat of an elected or nominated Member of Parliament, mayor, council chairperson or councillor, has become vacant, other than a question arising from the election of a candidate as a Member of the Parliament; or

(c) a petition may be heard and determined by the High Court or tribunal upon application made by—

(i) any person to whom the question relates; or

(ii) the AttorneyGeneral;

may be determined by the High Court or a tribunal, as the case may be.

(2) A person who makes an application to the High Court or a tribunal under subsection (1), has the right to appear and be represented before the High Court or tribunal.

(3) Subject to any rules of court or tribunal, the powers, practice and procedure of the High Court or a tribunal in respect of the trial of an election petition under this Part shall apply, with the necessary modifications, to the hearing and determination of such applications.

Avoidance of elections

97. (1) An election of a candidate as a Member of Parliament, mayor, council chairperson or councillor shall not be questioned except by an election petition presented under this Part.

(2) The election of a candidate as a Member of Parliament, mayor, council chairperson or councillor shall 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 provision 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.

(3) Despite the provisions of subsection (2), where, upon the trial of an election petition, the High Court or a tribunal finds that a corrupt practice or illegal practice has been committed by, or with the knowledge and consent or approval of, any agent of the candidate whose election is the subject of such election petition, and the High Court or a tribunal further finds that such candidate has proved that—

(a) a corrupt practice or illegal practice was not committed by the candidate personally or by that candidate's election agent, or with the knowledge and consent or approval of such candidate or that candidate's election agent;

(b) such candidate and that candidate's election agent took all reasonable means to prevent the commission of a corrupt practice or illegal practice at the election; and

(c) in all other respects the election was free from any corrupt practice or illegal practice on the part of the candidate or that candidate's election agent;

the High Court or a tribunal shall not, by reason only of such corrupt practice or illegal practice, declare that election of the candidate void.

(4) An election shall not be declared void by reason of any act or omission by an election officer in breach of that officer's official duty in connection with an election if it appears to the High Court or a tribunal that the election was so conducted as to be substantially in accordance with the provisions of this Act, and that such act or omission did not affect the result of that election.

Presentation of election petition

98. An election petition may be presented to the High Court or a tribunal by one or more of the following persons:

(a) a person who lawfully voted or had a right to vote at the election to which the election petition relates;

(b) a person claiming to have had a right to be nominated as a candidate or elected at the election to which the election petition relates;

(c) a person claiming to have been a candidate at the election to which the election petition relates; and

(d) the AttorneyGeneral.

Relief which may be claimed in election petition

99. Any of the following reliefs may be claimed in an election petition:

(a) a declaration that the election was void; or

(b) a declaration that any candidate was duly elected.

Form and procedure for presentation of election petition

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

(2) An election petition shall be presented—

(a) in the case of an election of a candidate as a Member of Parliament, to the Principal Registry or District Registry of the High Court by lodging it with the Registrar in accordance with this Act; or

(b) in the case of an election of a candidate as a mayor, council chairperson or councillor, to the appropriate tribunal by lodging it with the designated person.

(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.

(4) Where an election petition is presented under this section—

(a) in the case of an election petition presented in respect of an election of a candidate as a Member of Parliament, the Registrar shall, in writing, inform the Speaker of the National Assembly and the Commission of such presentation; and

(b) in the case of an election petition presented in respect of the election of a candidate as a mayor, council chairperson or councillor, the designated person shall, in writing, inform the Commission of the presentation.

Duty of Registrar and designated person to make out list of election petition

101. (1) Subject to the provisions of subsection (2), the Registrar and the designated person shall make out a list of all election petitions presented under this Act, placing them on such list in the order in which they are presented, and the Registrar or the designated person, as the case may be, shall keep at the Registrars office or the designated person's office a copy of the list which shall be open for inspection by any person making application for inspection thereof.

(2) An election petition shall, unless the High Court or a tribunal orders otherwise, be tried in the order in which it stands on the list made out by the Registrar or designated person under subsection (1), but where more election petitions than one are presented in respect of the same election, the election petitions shall be bracketed together and shall be dealt with as one petition, standing, unless the

High Court or a tribunal orders otherwise, in the list in the place where the last of the election petitions would have stood if it had been the only election petition presented in respect of that election.

Rules of practice and procedure, security for costs etc

102. (1) Subject to the other provisions of this Act, the Chief Justice may make rules regulating generally the practice and procedure of the High Court and tribunals with respect to the presentation and trial of election petitions, including rules as to the time within which any requirement of the rules is to be complied with and as to the costs of and incidental to the presentation and trial of the election petitions and as to the fees to be charged in respect of proceedings therein, and generally as regard to any other matter relating thereto as the Chief Justice may consider necessary or desirable.

(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.

Withdrawal of election petition

103. (1) A petitioner shall not withdraw an election petition without the leave of the High Court or a tribunal.

(2) An application for leave to withdraw an election petition shall not be made until notice of intention to withdraw the election petition has been given in such manner as the Chief Justice may prescribe.

(3) Where an election petition is presented by two or more petitioners, an application to withdraw the election petition shall not be made except with the consent of all the petitioners to it.

(4) The High Court or a tribunal may, upon an application for leave to withdraw an election petition, make such order as to costs as it may consider just.

Substitution of new petitioners

104. (1) Upon the hearing of an application under section *one hundred and three* for leave to withdraw an election petition, any person who might have been a petitioner in respect of the election to which that election petition relates may, despite the provisions of

section *one hundred*, apply to the High Court or tribunal to be substituted for the petitioner applying to withdraw, and the High Court or a tribunal may, if it grants leave to the petitioner to withdraw, order that person (hereinafter referred to as "the substituted petitioner") to be substituted for the petitioner.

(2) Subject to the other provisions of this section, the substituted petitioner shall, as nearly as may be, stand in the same position, and be subject to the same liabilities, under this Act as the petitioner for whom a substitution was made (hereinafter referred to as "the original petitioner").

(3) Where the High Court or a tribunal makes an order under subsection (1), it may direct that the security for costs given by the original petitioner shall remain as security for any costs caused thereafter by the substituted petitioner upon the trial of the election petition, and may direct that, to the extent of the amount of the security, the original petitioner shall be liable to pay the costs of the substituted petitioner.

(4) Unless the High Court or tribunal gives directions as in subsection (3), section *one hundred and three* (1) and (2) shall apply to the substituted petitioner as they apply in relation to a petitioner presenting an election petition.

Abatement of election petitions

105. (1) If a sole petitioner or the survivor of several petitioners dies, then subject to the provisions of this section, no further proceedings shall be heard upon the election petition.

(2) The death of a petitioner shall not affect that petitioner's liability for the payment of costs previously incurred.

(3) On the abatement of an election petition under subsection (1), any person who might have been a petitioner in respect of the election to which that election petition relates may, despite section *one hundred and one* apply to the High Court or tribunal to be substituted as a petitioner in place of the deceased petitioner and the High Court or a tribunal may, if it thinks fit, order that such person be substituted accordingly.

(4) Where the High Court or a tribunal makes an order under this section for the substitution of a person in place of a deceased petitioner such person shall, as nearly as may be, stand in the same position, and be subject to the same liabilities, under this Act as the

deceased petitioner would have been but for the death, and section *one hundred and three* (1) and (2) shall apply to the person as they apply in relation to a petitioner presenting an election petition.

Trial of election petitions

106. (1) An election petition shall be tried and determined by the High Court or a tribunal in open court—

(a) in the case of the election of a candidate as a Mayor, council chairperson or Councillor, within thirty days from the date of filing an election petition; and

(b) in the case of the election of a candidate as a Member of Parliament, within ninety days from the date of filing an election petition.

(2) Where an election petition is not tried and determined within the period specified in subsection (1) due to a failure by the petitioner to actively prosecute the petition, the High Court or a tribunal shall dismiss the petition for want of prosecution.

(3) The High Court or a tribunal may adjourn the trial of an election petition from time to time and from place to place.

(4) Subject to the provisions of this Act, the High Court may in respect of the trial of an election petition, exercise such powers within its civil jurisdiction as it may deem appropriate.

(5) On the trial of an election petition, a verbatim record of all evidence given orally in the trial shall be taken and transcripts of the record shall, at the conclusion of the proceedings, be delivered to the Commission by the Registrar or designated person, as the case may be.

Witnesses

107. (1) On the trial of an election petition, the High Court or a tribunal may—

(a) order a person who appears to the High Court or a tribunal to have been concerned in the election to attend as a witness at the trial; and

(b) examine any witness or any person who is present at the trial although such witness or person is not called as a witness by any party to the proceedings, except that after the examination by the High Court or a tribunal of a witness or person, the witness or person may be cross examined by or on behalf of the petitioner or the respondent.

(2) A person who is called as a witness at the trial of an election petition shall not be excused from answering any question relating to any offence connected with an election on the ground that the answer thereto may tend to incriminate that person, or on the ground of privilege.

(3) Despite subsection (2), a witness who answers to the satisfaction of the High Court or a tribunal every question which is required to be answered under subsection (2), and the answers to which may tend to incriminate that witness, shall not be liable to prosecution for any offence committed by that witness in connection with the election and in respect of which that witness is examined and the witness shall be entitled to receive a certificate of indemnity under the hand of the Registrar or designated person as the case may be, stating that the witness is freed and discharged from liability to prosecution for that offence.

(4) Despite subsection (2), an answer by a witness to a question before the High Court or tribunal under subsection (2) shall not, except in the case of any criminal proceedings for giving false evidence in respect of the evidence, be admissible in any proceedings, civil or criminal, in evidence against that witness.

(5) Where a person has received a certificate of indemnity under subsection (3), and any legal proceedings are at any time brought against that person for any offence to which the certificate relates, the court having conduct of the case shall, on proof of the certificate of indemnity, stay the proceedings and may award to that person such costs as that person may have been put to in the proceedings.

(6) All reasonable expenses incurred by any person in attending at or appearing before the High Court or a tribunal to give evidence as a witness at the trial of an election petition shall be allowed to that person according to the scale of allowances and expenses appropriate in civil proceedings before the High Court.

Conclusion of trial of election petition

108. (1) At the conclusion of the trial of an election petition, the High Court or a tribunal shall determine whether the respondent, or any other, and which, person, was duly elected, or whether the election to which the election petition relates was void, and the Registrar or designated person shall, as soon as is practicable, submit a copy of such determination to—

(a) in the case of an election petition in the High Court, the Speaker of the National Assembly and the Commission; and

(b) in the case of an election petition in a tribunal, the Commission.

(2) Where the High Court or a tribunal determines that the respondent was duly elected, the election shall be and remain valid.

(3) Where the High Court or a tribunal determines that the respondent was not duly elected but that some other person was duly elected, that other person shall be deemed to have been elected accordingly.

(4) Where the High Court or a tribunal determines that the respondent was not duly elected, and that no other person was duly elected, at the election concerned, the vacancy in the membership of the National Assembly or a Council in respect of which that election was held shall be deemed to continue until duly filled.

(5) Where a determination under subsection (1) alters the results of an election as previously declared, the Commission shall publish the results as so altered in the *Gazette*.

(6) Where it appears to the High Court or a tribunal upon the trial of an election petition that any corrupt practice or illegal practice has been committed by any person in connection with the election to which the election petition relates, the High Court or tribunal shall, at the conclusion of the proceedings, prepare a report stating

(a) the evidence given in the proceedings in respect of the corrupt practice or illegal practice;

(b) the names and particulars of any person by whom the corrupt practice or illegal practice was, in the opinion of the High Court or a tribunal, committed;

(c) in the event that there is an appeal, the Constitutional Court shall prepare the report, except that the Court shall not state the name of any person under this paragraph unless the person has been given an opportunity of appearing before the Court and of showing cause why that person's name should not be so stated.

(7) The Registrar or designated person shall deliver a copy of every report prepared by the High Court or a tribunal under subsection (6) to—

(a) the Commission; and

(b) the Director of Public Prosecutions.

(8) The Commission shall, as soon as it receives the report under subsection (7), recommend the prosecution of the person stated in the report by the Director of Public Prosecutions.

Costs

109. (1) Subject to the provisions of this section, costs, charges and expenses of, and incidental to, the presentation and trial of an election petition shall be borne in such manner and in such proportions as the High Court or a tribunal may order and in particular, any costs which in the opinion of the High Court or a tribunal have been caused by any vexatious conduct or by any frivolous or vexatious allegations or objections on the part of the petitioner or of the respondent, may be ordered to be paid by the party by whom such costs have been caused.

(2) Where, on the trial of an election petition, the High Court or a tribunal determines that the respondent was not duly elected and is of the opinion, having regard to the circumstances, that it would be just and reasonable to relieve any party to the election petition from all or a portion of the costs thereof, then—

(a) if the High Court or a tribunal finds that the election of the respondent was due to a mistake or improper performance or failure or performance of any function *bona fide* made by any election officer, it may, after sufficient notice to the Attorney-General to show cause to the contrary, make such order as to the payment by the State of the costs of the proceedings or a portion thereof, as it may deem proper;

(b) if the High Court or a tribunal finds that the election of the respondent was due to a mistake or improper performance, or failure of performance of any function *mala fide* made by any election officer, it may, after sufficient notice to such officer to show cause to the contrary, make such order as to the payment by such election officer of the costs of the proceedings or a portion thereof, as it may consider proper.

(3) The High Court or a tribunal may, on application made by any person to whom any costs, charges or expenses are payable under this Act, order the same to be paid out of any deposit made to secure the same, or by any surety who gave a recognizance to secure the same.

(4) The notice of an application made pursuant to subsection (3) shall be given, in such manner as may be prescribed by rules of the High Court or a tribunal, to the party by or on whose behalf the deposit was made or for whom the surety gave a recognizance, requiring the party, or the surety and the party, as the case may be, to state, within the time and in the manner as prescribed, whether that party resists the application.

(5) Where, on the trial of an election petition, any person appears to the High Court or a tribunal to have been guilty of any corrupt practice or illegal practice relating to the election which is the subject of the election petition, the High Court or a tribunal may, after giving that person an opportunity of making a statement to show cause why the order should not be made, order the whole or a portion of the costs of, or incidental to, the trial of the election petition to be paid by that person to such person or persons as the High Court or a tribunal may determine.

(6) Execution may be levied under any order for payment made by the High Court or a tribunal under this section in the same manner and to the same extent as execution may be levied under a judgement of the High Court or tribunal for the payment of money.

(7) Money deposited as security shall, when no longer needed as security for costs, be returned to the person in whose name it is deposited or to any person entitled to received the same by order of the High Court or a tribunal which may be upon motion after notice and proof that all just claims have been satisfied or otherwise sufficiently provided for as the High Court or a local government elections tribunal may require.

PART X

General Provisions

Code of Conduct

110. (1) The Commission shall enforce the Code of Conduct specified in the Schedule.

(2) The Commission may disqualify a political party or candidate in breach of the Code.

Appeal against decision of registration officer

111. (1) A person aggrieved by a decision or action taken by a registration officer may appeal to the Commission in the prescribed manner.

(2) The Commission shall notify the appellant of its decision within thirty days from the date of receipt of the appeal.

Powers to decide objections and appeals

112. (1) Whenever the Commission, is required under this Act to decide an objection, dispute, complaint or an appeal, the Commission may resolve the issue, that is the subject of the objection, dispute, complaint or appeal, through conciliation or mediation where applicable.

(2) The Commission shall prescribe the manner for handling any objection, dispute, complaint or appeal under this Act.

Constitution of conflict management committees

113. (1) The Commission shall, for purposes of resolving electoral disputes, constitute such number of conflict management committees as the Commission may determine.

(2) A conflict management committee shall comprise, as members, such number of conflict management officers appointed by the Commission, as the Commission shall determine.

(3) The Chairperson of the committee shall be appointed by the Commission and the Vice-Chairperson shall be elected by the members from amongst themselves.

(4) Subject to subsection (5), a member of a committee shall hold office for such period as the Commission shall determine.

(5) A member shall be paid such allowances as the Emoluments Commission may, on the recommendation of the Commission, determine.

(6) A committee shall meet for the transaction of business at such places and times as the Chairperson of the Committee may determine.

(7) The quorum at any meeting of a committee shall be one half of the members of the committee.

(8) There shall preside at any meeting of a committee—

(a) the Chairperson;

(b) in the absence of the Chairperson, the Vice-Chairperson; or

(c) in the absence of both the Chairperson and the Vice-Chairperson, such member as the members present may elect from their number for the purposes of that meeting.

(9) The determination of any matter before a committee shall be according to the votes of the majority of the members present and considering the matter.

(10) A committee may invite any person whose presence in its opinion is desirable to attend and to participate in the deliberations of a meeting of the committee but such person shall have no vote.

(11) A committee shall cause minutes to be kept of the proceedings of every meeting of a committee.

(12) The Commission shall assign persons employed in the Commission to perform such secretarial and administrative functions in connection with a committee as may be necessary for the performance of its functions.

Printing, manufacture, use, removal etc., of election materials

114. The Commission may authorise—

(a) the printing, manufacture or supply of any voting or election material;

(b) the use of the register of voters or any voting or election material for a purpose other than an election purpose; or

(c) the removal or destruction of any voting or election material.

Ownership of voting and election material and disposal

115. (1) The Commission shall own all voting and election materials used for, or provided by it in, an election.

(2) Unless the Constitutional Court, the High Court or a tribunal orders otherwise, the Commission may dispose of the voting and election materials used in a particular election six months after the date on which the final result of the election was declared, in the manner directed by the Commission.

Effect of certain irregularities

116. A mistake in the certified segment of the register of voters under this Act shall not invalidate that register of voters.

Inspection and copying of documents

117. Where this Act requires that documents be publicised, or made available for inspection or copying, the Commission shall endeavour to also publicise or make available those documents in electronic form.

When incapacity may be removed

118. Whenever a person has become subject to any incapacity under this Act by reason of a conviction or by reason of any declaration or report of any court, and any witness who gave evidence against such person upon the proceeding for such conviction, declaration or report is convicted of perjury in respect of that evidence, such person may apply to the High Court or a tribunal which, if satisfied that the conviction, declaration or report, so far as it concerns that person, was based upon perjured evidence, may order that, that person's incapacity shall from that time cease, and the same shall cease accordingly.

Person not required to state how person voted

119. A person who has voted at an election shall not in any proceedings, whether brought under this Act or otherwise, be required, to state for whom the person voted.

Evidence as to holding of election

120. Upon any charge of a corrupt practice or an illegal practice, or any other offence against this Act, alleged to have been committed at or in connection with an election, the certificate of a returning officer that the election mentioned therein was being or had been held shall be sufficient evidence of the fact that such election was being or had been held.

Validation of certain documents

121. A misnomer or inaccurate description of a person or place in a register, nomination paper, notice or other document required for the purposes of this Act shall not affect the full operation of the document with respect to that person or plaee in any case where the description of the person or place is such as to be commonly understood.

Powers of officer

122. (1) An officer may, during the campaign period and on polling day, enter any area, place and premises in which the officer reasonably believes there is being, or had been carried on, an activity that is an offence under this Act, except that an officer shall not enter into a private dwelling without the consent of the occupant or the authority of a court warrant.

(2) An officer may request any information from any person who appears to have custody or control of any material or thing which the officer reasonably believes is being used, or was intended to be used or is likely to be used, to commit an offence under this Act.

(3) An officer may seize or detain any material or thing where the officer has reasonable ground to believe that the material or thing is being used, was intended to be used or is likely to be used, to commit an offence under this Act.

Power of arrest

123. (1) A police officer may, without warrant, arrest a person and keep that person in custody where—

(a) the person is found committing an offence or is reasonably suspected of having committed an offence under this Act; or

(b) upon being requested by the police officer, the person wilfully, fails or refuses to furnish that person's name, address or other relevant information to the satisfaction of the police officer; and

(c) the police officer has reasonable grounds to believe that unless arrested, the person shall—

(i) escape or cause unreasonable delay to or trouble during or for, the election;

(ii) interfere with witnesses; or

(iii) tamper with or destroy relevant evidence or material.

(2) Any person arrested under subsection (1), shall be taken before a court within fortyeight hours, and shall not be detained for longer than is reasonably necessary for the purpose.

General penalty

124. A person who is convicted of an offence under this Act for which a penalty is not prescribed is liable, upon conviction—

(a) for a first offence, to a fine not exceeding five hundred thousand penalty units or to a term of imprisonment not exceeding five years, or to both;

(b) for a second or subsequent offence, to a fine not exceeding seven hundred thousand penalty units or to a term of imprisonment not exceeding seven years, or to both.

Regulations

Cap. 1

125. (1) Subject to the provisions of the Constitution and this Act, the Commission may, by statutory instrument, make regulations providing for the registration of voters for the purposes of elections and for the procedure and manner of conducting elections.

(2) Without prejudice to the generality of subsection (1), the Commission may, by statutory instrument, make regulations providing for all or any of the following matters:

(a) the registration of voters;

(b) the preparation of, and the form of, registers to be used in the registration of voters;

(c) the manner of ascertaining whether persons applying for registration as voters are qualified for registrations or for their inclusion in a register for a particular constituency;

(d) the making and determination of appeals, claims and objections with respect to the registration of voters;

(e) voter education;

(f) the correction, amendment and certification of registers of voters;

(g) the manner in which the name of any person may be deleted from a register of voters, the transfer of the names of persons from the register of voters of one polling district to that of another polling district and the restoration of the name of a registered voter;

(h) the manner and form for nomination of candidates for any election that a candidate at a direct election for the National Assembly is the authorised candidate of a political party;

(i) the publication of the names of candidates whose nominations are accepted;

(j) the payment of election fees by candidates, and the circumstances in which such fees are to be returned.

(k) the use of symbols at an election;

(l) the manner and procedure of voting at an election;

(m) the manner of ascertaining the identity of persons wishing to vote at elections and whether such persons are qualified to vote;

(n) the administering of oaths by election officers in respect of such matters as may be prescribed;

(o) the procedure to be followed at the conclusion of a poll in an election;

(p) for the purpose of declaring any candidate duly elected, the procedure to be followed where there is an equality of votes between candidates in an election for members of the National Assembly or Council;

(q) the procedure to be followed where only one person is duly nominated for election to the office of President, in a constituency for election to the National Assembly or in an election to a Council;

(r) the declaration, notification and publication of the results of an election;

(s) the custody and disposal of nomination papers, ballot papers, records, documents or other things relating to the registration of voters and the conduct of elections;

(t) election expenses and the return of election expenses;

(u) the notification and publication of any casual vacancy in the elected membership of the National Assembly or a Council and the fixing of a date of an election to fill such vacancy;

(v) the forms and records to be used for any of the purposes of this Act;

(w) the delimitation of provinces, constituencies, wards and polling districts; and

(x) any matter to be prescribed by or under this Act.

(3) Separate regulations may be made in respect of each category of elections.

(4) Regulations under this section may provide in respect of any contravention thereof that the offender shall be liable to a fine not exceeding two hundred thousand penalty units or to a term of imprisonment not exceeding two years, or to both.

(5) A prosecution for an offence against this Act shall not be commenced after the lapse of one year from the date on which the offence is alleged to have been committed.

126. The Electoral Act, 2006, is repealed.

Repeal of Act No.12 of 2006

SCHEDULE

(Section 107)

CODE OF CONDUCT

Enforcement of Code

1. (1) A person has, subject to paragraph (2), the right to—

(a) express political opinions;

(b) debate the policies and programmes of political parties;

(c) canvas freely for membership and support from voters;

(d) distribute election literature and campaign materials;

(e) publish and distribute notices and advertisements;

(f) erect banners, placards and posters;

(g) campaign freely;

(h) participate freely in partisan political activities; and

(i) seek the protection of the law from harm as a result of that person's political opinion or affiliation.

(2) A public officer shall not engage in any active partisan political activity referred to in subparagraph (1) whilst in the public service.

Promotion of free and fair elections

2. A person shall, during an election campaign or election, promote conditions conducive to the conduct of free and fair elections and be bound by this Code.

Duty of Commission

3. (1) The Commission shall, where reasonable and practicable to do so—

(a) meet political party representatives on a regular basis to discuss matters of concern related to on election campaign and election itself;

(b) ensure that political parties do not use State resources to campaign for the benefit of any political party or candidate;

(c) avail political parties with the election timetable and election notices in accordance with the Act;

(d) censure acts done by leaders of political parties, candidates, supporters, and Government and its organs, which are aimed at jeopardising elections or done in contravention of this Code;

(e) declare election results expeditiously from the close of the election day;

(f) ensure that a campaign rally or meeting which is legally organised by a political party is not disrupted or arbitrarily prohibited;

(g) ensure that an election officer, police officer, monitor, observer or media person is not victimised in the course of their election duties;

(h) ensure that police officers act professionally and impartially during the electoral process;

(i) ensure that traditional leaders do not exert undue influence on their subjects to support a particular political party or candidate;

(j) ensure that equal opportunity is given to all stakeholders, particularly political parties and independent candidates to participate in and conduct their political activities in accordance with the law; and

(k) condemn acts of media organisations and personnel aimed at victimisation, punishment or intimidation of media practitioners implementing any of the provisions of this Code.

(2) A member of the Commission may attend political rallies to monitor compliance with this Code.

Obligation of Political Party and candidate during election

4. (1) A political party and candidate shall—

(a) establish and maintain effective lines of communication with the Commission and with other registered political parties and candidates, at national, political and local level, including the provision of names and the contact details and addresses of or a candidate's party election agents and of other relevant office bearers and representatives;

(b) accept and respect decisions of the Commission in respect of election results announced by returning officers and the Commission in accordance with the law;

(c) issue directives to their members and supporters to observe this Code and take any necessary steps to ensure compliance;

(d) hold public meetings in compliance with the law;

(e) adhere to the election timetable issued by the Commission in conducting election campaigns in accordance with this Act;

(f) take appropriate measures to ensure environmental protection and cleanliness in the course of posting or distributing electoral campaign material;

(g) remove campaign materials within fourteen days of the declaration of election results;

(h) take necessary measures to ensure public safety in the course of posting or distributing electoral campaign material; and

(i) carry out campaign meetings and rallies peacefully.

(2) A member or supporter of a political party or a candidate shall not—

(a) use language which incites hatred or violence in any form against any person;

(b) issue any pamphlet, newsletter, poster or other propaganda which contains materials that incite people to violence or rebellion;

(c) deface, remove or destroy campaign materials of another political party or publications of the Commission;

(d) disrupt another political party's rally, meeting, march or demonstration or seek to obstruct another person from attending a political rally of another political party;

(e) continuously remain at a polling station during the campaign period or elections; and

(f) wear any campaign materials within four hundred metres of the polling station on the polling day.

(3) Without prejudice to any other written law, any person who contravenes subparagraph (2) commits an offence and shall be liable upon conviction to a fine not exceeding one hundred thousand penalty units or to imprisonment not exceeding one year, or to both.

Duty of election agent or polling agent during election

5. (1) An election agent or polling agent shall, subject to this Code, have the following duties during an election:

(a) observe the opening and closing of a polling station assigned to them on polling day;

(b) witness the voting process;

(c) witness the count of ballot papers for candidates;

(d) witness the announcement of results; and

(e) witness the declaration of results, where applicable.

(2) An election agent or polling agent shall counter sign the election results duly announced or declared by a presiding officer or returning officer, as the case may be, except that failure to countersign the election results by such election agent or polling agent shall not render the results invalid.

Duties of Zambia Police

6. The Zambia Police Service shall—

(a) enforce law and order at campaign meetings and processions in order to maintain peace and order;

(b) ensure that police officers do not abuse their authority or Government resources to campaign for the benefit of any political party or candidate;

(c) refrain from disrupting any campaign, rally or meeting which is legally convened by any political party; and

(d) ensure that police officers do not use their office to oppress any political party, candidate or supporter.

Duties of media

7. (1) Print and electronic media shall—

(a) provide fair and balanced reporting of the campaigns, policies, meetings, rallies and press conferences of all registered political parties and candidates during the campaign period;

(b) provide news of the electoral process up to the declaration of results;

(c) abide by regional codes of conduct in the coverage of elections provided that such guidelines are not in conflict with this Code;

(d) be bound by the provisions of this Code during elections; and

(e) in liaison with the Commission, recognise a representative media body authorised to receive complaints and provide advice regarding fair coverage of elections.

(2) A media organisation shall endeavour to—

(a) undertake capacity building of media personnel in their respective organisations;

(b) report election news in an accurate manner and not make any abusive editorial comment, incite violence or advocate hatred based on race, ethnicity, tribe, gender, sex, political or religious conviction; and

(c) identify any editorial comment it intends to make and separate it from the factual reporting of the news.

(3) The heads, senior management and staff of public and private media organisations shall not intimidate media practitioners and shall allow them to exercise professional judgment without undue influence.

(4) Public and private media personnel shall—

(a) conduct interviews with candidates with fairness both in the style of the interview and in the amount of the time given;

(b) refrain from broadcasting their own political opinions, commentary or assessment, and where they do so, clearly identify the opinion, commentary or assessment as their own and carefully balance it in order to avoid bias; and

(c) be duly accredited by the Commission to enter a nomination centre, polling centre or totalling centre.

Allocation of air time

8. (1) A public television, radio and electronic media shall allocate public air time equally to all political parties and candidates for their political broadcasts.

(2) The Commission shall prescribe the amount of air time in any given language on public television or radio to be allocated to a political party or candidate.

(3) On polling day, media shall not broadcast any campaign interviews for political parties or independent candidates or predict election results.

(4) Broadcasters shall inform the public on the source of any public opinion poll and shall indicate the margin of error.

Election results programme

9. (1) Media shall disclose accurate election results and provide updates on the progress of the vote counting process and shall not speculate election results but shall broadcast confirmed election results as they are announced and published by presiding officers.

(2) Television and radio stations shall—

(a) maintain full records of all radio and television news bulletins and recordings of all other programmes related to the election, including party political broadcasts and shall institute a close and meticulous monitoring system to ensure balance throughout the campaign and up to the close of poll; and

(b) provide the Commission, at any reasonable time, with such records, information and recordings as the Commission may require to fulfill its monitoring role.

(3) The Commission shall require newspapers to make available archived copies of newspapers for inspection in the event of a complaint.

(4) A candidate or political party who alleges that the candidate or political party has been unfairly treated or covered by any media organisation in the course of the election campaign, may lodge a complaint against the media organisation, in writing, to the Commission.

(5) Where a complaint made under subparagraph (4) requires any media organisation to rectify an error, the candidate or political party making the complaint shall send the complaint to that media organisation and a copy of the complaint to the Commission and the media organisation shall respond to the complaint.

(6) Where a right of reply, a retraction or the correction of a matter of significance is necessary, it shall be made in a like manner and with equal prominence as the original report or publication.

Monitors and observers

10. (1) A person shall not act as a monitor or observer, during an election campaign or election unless the person is duly accredited by the Commission.

(2) A monitor shall be nominated by the organisation to which the monitor belongs and shall undergo training and assessment by that organisation.

(3) A monitor or observer shall be provided with necessary identification by the Commission and the monitor's or observer's organisations.

(4) A monitor or observer shall discharge monitors or observer's functions in accordance with this Code and any other written law or such lawful directives as may be given by the Commission or any person acting on its behalf.

(5) A monitor or observer shall—

(a) bring to the attention of the presiding officer or returning officer or member of the Commission any observed electoral malpractice;

(b) be impartial in the conduct of the monitor's or observer's duty and shall, at no time, publicly indicate or express any bias or preference with reference to any political party or candidate;

(c) be in a sufficient number at each polling station and shall ensure that their presence is widely known and recognised by the electorate;

(d) not interfere with the duties of the election officials in any way and shall immediately report any violation to the proper authority;

(e) ensure that any material information or report which the monitor or observer receives or any event, occurrence or statement of which the monitor or observer has been notified or which indicates the commission of an offence or contravention of the Act or this Code are brought to the attention of the monitor's or observer's organisations, the police, the Commission, conflict management committees and other parties concerned;

(f) not by themselves or through the monitor's or observer's organisation, forecast, declare or disclose the result of any election before the declaration by the Commission;

(g) when so requested, immediately identify themselves to any election officer or police officer and shall, during the conduct of the monitor's or observer's activities, at all times carry, wear or otherwise prominently display the identification issued by the Commission;

(h) not display allegiance to any political party at any time and shall refrain from carrying, wearing and displaying electoral material or any article of clothing, colours, badges or other items denoting support for or opposition to any political party or candidates or any of the issues in contention in the elections;

(i) not be involved in corrupt practices or accept any favours, so as to make statements in favour of or against any candidate or political party; and

(j) not carry or display arms or other dangerous weapons during the conduct of the monitor's or observer's activities or while wearing the identification issued by the Commission.

(6) Monitors and observers and their sponsoring organisations shall, whenever requested by the Commission, attend such briefings, training workshops and other meetings convened in order to co ordinate their activities.

(7) After the declaration of results of the elections, monitors and observers shall hand over to the Commission any identification received from it.

(8) The Commission may revoke the accreditation of any monitor or observer who contravenes the provisions of this Code.

Powers of Commission

11. (1) The Commission may—

(a) reprimand a political party, candidate or stakeholder for any conduct in violation of this Code;

(b) report a breach of this Code to the Zambia Police Service, Anti-Corruption Commission and Drug Enforcement Commission or any other relevant law enforcement agency;

(c) revoke the accreditation of election agents, polling agents, monitors observers or the media where it is necessary in the interest of public safety and security to do so; and

(d) impose any administrative measures on any person, candidate or political party for persistent breach of this code.

(2) The Commission may where practicable to do so, summon any person contravening this Code and any voter, candidate or political party alleging a breach to appear before it.

Complaints

12. (1) The following persons may lodge a complaint to the Commission in relation to an election:

(a) a voter or candidate in a constituency where a breach of this Code has been committed; or

(b) from a political party participating in an election.

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

(3) The Commission may refer and report any violation of the Code to the Zambia Police Service, AntiCorruption Commission or any other appropriate law enforcement agency for investigation and prosecution where appropriate.

Conflict management committee

13. (1) Conflict management committees established by the Commission pursuant to section *one hundred and eight* may resolve electoral disputes.

(2) The conflict management committees shall take into account the provisions of this Code in resolving electoral disputes.

(3) Conflict management committees shall mediate in electoral disputes and shall encourage amicable settlement of electoral disputes within twenty four hours of receipt of a formal complaint.

Prohibition on coercion and intimidation

14. A person or a member of a law enforcement agency, civil society, a Church, faith-based organisation, traditional leader, political party or media shall not, by means of threats, violence or sanction, coerce or intimidate another person during campaigns, public debates or elections.

General offence

15. (1) A person shall not—

(a) cause violence or use any language or engage in any conduct which leads or is likely to lead to violence or intimidation during an election campaign or election;

(b) carry or display arms or weapons, traditional or otherwise, of any kind at a political meeting or in the course of any march, demonstration or other public gathering of a political nature;

(c) make false, defamatory or inflammatory allegations concerning any person or political party in connection with an election;

(d) arrange a public meeting, demonstration, rally or march at the same time and venue as another similar political event organised by another political party or candidate;

(e) prevent the reasonable access to voters of any candidate or political party in any manner for the purposes of conducting voter education, fund raising, canvassing membership or soliciting support;

(f) plagiarise the symbols, colours or acronyms of candidates or other political parties;

(g) deface, remove or destroy any political campaign materials of any person or political party or publications of the Commission;

(h) offer any inducement, reward or bribe to any person in consideration of such person—

(i) joining or not joining any political party;

(ii) attending or not attending any political event;

(iii) voting or not voting;

(iv) accepting, refusing or withdrawing that person's domination as a candidate in an election;

(v) surrendering that person's voter's card, or national registration card or both; or

(vi) offering to surrender a voter's card or national registration card, or both;

(i) abuse or attempt to abuse a position of power, privilege or influence, including parental, patriarchal or traditional authority for political purposes including any offer of a reward or for the issuance of a threat;

(j) propagate any opinion or action which is prejudicial to—

(i) the sovereignty, integrity or security of the country;

(ii) the maintenance of public order; or

(iii) the independence of any institution;

(k) use Government or parastatal transportation or facilities for campaign purposes, except that this paragraph shall not apply to the President and the Vice President in connection with their respective offices;

(l) use Government transportation or resources or facilities to transport voters to polling stations;

(m) discriminate against any person on grounds of race, ethnicity, class, disability, gender, sex, religion or in any other manner in connection with an election or political activity;

(n) carry any statue, caricature or anything which tends to ridicule, revile or scandalise any political party or its leader, a candidate or the Government, at any public political gathering, meeting or procession; and

(o) be in possession of a voter's card or national registration card belonging to another person during the campaign period.

(2) A person who contravenes subparagraph (1) commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

General Penalty

16. A person who contravenes any provision of this Code for which no specific penalty is provided commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

Revocation of SI No. 90 of 2006

17. The Electoral (Code of Conduct) Regulations, 2006, are revoked.

GOVERNMENT OF ZAMBIA

STATUTORY INSTRUMENT NO. 63 OF 2016

The Electoral Process Act 2016

(Act No. 35 of 2016)

The Electoral Process (General) Regulations, 2016

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5. Form of oath or affirmation
6. Revocation of appointments of election officers
7. Notification of vacancy in council or National Assembly
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NOMINATION PROCEDURE

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11. Nomination for presidential election
12. Nomination for candidate for election as Member of Parliament
13. Nomination for mayor or council chairperson

Copies of this Statutory Instrument can be obtained from the Government Printer, P.O.Box 30136, 10101 Lusaka Price K120.00 each

14. Nomination for election as councillor
15. Receipt of nominations
16. Guidance by returning officer
17. Control at nomination office
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29. Preparations for taking of poll
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49. Sealing of ballot papers
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51. Declaration of President-elect
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PART IV

GENERAL PROVISIONS

55. Election agents
56. Polling agents
57. Offences by election officers
58. Revocation of S.I. No. 92 of 2006

SCHEDULE

IN EXERCISE of the powers contained in section *one hundred and twenty-five* of the Electoral Process Act, 2016, the following Regulations are made:

PART I

PRELIMINARY PROVISIONS

Title

1. These Regulations may be cited as the Electoral Process (General) Regulations, 2016.

Interpretation

2. (1) In these Regulations, unless the context otherwise requires—

"assistant returning officer" means a person appointed as such under regulation 4;

"ballot box" has the meaning assigned to it in the Act;

"ballot paper" has the meaning assigned to it in the Act;

"ballot paper account"has the meaning assigned to it in the Act;

"by-election" has the meaning assigned to it in the Constitution; Cap. 1

"candidate" has the meaning assigned to it in the Act;

"councillors" has the meaning assigned to it in the Act;

"Chief Electoral Officer" means the person appointed as Chief Electoral Officer under the Electoral Commission of Zambia Act, 2016 Act No. 25 of 2016

"election agent" has the meaning assigned to it in the Act;

"election officer" has the meaning assigned to it in the Act;

"local government election" includes elections for a mayor, council chairperson and councillor;

"local notice" means a notice given at the nomination office, the office of the district council within which the constituency is situated and such other place as the returning officer considers necessary;

"Member of Parliament" has the meaning assigned to it in the Constitution; Cap. 1

"national registration card" has the meaning assigned to it in the Act;

"national registration number has the meaning assigned to it in the Act;

"nomination office" means a place appointed as such under regulation 10;

"nomination paper" has the meaning assigned to it in the Act;

"official mark" means a mark provided to a presiding officer under regulation 29, for the taking of a poll; "official seal" means a seal provided to a presiding officer under regulation 29, for the taking of a poll; "polling agent" has the meaning assigned to it in the Act;

"polling assistant"has the meaning assigned to it in the Act;

"polling day" has the meaning assigned to it in the Act;

"polling district" has the meaning assigned to it in the Act;

"polling station" has the meaning assigned to it in the Act;

"presiding officer" has the meaning assigned to it in the Act;

"registered" means registered in a register of voters;

"register of voters" has the meaning assigned to it in the Act;

"Returning Officer" has the meaning assigned to it in the Act;

"returning officer" has the meaning assigned to it in the Act;

Cap. 1 "Speaker" has the meaning assigned to it in the Constitution; and

"voter's card" has the meaning assigned to it in the Act.

(2) Where an act or thing is required or authorised to be done under these Regulations in the presence of a candidate, an election agent or a polling agent, the non attendance of the candidate, election agent or polling agent at the time and place appointed for the purpose shall not, if the act or thing is otherwise legally done, invalidate the act or thing done.

Functions of Chief Electoral Officer

3. The Chief Electoral Officer shall —

(a) ensure that an election officer performs the election office's functions with impartiality and in accordance with these Regulations;

(b) issue to an election officer such instructions as the Chief Electoral Officer considers necessary to ensure due compliance with these Regulations; and

(c) perform such functions as are conferred upon the Chief Electoral Officer under these Regulations.

Returning officer

4. (1) The Commission shall appoint in respect of each constituency, district or ward—

(a) a returning officer, by notice in the *Gazette;*

(b) assistant returning officers, by notice, in writing, for the purpose of assisting the returning officers in the performance of their functions; and

(c) polling assistants, by notice, in writing.

(2) The Commission may, by notice, in writing, appoint for each polling district, presiding officers, assistant presiding officers and polling assistants.

Form of oath or affirmation

5. The officers referred to in regulation 4 shall, before exercising any of the functions conferred upon the officers under these Regulations, take and subscribe an oath or make an affirmation before a Subordinate Court Magistrate, Local Court Magistrate, election officer,

returning officer, Commissioner for Oaths, Head of a Government School or Principal of a College in Form GEN 1 set out in the Schedule.

Revocation of appointment of election officers

6. (1)Where the Commission revokes the appointment of a returning officer, it shall publish a notice of the revocation in the *Gazette*.

(2) Where the Commission revokes the appointment of an assistant returning officer, presiding officer, assistant presiding officer or polling assistant, it shall give notice, in writing, of the revocation to the person concerned.

Notification of vacancy in council or National Assembly

7. (1) The principal officer of a council shall, upon a casual vacancy occurring in the elected membership of a council, inform the Commission and the district or ward concerned, in writing, of the occurrence of the vacancy, as soon as practicable after it occurs.

(2) The Commission shall cause every casual vacancy in the elected membership of the National Assembly or council to be filled as soon as practicable.

Allocation and registration of symbols

8. (1) The Chief Electoral Officer shall maintain a register of symbols for use by candidates at elections, and that register shall be in such form as theChief Electoral Officer may determine.

(2) A political party or independent candidate contesting an election shall apply to the Chief Electoral Officer for the registration of a symbol chosen by that party or candidate for use by a candidate supported by that party or by that independent candidate at elections and subject to subregulations (4) and (5), the Chief Electoral Officer shall register that symbol.

(3) An application made on behalf of a political party shall be made by the secretary of that political party.

(4) The following shall not be registered or used as symbols:

(a) the armorial ensigns or the National Flag of Zambia;

(b) a device or an emblem which, in the opinion of the Chief Electoral Officer, is normally associated with an ethnic group or religion or the regalia of a chief;

(c) a symbol or part of a symbol which, under the provisions of this regulation, is currently registered in respect of a political party or candidate;

(d) a symbol which is not distinctive from any other registered symbol; and

(e) a symbol the use of which is, in the opinion of the Chief Electoral Officer, offensive or objectionable.

(5) The Chief Electoral Officer shall not register a symbol under this regulation in respect of a political

party or candidate until any other registered symbol in respect of that party or independent candidate is cancelled.

(6) The Chief Electoral Officer shall allocate and register in respect of a political party or independent candidate for election in a constituency, district or ward a symbol for use by that political party or independent candidate in that election.

Determination of whether candidate is supported by political party

9. (1) If a question arises in respect of the allocation and registration of a symbol under regulation 8 regarding whether the nomination of a candidate is supported by a political party, that question shall be referred to and determined by the Commission.

(2) The Commission shall consult the leader or secretary of a political party before determining the question referred to in sub-regulation (1).

PART II

Nomination Procedure

Appointment of nomination office

10. (1) The Commission shall, by notice in the *Gazette*, appoint for each constituency, district or ward in respect of which an election date has been appointed, a place to be the nomination office for receiving nominations papers.

(2) The returning officer for a constituency, district or ward shall attend at the nomination office during the periods appointed in respect of that constituency, district or ward for the receipt of nomination, to receive nomination papers in that constituency, district or ward.

Nomination for presidential election

11. (1) A presidential nomination paper shall be—

(a) in Form GEN 2 set out in the Schedule;

(b) signed by the candidate in the presence of the Returning Officer;

(c) subscribed to by not less than one hundred registered voters from each Province who support the presidential candidate and the running mate; and

(d) accompanied by a nonrefundable election fee determined by the Commission.

(2) A nomination paper for a running mate shall be in Form GEN 3 set out in the Schedule.

(3) Sub-regulation (1)(c) and (d) does not apply to a running mate.

(4) A Presidential candidate shall file an affidavit, for purposes of Article 52 of the Constitution, in Form GEN 4 set out in the Schedule. Cap. 1

(5) The supporters referred to in sub regulation (1) (c) shall -

(a) be screened and validated by an assistant returning officer at each provincial capital appointed for that purpose by the Commission; and

(b) endorse Part B of the presidential nomination paper in the presence of the assistant returning officer.

(6) A presidential candidate shall lodge with the Returning Officer—

(a) a statutory declaration of assets and liabilities in Form GEN 5 set out in the Schedule; and

(b) a declaration of compliance with the Electoral Code of Conduct in Form GEN 6 set out in the Schedule.

(7) A presidential candidate shall submit the processed nomination papers to the Returning Officer on a day and at a time appointed for the receipt of nominations.

(8) The Returning Officer shall, at the time of lodging nomination papers, take a portrait of the candidate and where the nomination papers are lodged by an election agent, the election agent shall submit a portrait of the candidate as specified by the Commission.

(9) In this regulation, unless otherwise provided, a reference to a Presidential candidate includes a running mate.

Nomination for candidate for election as Member of Parliament

12. (1) The nomination paper for a candidate for election as a Member of Parliament shall be—

(a) in Form GEN 7 set out in the Schedule;

(b) subscribed to in Part B of the Form by fifteen supporters, registered in the constituency, in the presence of the returning officer;

(c) signed by the candidate in the presence of the returning officer; and

(d) accompanied by a nonrefundable election fee determined by the Commission.

Cap. 1

(2) A candidate for election as a Member of Parliament shall file an affidavit, for purposes of Article 52 of the Constitution, in Form GEN 8 set out in the Schedule.

(3) A candidate for election as a Member of Parliament shall lodge with the returning officer for the constituency concerned -

(a) a statutory declaration of assets and liabilities in Form GEN 5 set out in the Schedule; and

(b) a declaration of compliance with the Electoral Code of Conduct in Form GEN 6 set out in the Schedule.

(4) The returning officer shall, at the time of receiving nomination papers, take a portrait of the candidate, and where the nomination papers are lodged by an election agent, the agent shall submit a portrait of the candidate as specified by the Commission.

(5) A candidate or a person duly authorised by that candidate shall, at the time of lodging a nomination paper in a constituency, attend before the returning officer for the constituency with the fifteen supporters of the candidate who shall produce their voter's cards and national registration cards to the returning officer.

Nomination for mayor or council chairperson

13. A candidate for election as a mayor or council chairperson in a district shall lodge with the returning officer for that district-

(a) a nomination paper in Form GEN 9 set out in the Schedule; and

(b) an affidavit in Form GEN 10 set out in the Schedule.

Nomination for election as councillor

14. (1) The nomination paper for a candidate for election as a councillor shall be—

(a) in Form GEN 11 set out in the Schedule;

(b) subscribed to by nine supporters, registered in the ward, in the presence of the returning officer;

(c) signed by the candidate in the presence of the returning officer; and

(d) accompanied by a non refundable election fee specified by the Commission.

(2) A candidate for election as a councillor shall file an affidavit in Form GEN 12 set out in the Schedule.

(3) A candidate for election as a councillor in a ward shall lodge with the returning officer for that ward—

(a) a duly completed nomination paper and affidavit; and

(b) a declaration of compliance with the Electoral Code of Conduct in Form GEN 6 set out in the Schedule.

(4) The returning officer shall, at the time of lodging nomination papers, take a portrait of the candidate and where the nomination papers are lodged by an election agent, the agent shall submit a portrait of the candidate as specified by the Commission.

(5) A candidate or a person duly authorised by the candidate shall, at the time of lodging a nomination paper, present themselves to the returning officer with the fifteen supporters who shall produce their voters cards and national registration cards to the returning officer.

(6) The supporters shall subscribe their signatures on the nomination paper in the presence of the the returning officer.

Receipt of nominations

15. (1) A returning officer shall receive the nomination of a candidate in an election on the days, hours and places specified by the Commission, by statutory order.

(2) A returning officer shall attend at the place, on the days and during the hours appointed by the Commission to provide nomination papers to candidates and to receive the nomination of candidates.

(3) A returning officer may extend the closing time of the period within which to receive nominations if the returning officer is satisfied that a candidate and the candidate's supporters duly presented themselves to the returning officer before the close of the period fixed for the receipt of nominations but were prevented from lodging their nomination before the expiry of that period because the returning officer was receiving the nomination of another candidate during the same period.

Guidance by returning officer

16. (1) Where a candidate or candidate's agent intending to lodge a nomination in a constituency, district or ward requests the

returning officer for that constituency, district or ward to examine the nomination paper before it is lodged, or to be guided on any matter relating to that nomination paper, the returning officer shall guide that candidate or candidate's agent to the best of the returning officer's ability.

(2) The advice or guidance given under subregulation (1) shall not be inquired into in a proceeding before a court.

Control at nomination office

17. (1) A returning officer shall maintain order at the polling station and in its precincts, and shall regulate the number of persons to be admitted at a time in the nomination office.

(2) A returning officer at a nomination centre may require any person to leave the nomination centre and its precincts if, in the opinion of the returning officer, the person is causing a disturbance which is likely to interfere with the poll.

(3) Sub-regulation (2) does not apply to—

(a) a member of the Commission or its members of staff;

(b) an election officer;

(c) a person who is accompanying another person wishing to lodge a nomination paper in accordance with these Regulations and whose name appears on the nomination paper as a candidate, proposer, seconder or supporter;

(e) a police officer on duty;

(f) accredited monitors and observers; or

(g) a person authorised, in writing, by the Chief Electoral Officer to enter and remain in the polling station.

(4) The powers conferred by this regulation shall not be exercised so as to prevent a person who is otherwise entitled to be at the nomination office.

Determination of validity of nominations

18. (1) A returning officer for a constituency, district or ward shall, immediately after the filing of a nomination paper in that constituency, district or ward, determine the validity of each nomination lodged with the returning officer and shall declare invalid a nomination in respect of which—

(a) the nomination paper was not duly completed or properly signed or lodged;

(b) the nomination paper is not accompanied by the affidavit or the affidavit is defective in a material particular; or

(c) the appropriate election fee has not been paid.

(2) Where a returning officer determines that a nomination is invalid, the returning officer shall reject the nomination and shall endorse on the nomination paper the reason for the determination, and shall sign that endorsement.

(3) Where a returning officer determines that a nomination is valid, the returning officer shall sign the nomination paper to signify acceptance of the nomination.

(4) Where a returning officer for a constituency, district or ward determines that only one candidate has been validly nominated for election in that constituency, district or ward, the returning officer shall declare that candidate to be duly elected in that constituency, district or ward and shall inform the Commission accordingly.

(5) A returning officer shall notify each candidate, in writing, of the returning officer's decision in respect of that candidate immediately after the filing of nominations.

(6) Where a returning officer determines that more than one candidate is validly nominated, the returning officer shall immediately publish a notice of the names of the candidates validly nominated, in a manner that the returning officer considers necessary for giving the names sufficient publicity, and shall cause the notice to be published in the *Gazette*.

(7) The determination of the returning officer that a nomination is valid or invalid is final unless challenged through an election petition in accordance with Article 52(4) of the Constitution. Cap. 1

Procedure after determination of validity of nominations

19. (1) A returning officer shall, after determining the validity of nominations lodged with the returning officer, inform the Commission of the candidates who are validly nominated.

(2) Where a returning officer determines that no candidate has been validly nominated for election in that constituency, district or ward, the returning officer shall inform the Commission accordingly.

(3) Where the Commission is informed under subregulation (2) that no candidate has been validly nominated, the Commission shall, in respect of that constituency, district or ward, exercise its powers provided for in regulation 7.

Publication of local notice

20. (1) Where two or more candidates have been validly nominated for a constituency, district or ward, the returning officer shall give local notice that a poll shall be taken in that constituency, district or ward on the day appointed for the election, and the local notice shall set out the names of the candidates in alphabetical order of surnames.

(2) Where two or more candidates have been validly nominated for a constituency, district or ward, the returning officer shall publish the information contained in the nomination papers and affidavits relating to the candidates.

(3) Where no candidate or only one candidate has been validly nominated for election in a constituency, district or ward, the returning officer shall give local notice that a poll shall not be taken in that constituency, district or ward.

(4) Where in respect of a constituency, district or ward, the same day has been appointed for the poll for elections to the office of President, the National Assembly or councillor, the returning officer for that constituency, district or ward shall—

(a) in the notice referred to in subregulation (1), state that the polls shall be held at the same time; and

(b) in the notice referred to in subregulation (3), state that despite a poll for election to the National Assembly not being taken in that constituency, district or ward, the poll for the election to the office of President or councillor, as the case may be, shall be taken on the appointed day.

Procedure upon death of candidate

21. The Commission shall, where a candidate who is validly nominated for election in a constituency, district or ward dies before the close of the poll in that election, declare all proceedings relating to the election in that constituency, district or ward to be void, and shall in respect of that constituency, district or ward appoint new election dates.

Inspection of nomination paper

22. A person registered in a constituency, district or ward may, at any reasonable time, after the returning officer for the constituency, district or ward has given notice of the date of the poll and before the day appointed for the taking of a poll in that constituency, district or ward inspect, at the office of the returning officer, a nomination paper of a candidate in that constituency, district or ward.

PART III

ELECTIONS

Notice of polling stations

23. The electoral officer for a polling district shall, for the purpose of the taking of a poll in the polling district, give local notice and such other notice indicating the location of a polling station in the polling district.

Appointment of times of polling

24. (1) Subject to regulation 25, a poll shall commence and close at such time as the Commission appoints, and notice of the times shall be published in the *Gazette* and in such other manner as the Commission directs.

(2) The Commission may appoint different commencement or closing times for different constituencies or polling districts.

Postponement of poll in case of emergency

25. (1) A presiding officer may postpone until later in the day, and if necessary to some other day, the polling at the polling station where voting cannot be started or is interrupted by reason of a riot, open violence, flood, natural catastrophe or other cause, which affects the conduct of a free and fair election at the polling station.

(2) Where a presiding officer postpones a poll, in accordance with sub-regulation (1), the polling shall start or restart at the earliest practicable time or date.

(3) A presiding officer may extend the hours or postpone the day of polling at a polling station where polling has started or has been interrupted by reason of any of the causes referred to in subregulation (1), and references in these Regulations to the close of the poll shall be construed accordingly.

(4) If a poll is postponed at a polling station, the hours of polling on the day to which it is postponed shall be the same as those for the original day, and references in these Regulations to the closing of the poll shall be construed accordingly.

(5) A presiding officer shall, where the presiding officer postpones a poll in accordance with these Regulations, take such precautions as are necessary to safeguard the ballot boxes, ballot papers and other election requisites, and shall immediately notify the returning officer of that postponement.

(6) Where a returning officer is notified under subregulation (4) of the postponement of a poll, the returning officer shall immediately notify the Commission of the postponement.

Nature of poll

26. (1) A voter may vote at the polling station appointed for the polling district in which that voter is registered and shall not be entitled to vote at any other polling station.

(2) At the taking of a poll, a voter shall be entitled to cast one vote for a candidate and if a voters name appears in error or for any other reason in more than one register of voters, or more than once in the same register of voters, the voter shall not be entitled to cast more than one vote for a candidate.

Form of ballot paper

27. (1) The ballot paper for a poll in a presidential election shall be in Form GEN 13 set out in the Schedule and shall show, in alphabetical order, the surnames and portraits of the presidential candidates and the names only of the running mate, the names of the political party, if supported by any, and the symbol of each candidate.

(2) The ballot paper for a poll in an election for a Member of Parliament or councillor shall be in Form GEN 14 set out in the Schedule and in respect of a constituency, district or ward shall show the names in alphabetical order of the surnames and portraits of the candidates, the names of the political party, if supported by any, for election in that constituency, district or ward and the symbol of each candidate.

Issuance of ballot paper

28. (1) A person who intends to vote in an election shall apply for a ballot paper and shall—

(a) attend at the polling station at which the person is entitled to vote;

(b) produce that person's voter's card and national registration card to the presiding officer or assistant presiding officer at a polling station;

(c) present both hands for inspection by the presiding officer, assistant presiding officer or polling assistant; and

(d) have the right hand thumb nail stained, or any other finger or body part found appropriate by the polling assistant.

(2) A person who fails to comply with the requirements of this regulation shall not be issued with a ballot paper.

(3) Subregulation (1) (a), (c) and (d) shall not apply where a special vote is applicable.

(4) A presiding officer or polling assistant at a polling station may ask an applicant for a ballot paper any question that the presiding officer or polling assistant considers necessary to enable the presiding officer or polling assistant to identify the applicant with the name on the register of voters for that polling station.

(5) A person shall not be issued with a ballot paper or permitted to vote at a polling station unless the presiding officer or polling assistant for the polling station is satisfied that the person—

(a) is entitled to vote at that polling station;

(b) has produced that person's voter's card;

(c) has properly been identified;

(d) has not previously voted in the poll in respect of which the person is applying for a ballot paper; and

(e) is not disqualified from voting at that election under section 47 of the Act.

Preparations for taking of poll

29. (1) A returning officer shall, in respect of the taking of a poll in a polling station within the returning officer=s constituency, district or ward—

(a) ensure that there are sufficient compartments within which votersmay mark their ballot papers in secrecy and screened from observation;

(b) provide each presiding officer with such number of ballot boxes, ballot papers, official seals, official marks, the voters= roll relating to the polling station and such other things as may be necessary for the taking of the poll;

(c) make such arrangements to facilitate the taking of the poll as may be necessary for ensuring that the poll is taken in the manner provided in these Regulations and in accordance with any instructions issued by the Commission; and

(d) publish, both inside and outside each polling station, notices instructing voters on the procedure for casting their votes and notices showing

(i) the names in alphabetical order of surnames of the candidates for election in that constituency, district or ward; and

(ii) the symbol allocated under regulation 8 in respect of each candidate for election in the constituency, district or ward.

(2) The returning officer for each constituency, district or ward in which a poll is to be taken shall give notice, in writing, to each candidate for election in the constituency, district or ward, before the day appointed for taking of the poll, of the time and place at which the votes cast in the elections shall be counted.

Ballot boxes, official seals and official marks

30. (1) Every ballot box shall be transparent and constructed in a manner that, after it is sealed under regulation 42, the ballot papers can be placed in the ballot box by the voters but not taken out without breaking the seals.

(2) The official seals and official marks in respect of every poll shall be in such form as the Commission may determine.

Procedure before commencement of poll

31. (1) The presiding officer at each polling station shall, immediately before the commencement of the poll, show every ballot box, open and empty, to any person whose presence for that purpose is permitted so that the person may see that it is empty, and shall then seal with the official seal each ballot box, and shall permit a candidate, election agent or polling agent, who may be present to affix their seals to the ballot box, and the seal or seals shall not be broken until the ballot box is opened in accordance with the provisions of these Regulations.

(2) The presiding officer or assistant presiding officer at each polling station shall place every ballot box sealed under subregulation (1) in a position that it can be seen throughout the taking of the poll by the presiding officer or assistant presiding officer and a candidate, election agent or polling agent who is present at the polling station.

Control of persons entering polling station

32. (1) The presiding officer at each polling station shall keep order in the polling station and in its precincts, and shall regulate the number of voters to be admitted at a time to that polling station.

(2) The presiding officer at each polling station may require any person to leave the polling station and its precincts if, in the opinion of the presiding officer, that person is causing a disturbance which is likely to interfere with the taking of the poll.

(3) Sub-regulation (2) does not apply to—

(a) a member of the Commission or its members of staff;

(b) an election officer;

(c) a person who is accompanying another person wishing to vote in accordance with these Regulations;

(e) a police officer on duty;

(f) accredited monitors and observers; or

(g) a person authorised, in writing, by the Chief Electoral Officer to enter and remain in the polling station.

(4) A candidate, election agent, polling agent or a person accredited by the Commission to enter and remain in a polling station shall, before attending the taking of a poll at any polling station, take and subscribe an oath or make an affirmation, in Form GEN 1 set out in the Schedule before the returning officer for that constituency, district or ward.

(5) The powers conferred by this regulation shall not be exercised so as to prevent any voter who is entitled to vote at a polling station from having an opportunity of voting at that polling station.

Procedure for casting vote at polling station

33. Where a presiding officer, assistant presiding officer or polling assistant is satisfied that an applicant is entitled to be issued with a ballot paper, and to vote, the following procedure shall be followed:

(a) the voter shall, before receiving a ballot paper, present to the polling assistant, the right hand thumb to be marked, except that in the case of a voter without any thumb, that voter shall present any other finger or body part found appropriate by the polling assistant;

(b) before issuing a ballot paper to the voter, the presiding officer or assistant presiding officer shall

(i) call out the name and the number of the voter as recorded in the register of voters at such polling station;

(ii) cancel the name relating to the voter in the register of voters, as evidence that the voter has received a ballot paper; and

(iii) stamp the back of the ballot paper with the official mark;

(c) the presiding officer or polling assistant shall detach the ballot paper from its counterfoil and deliver it to the voter;

(d) the voter shall, on receiving the ballot paper, enter one of the compartments provided in the polling station for that purpose and signify the vote by secretly marking the ballot paper with a cross in the appropriate place and shall then fold the ballot paper in such a way that the official mark stamped on it is visible and the mark signifying the vote is not visible; and

(e) the voter shall thereafter leave the compartment and shall, in the presence of the presiding officer or polling assistant, place the folded ballot paper in the ballot box provided in the polling station for that purpose.

Costing of votes

34. (1) A voter shall cast the vote without undue delay and shall leave the polling station as soon as the voter has placed the ballot paper in the ballot box.

(2) Where the presiding officer is of the opinion that a voter is causing undue delay in casting the vote and that the delay is likely to hinder the adequate or orderly conduct of the poll, the presiding officer may require that voter to complete casting the vote within a period of two minutes immediately thereafter.

(3) A presiding officer shall permit every voter to cast a vote before closing the poll if the voter, at the time appointed for the closing of the poll

(a) is inside the polling station; or

(b) is owing to congestion, in the opinion of the presiding officer, within the precincts of the polling station.

Restriction on communication in precincts of polling station

35. A person, other than a presiding officer, polling assistant, police officer or person on duty in an official capacity at a polling station, shall not have any communication with a voter while the voter is in the precincts of the polling station for the purpose of voting.

Prohibition of use of electronic devices

36. (1) A person shall not use or be allowed to use an electronic device in a polling station or verification room of an election result.

(2) Despite sub-regulation (1), the Commission may specify a list of officials who may use an electronic device in a polling station or verification room for purposes of communication.

Spoilt ballot papers

37. Where a voter inadvertently deals with a ballot paper in such a manner that it cannot be used as a valid ballot paper, the voter shall deliver that ballot paper to the presiding officer and if the presiding officer is satisfied that the ballot paper has been spoilt inadvertently, the presiding officer shall issue another ballot paper to that voter and shall cancel the spoilt ballot paper and the counterfoil to which it relates.

Objections concerning voting

38. (1) An election agent, a polling agent or another voter may, at any time before a voter has been handed a ballot paper at a polling station, object to that voter being entitled to vote or to vote at that polling station if it appears that —

(a) the vote's name is not in the register of voters at that polling station; and

(b) the voter is not in possession of a voter's card or national registration card, or the objector has reasonable grounds to show that the person is not a citizen.

(2) An election agent or voter may object to any other conduct of an election officer or any other person present at a polling station.

(3) An objection shall be made to the presiding officer by an election agent, polling agent or voter in Form GEN 15 set out in the Schedule.

(4) Where a presiding officer does not accept an objection lodged under this regulation, the presiding officer shall accept the ballot and shall count the objected votes.

(5) An objector who is not satisfied with the decision of the presiding officer made under sub-regulation (4) may appeal to the returning officer before the close of voting in Form GEN 16 set out in the Schedule, and the returning officer and presiding officer shall keep a record of each objection and decision made.

Assistance to certain voters

39. (1) A presiding officer or other election officer at the request of a voter who is unable to read shall assist that voter in voting in the presence of—

(a) a person appointed by the presiding officer or accredited observer or monitor, if available; or

(b) two election agents of different candidates, if available.

(2) A person may assist a voter in voting if -

(a) the voter requires assistance due to physical disability;

(b) the voter has requested to be assisted by that person; and

(c) the presiding officer is satisfied that person has attained the age of eighteen years.

(3) The secrecy of voting as provided in the Constitution shall be preserved in the application of this regulation. Cap. 1

(4) A presiding officer shall record in the copy of the register of voters, by means of a mark placed next to the name of the voter concerned, that the presiding officer or another person assisted the voter as provided under this regulation and give the reason for doing so.

Voting by persons employed on election duties

40. (1) Where a person entitled to vote in a constituency, district or ward is employed as a returning officer, presiding officer, polling assistant, police officer or in any other official capacity at a polling station outside that constituency, district or ward, other than the polling station at which that person is entitled to vote, the returning officer for that constituency, district or ward may authorise that person, by certificate under the returning officers= hand in Form GEN 17 set out in the Schedule, to vote at the polling station at which the person is employed.

(2) A voter to whom a certificate is issued under subregulation (1) shall deliver that certificate to the presiding officer when the voter applies for a ballot paper.

Delegation of powers of presiding officer

41. The presiding officer at a polling station may, during a temporary absence from that polling station, delegate the presiding officers power's, subject to the directions of the Commission, to a polling assistant, and during the period of that absence, the polling assistant shall have and may exercise the powers of the presiding officer.

Sealing of full ballot box

42. (1) The presiding officer shall, as soon as a ballot box gets filled up during voting, seal it in the presence of accredited observers, monitors or polling agents and allow the agents to affix their seals to the box, which shall be kept in full view of all persons present until the close of the poll.

(2) The presiding officer shall, where a ballot is sealed under sub-regulation (1), place a new sealed ballot box for the continuity of the voting process.

Procedures after close of poll

43. (1) The presiding officer at a polling station shall, as soon as practicable after the close of the poll, in the presence of the candidates, accredited observers, monitors, election agents or polling agents, present at the polling station—

(a) close and seal the aperture of every ballot box used for the poll, and permit the candidates, accredited observers, monitors, election agents or polling agents, present at the polling station to affix their seal to the ballot box;

(b) in respect of the poll, complete the ballot paper account in Form GEN 18 set out in the Schedule; and

(c) place in separate envelopes, which shall be sealed with official paper seals and with the seals of the candidates, election agents or polling agents, if any, who wish to affix their seals to the ballot box, all the relevant documents such as unused ballot papers, spoilt ballot papers, copy of the register of voters, counterfoils of used ballot papers, the ballot paper account, the official marks and official seals.

(2) A presiding officer shall, in accordance with such directions as may be issued by the Commission, dispatch each envelope sealed and the ballot boxes sealed in safe custody to the returning officer for the constituency, district or ward in respect of which the poll was conducted.

(3) The returning officer for a constituency, district or ward in which a poll has been taken shall take into custody and issue a receipt for all the packets and ballot boxes delivered to the returning officer by a presiding officer in accordance with subregulation (2).

Counting to be done at polling stations

44. (1) The returning officer for constituency, district or ward shall ensure that the counting takes place as soon as practicable after the close of the poll in the respective polling stations in the constituency.

(2) A presiding officer for a polling station shall, as soon as practicable, conduct the count at the polling station immediately after the close of the poll at the polling station.

Counting of votes

45. (1) A presiding officer for a polling station in which a poll has been taken shall, with the assistance of the polling assistants for that polling station, count all the votes cast in the election in that polling station in accordance with the provisions of this regulation.

(2) The counting of the votes shall, so far as circumstances permit, proceed continuously until the count is completed, allowing only a reasonable time for refreshments.

(3) The procedure for counting shall be as follows:

(a) the presiding officer shall open each ballot box and, after removing all the ballot papers, shall count and record the total number of ballot papers contained in each ballot box, without reference to the manner in which the ballot papers are marked;

(b) the presiding officer shall then count and record the total number of valid ballot papers in respect of each candidate, commencing with the election to the office of the President, Member of Parliament and councillor; and

(c) the presiding officer shall ensure that, while counting the ballot papers, the polling assistants keep the side of each ballot paper on which the vote is recorded upwards, and shall take all precautions for preventing any person present at the count from seeing the number printed on each ballot paper.

Rejection of ballot papers

46. (1) A presiding officer shall, subject to subregulation (2) reject as invalid, and shall not count, a ballot paper—

(a) which does not bear the official mark, unless the presiding officer is satisfied that the omission is a *bona fide* error;

(b) which contains more than one vote;

(c) on which anything other than the number printed on the ballot paper is written or marked in such manner that the voter can be identified; or

(d) which is unmarked or invalid for uncertainty.

(2) A ballot paper on which the vote is marked—

(a) elsewhere than in the proper place;

(b) otherwise than by means of a cross; or

(c) by more than one mark;

shall not by that reason be invalid if the intention of the voter clearly appears on it, and the manner in which the paper is marked does not of itself identify the voter and it is not shown that the voter can be identified.

(3) The presiding officer shall stamp the word "rejected" on a ballot paper which is not to be counted under this regulation.

(4) The presiding officer shall draw up a statement in Form GEN 19 set out in the Schedule showing the number of ballot papers rejected under the several heads of—

(a) absence of official mark;

(b) more than one vote;

(c) writing or mark by which voter could be identified; and

(d) unmarked or invalid for uncertainty.

(5) The presiding officer of a polling station may

give a candidate, election agent or polling agent present at the polling station a copy of the statement referred to in sub-regulation (4).

Re-counting of votes

47. A candidate, an election agent or polling agent may, if present when the counting or recounting of the votes is completed, request the presiding officer to have the votes re-counted, or the presiding officer may, have the votes re-counted or again re-counted, except that the presiding officer may refuse the request if, in the opinion of the presiding officer, it is unreasonable.

Equality of votes

48. (1) Where an equality of votes is found to exist between two or more candidates and the addition of one vote would entitle any one of the candidates to be declared elected, the returning officer shall immmediately decide between those candidates by lot in such manner as the Commission may determine and shall proceed as if the candidate on whom the lot falls has received an additional vote.

(2) This regulation shall not apply to an election to the office of President.

Sealing of ballot papers

49. (1) The presiding officer shall, on completion of the counting and totalling of votes cast in an election, seal in separate marked envelopes the ballot papers counted in respect of each candidate, and shall place the rejected ballot papers in separate envelopes.

(2) The presiding officer shall announce how the votes have been cast for each candidate in Form GEN 20 set out in the Schedule, and how many have been rejected in the polling station and may require if present, election agents or monitors to countersign the results, except that failure to countersign the election results does not render the results invalid.

(3) The presiding officer shall deliver the envelopes referred to in sub-regulation (1) to the returning officer of the constituency, district or ward concerned with all the documents and materials referred to in regulation 45.

Announcement and declaration of the results

50. (1) The returning officer shall, after the returning officer receives the votes counted at the polling stations in the constituency, district or ward, total the votes of the poll for each candidate from the ballot paper accounts of each polling station.

(2) In every constituency where a poll in respect of an election to the office of President, mayor or council chairperson has been taken, the returning officer for that constituency shall, without delay after the totalling of the votes has been completed, announce the results of each candidate in Form GEN 20 set out in the Schedule and inform the Commission of the number of valid votes cast in the election and the number of valid votes cast for each candidate and votes rejected.

(3) When the totalling of the votes for National Assembly or local government elections has been completed and the result of the poll ascertained, the returning officer shall

(a) complete in duplicate a declaration of the results of the poll in Form GEN 21 set out in the Schedule;

(b) declare to be elected as Member of Parliament, mayor, council chairperson or councillor, the candidate to whom the majority of votes were cast by reading aloud in public at the place where the totalling was conducted; and

(c) cause to be delivered to the Commission, without delay, the original of the completed form.

Declaration of President-elect

51. (1) If, on an initial ballot for a presidential election, no candidate receives more than fifty percent of the valid votes cast at the election, the Returning Officer shall announce the results of the initial ballot in Form GEN 22 set out in the Schedule, and the Commission shall appoint a day for taking a second ballot in accordance with the Constitution. Cap. 1

(2) For the purpose of determining whether any presidential candidate is entitled to be declared elected under the Constitution, Cap. 1 the Returning Officer shall ascertain the total number of valid votes cast in favour of each candidate and if a presidential candidate

records more than fifty percent of the valid votes cast, the Returning Officer shall declare that candidate to be President-elect in Form GEN 23 set out in the Schedule.

(3) The presidential candidate who obtains more than fifty percent of the valid votes cast in the initial ballot or second ballot shall be declared President-elect by the Returning Officer.

Notice of result

52. (1) The Commission shall, in respect of each candidate declared elected in accordance with regulations, give notice in the *Gazette* of—

(a) the full names of those candidates; and

(b) the constituency, district or ward in which the candidate was elected.

(2) A person validly nominated and unopposed in accordance with regulation 20(3) shall be deemed to have been elected with effect from the date appointed for the taking of the poll at the election in the constituency, district or ward concerned.

Verification of ballot papers

53. (1) The returning officer for a constituency, district or ward in which a poll is taken shall appoint a time and place at which the verification of the ballot paper accounts completed in that constituency, district or ward shall take place and shall give notice, in writing, of the time and place to the candidate in such election.

(2) The returning officer shall, at the time and place appointed under subregulation (1), in the presence of the assistant returning officer for that constituency, district or ward and candidates and their election agents, monitors or observers present, proceed with the verification of the ballot paper accounts.

(3) The returning officer conducting a verification in accordance with sub-regulation (2) shall—

(a) open the envelopes containing the unused ballot papers together with their counterfoils and the spoilt ballot papers and the envelopes delivered to the returning officer in respect of each polling station in the constituency;

(b) in respect of each polling station, compare the ballot papers contained in the ballot boxes as recorded under regulation 45 and with the total number of unused and spoiled ballot papers contained in an envelope for that polling station;

(c) re-seal all the envelopes with their respective contents; and

(d) place ballot paper account forms for that constituency, district or ward in one envelope and seal that envelope.

(3) The returning officer shall prepare and deliver to the Commission a report on the verification of the ballot paper accounts in Form GEN 24 set out in the Schedule, and shall permit the candidates, monitors, observers and election agents present at the verification to make a copy of the report.

Custody and destruction of election materials

54. (1) The returning officer shall, upon the completion of the verification of the ballot paper accounts, immediately deliver to the Commission all sealed envelopes in connection with the election.

(2) The Commission shall retain the envelopes delivered under subregulation (1) in respect of any poll in an election for a period of six months after the day on which the result of the election was declared, and shall then cause them to be destroyed by any efficacious method.

(3) Where the Commission has been informed under section 100 (4)of the Act that an election petition has been presented in respect of an election, the packets shall not be destroyed until the trial of that election petition is finally determined.

PART IV
General Provisions

Election agents

55. (1) A candidate shall name an election agent in the nomination paper and, subject to the other provisions of this regulation, the person named shall be the election agent of the candidate for the purpose of that election.

(2) A candidate may revoke the appointment of an election agent at any time, or an election agent may resign from the appointment, by giving written notice to the other party.

(3) Where the election agent of a candidate ceases to be the candidate's election agent for any reason,

that election agent shall give written notice of the cessation to the returning officer for the constituency concerned and if another person is appointed to be the candidate's election agent, the notice shall set out the full name and address of the new election agent.

(4) A person who is not appointed in accordance with the provisions of this regulation shall not exercise the rights of an election agent.

(5) A candidate in a presidential election may, for the purposes of that election, appoint one person in each constituency to be the candidate's election agent for that constituency or appoint the same election agent to be the election agent for two or more constituencies, and the other provisions of this regulation shall apply to that candidate and election agent.

Polling agents

56. (1) Subject to the other provisions of this regulation, a candidate, or the candidate's election agent may, in respect of each polling station within the constituency in which the candidate is nominated, appoint a person to be that candidate's polling agent.

(2) A candidate or the candidate's election agent shall, at least four days before the day appointed as polling day for the constituency, district or ward concerned, give written notice to the returning officer for the constituency, district or ward stating the names and addresses of the polling agents appointed under sub regulation (1) and specifying the polling station for which each person is appointed as polling agent.

(3) A person who is not appointed in accordance with the provisions of this regulation shall not exercise the rights of a polling agent.

(4) A candidate in a presidential election may, for the purposes of that election, appoint a person to be that candidate's polling agent in respect of a polling station or to be that candidate's election agent.

(5) A person may, in respect of a polling station in the constituency for which that person is election agent, appoint a person to be the polling agent of a candidate and the other provisions of these regulations shall apply to that candidate, that candidate's election agent and polling agents.

Offences by election officers

57. An election officer or person who wilfully fails to perform the functions of that office or fails to comply with any of the requirements of these Regulations commits an offence and is liable, upon conviction, to a fine not exceeding ten thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

Revocation of S.I. No. 92 of 2006

58. The Electoral (General) Regulations, 2006, are revoked.

SCHEDULE

(*Regulations* 4, 9, 11(1), 11(2), 11(4), 11(6)(a), 11 (6)(b), 12(1), 12(2), 13(a), 13(b),12(3)(a), 14(1)(a), 14(2),27(1), 27(2), 38(3), 38(5), 40(1), 43(1), 46(3), 49, 50, 51(1), 51(2) and 53(3))

PRESCRIBED FORMS

GEN 1
(*Regulations* 5 and 32)
(Complete in triplicate)

REPUBLIC OF ZAMBIA

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

The Electoral Process (General) Regulations, 2016

OATH ( ) OR AFFIRMATION ( )

I..... .....
Surname Other Names

having been appointed .....do hereby

*swear/solemnly and sincerely affirm that—

(a) I will carry out the duties required of me as a result of my appointment impartially and to the best of my ability without fear or favour to any person or persons;

(b) I will not directly or indirectly reveal to any person any matter that may come to my knowledge or notice as a result of my appointment unless so authorised by law; and

(c) I will diligently discharge my duties in accordance with the law and shall abide with the Electoral Code of Conduct.

Signed:.....

*Sworn/Affirmed before me this ..... day of 20

Signed.....

Name in CAPITALS .....

*Subordinate Court Magistrate/Local Court Magistrate/Election Officer/Returning Officer/ Commissioner for Oaths/Head of Government School/Principal of a College.

+ In case of candidate, election agent or polling agent delete paragraph *(a)*

*Delete as necessary

GEN. 2
(*Regulation* 11(1))
(Complete in triplicate)

REPUBLIC OF ZAMBIA

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

The Electoral Process (General) Regulations, 2016

PRESIDENTIAL ELECTION NOMINATION PAPER

PART A

To: The Returning Officer,.....
We the undersigned being registered voters do hereby nominate:
Surname (in BLOCK CAPITALS)
First name (in BLOCK CAPITALS)
** Other Names
National Registration Card No.
Voter's Card No.
Gender: Mobile Phone No.
Residential Address:.....
Postal Address:.....
to stand as a candidate for election in the .....election.

Please Fill the Section in Block Capitals

I, (Surname).....(First name).....

(Other Names):.....
Hereby declare:

(a) that I accept the nomination;
(b) * that my nomination is supported by the .....political party and the party symbol is .....
*that I am an independent candidate and my symbol is .....
(c) that I appoint, (Surname).....
(Other Names).....(NRC Number).....
as my running mate in the election.
(d) that I have appointed the persons listed in Part C in accordance with Regulation 50, as my Election Agents in the named constituencies.
(e) An affidavit stating that I qualify for election as President is hereby lodged.

....
(Date) (Signature of Candidate)

Received by me at ..... hours on the ..... day of .....20.....

*VALID/INVALID Receipt No: .....
Rejection Reason (if invalid):.....

....
(Name of Returning Officer) (Signature of Returning Officer)

*Delete whichever is not applicable
** Note that only initials will be used for other names on the ballot paper

PART B

We being registered voters, support the candidature of.....for elections as President of the Republic of Zambia on.....(date)

Province	Full Name in Block Capitals	Voter's Card Number	Signature or thumb-print

Page.....of.....pages

Verified before me.....

Name:.....

Assistant Returning Officer

Date:.....

Witness: Name:.....

Signature.....

Designation:.....

GEN. 3
(*Regulations* 11 (3))
(Complete in triplicate)

REPUBLIC OF ZAMBIA

The Electoral Process Act, 2016
(Act No. 35 of 2016
The Electoral Process (General) Regulations, 2016

PRESIDENTIAL ELECTION NOMINATION PAPER RUNNING MATE

To: The Returning Officer,.....

I, the undersigned being Presidential candidate, do hereby nominate:

Surname (in BLOCK CAPITALS) ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

First name (in BLOCK CAPITALS) ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

** Other Names ☐☐☐☐☐☐☐☐☐ ☐☐☐☐☐☐☐☐☐

National Registration Card No. ☐☐☐☐☐☐ ☐☐ ☐

Voter's Card No. ☐☐☐☐☐☐☐☐

Gender: ☐ Mobile Phone No. ☐☐☐☐☐☐☐☐☐

Residential Address:.....
Postal Address:.....
to stand as my Running Mate for the Presidential Election

....
(Date) (Signature of Candidate)

Please Fill the Section in Block Capitals

I, (Surname).....(First name).....

(Other Names):.....
Hereby declare that:

(a) I accept the nomination as a Running Mate to .....
.....(full names of candidate).

(b) an affidavit stating that I qualify for election as President is hereby lodged.

....
(Date) (Signature of Running Mate)

Received by me at .....hours on the .....day of .....20.....

*VALID/INVALID
Rejection Reason (if invalid):.....

....
(Name of Returning Officer) (Signature of Returning Officer)

*Delete whichever is not applicable

** Note that only initials will be used for other names on the ballot paper

GEN. 4
(*Regulations* 11 (4))
(Complete in triplicate)

REPUBLIC OF ZAMBIA

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

The Electoral Process (General) Regulations, 2016

AFFIDAVIT FOR PRESIDENTIAL CANDIDATE/RUNNING MATE *

I, ...,
a Zambian Citizen nominated to contest Presidential election/ as a running mate*, do hereby make OATH/solemnly affirm and state that:

1. I am a Zambian Citizen by birth/descent* and attach a certified copy of my green National Registration Card marked 1.
2. I have been ordinarily resident in Zambia and I reside at .....
   (Physical address, town, province)
3. I am a registered voter and a certified copy of my voter's card is attached and marked 2.
4. I am .....years of age.
5. I am fluent in the official language.
6. I have obtained, as a minimum academic qualification, a Grade twelve certificate or its equivalent and attached is a certified copy of my Grade twelve certificate/equivalent* marked 3.
7. I have paid all my personal taxes/ made arrangements satisfactory* to the appropriate tax authority for the payment of taxes. Attached hereto is a certified copy of the tax clearance certificate/proof of arrangement of paying taxes marked 4.
8. I have declared my assets and liabilities and the statement of the assets and liabilities is attached and marked 5.
9. I qualify for nomination as a Presidential candidate and the disqualifications in Article 100 (2) do not apply to me.
10. I swear this affidavit conscientiously believing the same to be true and correct to the best of my knowledge.

Sworn by the said .....at Lusaka this..... day of .....

Before Me: .....

Commissioner for Oaths

*delete whichever is not applicable.

GEN. 5
(*Regulations* 11 (6) (a) and 12(2)*(a)*)
(Complete in triplicate)

REPUBLIC OF ZAMBIA

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

The Electoral Process (General) Regulations, 2016

STATUTORY DECLARATION OF ASSETS AND LIABILITIES

(Presidential Candidate/Running Mate/Member of Parliament/Mayor/Council Chairperson*)

I, ... (full names) being a candidate for election to the office of the President of the Republic of Zambia/Running Mate* do solemnly and sincerely declare that the statement annexed hereto is made by me for the purposes of Article 100/70* of the Constitution and is a true and complete statement of my assets and liabilities.

AND I make this solemn declaration conscientiously believing the same to be true.

Signed.....

Subscribed and solemnly declared before me this ..... day of ..... 20.....

.....

Returning Officer

Note: A typed or clearly printed/written statement of assets and liabilities must be annexed to this declaration.

*Delete whichever is not applicable

GEN. 6
(*Regulation* 11 (6)(b), 12(3)(b) and 14(3)*(b)*)
(Complete in triplicate)

REPUBLIC OF ZAMBIA

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

The Electoral Process (General) Regulations, 2016

DECLARATION OF COMPLIANCE WITH ELECTORAL CODE OF CONDUCT

I, ... do solemnly and sincerely declare that:

(1) I am a citizen of .....

(2) My National Registration Card Number is.....

(3) *I am the Secretary General of.....a political party registered under the Societies Act, and intending to participate in the elections.

*I am an independent candidate intending to participate in the elections.

(4) *I shall ensure that the .....
as a political party and its supporters, shall observe the Code of Conduct during campaigns and elections.

*I shall comply and be bound by the provisions of the Electoral (Code of Conduct) Regulations.

(5) I make this solemn declaration conscientiously believing the same to be true.

Signed: .....

Name:.....

Residential Address:.....

Subscribed to and solemnly declared before me at..... this.....day of ..... 20.....

Local Court Magistrate, Subordinate Court Magistrate, Head of Primary or Secondary School, Principal of a College, commissioner for Oaths, electoral Officer or Head of any government isntitutition

**Delete where inapplicable*

GEN. 7
(*Regulation* 12(1))
(Complete in triplicate)

REPUBLIC OF ZAMBIA

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

The Electoral Process (General) Regulations, 2016
NATIONAL ASSEMBLY NOMINATION PAPER

PART A

To: The Returning Officer,.....Constituency,.....District.
We the undersigned being registered voters in the above-named constituency, do hereby nominate:

Surname (in BLOCK CAPITALS)

First name (in BLOCK CAPITALS)

** Other Names

National Registration Card No.

Voter's Card No.

Gender: Mobile Phone Number:

Residential Address:.....
Postal Address:.....
to stand as a candidate for election in the .....Constituency in ....
..... District

Please Complete this Section in Block Capitals

I, (Surname).....(First Name).....
(Other Names):.....
Hereby declare: -

(a) that I accept the nomination;
(b) * that my nomination is supported by the .....political party and I have been a member for ..... The symbol .....
* that I am an independent candidate and my symbol is .....
(c) (i) that I have appointed (full name).....
of (address).....
(ii) that I have appointed (full name).....
of (address).....
to be my Election Agents in accordance with the regulations.
(d) An Affidavit stating that I qualify for election as a Member of Parliament is hereby lodged.

....
(Date) (Signature of Candidate)

Received by me at .....hours on the ..... day of .....20.....

*VALID/INVALID Receipt No:.....Amount.....
Rejection Reason (If invalid):.....

....
(Name of Returning Officer) (Signature of Returning Officer)

*Delete whichever is not applicable
** Note that only initials for Other Names will be used on the ballot paper

PART B

We, being registered voters in the.....Constituency,.....

District, support in the candidature of.....

Full Name in Block Capitals	Voter's registration card number	Signature or thumb-print

NOTES

1. Candidates are advised to acquant themselves with the provisions of regulations 14 to 24, 57 and 58 before competting this nomination paper.
2. When this nomination paper is lodged it must be accompanied by the sum of K.....in cash as non refundable nomination fee.
3. A candidate may authorise another person to countersign a Nomination Paper on his behalf to lodge it with the Returning Officer, but, in that event, the written authorisation of the candidate's digital and printed photograph (34mm (high) x 30mm (wide)) must be presented with the Nomination Paper.
4. The statutory Declaration on FORM GEN 2a must be completed by the candidate himself before a Commissioner for Oaths.

GEN. 8
(*Regulation* 13)
(Complete in triplicate)

REPUBLIC OF ZAMBIA

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

The Electoral Process (General) Regulations, 2016

AFFIDAVIT IN SUPPORT OF NOMINATION AS A MEMBER OF PARLIAMENT

I, ... a Zambian Citizen nominated to contest elections as a Member of Parliament, do hereby make OATH/solemnly affirm and state that-

1. I am a Zambian Citizen and I attach a certified copy of my green national registration card marked 1.
2. I reside at.....
   (*Physical address, town, province*)
3. I am a registered voter and a certified copy of my voter's card is attached and marked 2.
4. I am .....years old.
5. I have obtained, as a minimum academic qualification, a Grade twelve certificate or its equivalent and a certified copy of my Grade twelve certificate/equivalent* is attached and marked 3.
6. I have declared my assets and liabilities and the statement of the assets and liabilities is attached and marked 4.
7. I am not a member of a political party and I have not been a member of a political party for at least two months immediately before the date of the election**.
8. I qualify for nomination as a Member of Parliament and the disqualifications in Article 70 (2) do not apply to me.
9. I swear this affidavit conscientiously believing the same to be true and correct to the best of my knowledge.

Sworn by the said ..... at ..... this ..... day of ..... 20.....

Before Me .....

Commissioner for Oaths

* delete whichever is not applicable.
** applies only to independent candidate, delete if not applicable.

GEN. 9
(*Regulation* 12(2))
(Complete in triplicate)

REPUBLIC OF ZAMBIA

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

The Electoral Process (General) Regulations, 2016

LOCAL GOVERNMENT NOMINATION PAPER

MAYOR/COUNCIL CHAIRPERSON

PART A

To: The Returning Officer,.....District
We the undersigned being registered voters in the above-named district, do hereby nominate:

Surname (in BLOCK CAPITALS)

First name (in BLOCK CAPITALS)

** Other Names

National Registration Card No.

Voter's Card No.

Gender: Mobile Phone Number:

Residential Address:.....
Postal Address:.....
To stand as a candidate for election as Mayor/Council Chairperson* in .....District

Please Complete this Section in Block Capitals

I, (Surname).....(First Name).....
(Other Names):.....
Hereby declare: -
(a) that I accept the nomination;
(b) * that my nomination is supported by the.....political party and the symbol is.....

* that I am an independent candidate and my symbol is .....
(c) (i) that I have appointed (full name).....
of (address).....
(ii) that I have appointed (full name).....
of (address).....
to be my Election Agents in accordance with the regulations.
(d) An affidavit stating that I qualify for election as Mayor/Council Chairperson is hereby lodged.

....
(Date) (Signature of Candidate)

Received by me at .....hours on the ..... day of .....20.....

*VALID/INVALID Receipt No:.....Amount.....
Rejection Reason (If invalid): .....

....
(Name of Returning Officer) (Signature of Returning Officer)

*Delete whichever is not applicable
** Note that only initials for Other Names will be used on the ballot paper

PART B

We, being registered voters in the.....District, support the candidate of .....

Full Name in Block Capitals	Voter's registration card number	Signature or thumb-print

NOTES

1. Candidates are advised to acquant themselves with the provisions of regulations 15 to 24 and 58 before completing this nomination on paper.
2. When this nomination paper is lodged it must be accompanied by the sum of K.....in cash as non refundable nomination fee.
3. A candidate may authorise another person to countersign a Nomination Paper on his or her behalf and to lodge it with the Returning Officer, but, in that event, the written authorisation of the candidate and the candidate's digital and printed photograph (34 mm (high) x 30 mm (wide)) must be presented with the Nomination Paper.
4. An affidavit FORM GEN 3c must be completed by the candidate himself or hereself before a Commissioner for Oaths.

GEN 10
(*Regulation* 13*(b)*)
(Complete in triplicate)

REPUBLIC OF ZAMBIA

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

The Electoral Process (General) Regulations, 2016

AFFIDAVIT IN SUPPORT OF NOMINATION AS MAYOR/COUNCIL CHAIRPERSON*

I,....., a Zambian Citizen nominated to contest election as a Mayor/Council Chairperson* do hereby make OATH/ solemnly affirm and state that:—

1. I am a Zambian Citizen and I attach a certified copy of my green National Registration Card marked 1
2. I reside at .....
(Physical address, town, province).
3. I am a registered voter and a certified copy of my voter's card is hereto attached and marked 2.
4. I have obtained, as a minimum academic qualification, a Grade twelve certificate or its equivalent and a certified copy of the Grade twelve certificate/equivalent* is hereto attached and marked 3.
5. I have declared my assets and liabilities and the statement of the said assets and liabilities is attached and marked 4.
6. I qualify for nomination as a Mayor/ Council Chairperson*.
7. I swear this affidavit conscientiously believing the same to be true and correct to the best of my knowledge.

Sworn by the said .....at .....this ..... day of .....

Before Me .....
Commissioner for Oaths

*delete whichever is not applicable.

GEN. 11
(*Regulation* 14(1))
(Complete in triplicate)

REPUBLIC OF ZAMBIA

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

The Electoral Process (General) Regulations, 2016

THE LOCAL GOVERNMENT NOMINATION PAPER

COUNCILLOR
PART A

To: The Election Officer, ...Ward,
.....Constituency, ...District.

We the undersigned being registered voters in the above-named ward, do hereby nominate:

Surname (in BLOCK CAPITALS)

First name (in BLOCK CAPITALS)

** Other Names

National Registration Card No.

Gender: Mobile Phone Number:

Residential Address:.....

Postal Address:.....

To stand as candidate for election as Councillor in the .....Ward of the ..... Council

Please Complete this Section in Block Capitals

I, (Surname).....(First Name).....

(Other Names):.....

Hereby declare:-

(a) that I accept the nomination;

(b) * that my nomination is supported by the.....political party and the symbol is .....

* that I am an independent candidate and my symbol is.....

(c) (i) that I have appointed (full name).....
of (address).....

(ii) that I have appointed (full name).....
of (address).....
to be my Election Agents in accordance with the regulations.

(d) An affidavit stating that I qualify for election as a Councilor is hereby attached.

....
(Date) (Signature of Candidate)

Received by me at .....hours on the ..... day of .....20.....

*VALID/INVALID Receipt No:..... Amount: K.....

Reason for Rejection (If invalid):.....

....
(Name of Returning Officer) (Signature of Returning Officer)

*Delete whichever is not applicable
** Note that only initials for Other Names will be used on the ballot paper

PART B

We, being registered voters in the.....Ward of the.....Council, support the candidature of.....

Full Name in Block Capitals	Voter's registration card number	Signature or thumb-print

NOTES

1. Candidates are advised to acquant themselves with the provisions of regulations 16 to 24 and 57, and 58 of the regulations before completing this nominated paper.
2. When this nomination paper is lodged it must be accompanied by the sum of K.....(City Council), K.....(Municipal Council) or K.....(District Council) in cash as non refundable nomination fees.
3. A candidate may authorise another person to countersign a Nomination Paper on his or her behalf and to lodge it with the Returning Officer, but, in that event, the written authorisation of the candidate and the candidate's digital and printed photograph (34 mm (high) x 30 mm (wide)) must be presented with the Nomination Paper.
4. An affidavit FORM GEN 3d must be completed by the candidate himself or hereself before a Commissioner for Oaths.

GEN. 12
(*Regulation* 14(2))
(Complete in triplicate)

REPUBLIC OF ZAMBIA

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

The Electoral Process (General) Regulations, 2016

AFFIDAVIT IN SUPPORT OF NOMINATION AS A COUNCILLOR

I, ...,
nominated to contest election as a Councillor do hereby make OATH/solemnly affirm and state that:—

I am a Zambian Citizen /holder of a resideut permit/ resident in the district* and, a certified copy of my green National Registration Card/resident permit * is hereby attached and marked 1.

(1) I reside at.....
(*Physical address, town, province*)

(2) I am not a Member of Parliament or nominated to stand as a Member of Parliament.

(3) I am ..... years of age.

(4) I have obtained, as a minimum academic qualification, a Grade twelve certificate or its equivalent and a certified copy of my Grade twelve certificate/equivalent* is hereto attached and marked 2.

(5) I have paid all my council taxes and I attach hereto a certified copy of tax clearance from the Council, marked 3

(6) I qualify for nomination as a Councillor.

(7) I swear this affidavit conscientiously believing the same to be true and correct to the best of my knowledge.

Sworn by the said ..... at ..... this ..... day of ....., 20 .....

Before Me
Commissioner for Oaths

* delete whichever is not applicable.

GEN 13
(*Regulation* 27 (1))
(Complete in triplicate)

REPUBLIC OF ZAMBIA

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

The Electoral Process (General) Regulations, 2016

BALLOT PAPER FOR PRESIDENTIAL ELECTION

Serial No.....

Constituency .....

Instructions: **Vote** for **ONE** candidate **ONLY** by marking one cross in the blank box opposite the name and symbol of the candidate for whom you wish to vote. **DO NOT** make any other mark on this paper by which you can be identified.

PORTRAIT OF CANDIDATE	NAME OF CANDIDATE Name of Running Mate	POLITICAL PARTY/INDEP	SYMBOL	MARK/ CROSS

*Official Mark to be stamped on reverse side of ballot paper

GEN 14
(*Regulation* 27 (2))
(Complete in triplicate)

REPUBLIC OF ZAMBIA

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

The Electoral Process (General) Regulations, 2016

BALLOT PAPER FOR NATIONAL ASSEMBLY/MAYORAL/COUNCIL CHAIRPERSON/COUNCILLORS

Serial No.....

Constituency .....

Instructions: **Vote** for **ONE** candidate **ONLY** by marking one cross in the blank box opposite the name and symbol of the candidate for whom you wish to vote. **DO NOT** make any other mark on this paper by which you can be identified.

PORTRAIT OF CANDIDATE	NAME OF CANDIDATE Name of Running Mate	POLITICAL PARTY/INDEP	SYMBOL	MARK/ CROSS

*Official Mark to be stamped on reverse side of ballot paper
*Delete where inapplicable

GEN. 15
(Regulation 38(3))
(Complete in triplicate)

REPUBLIC OF ZAMBIA

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

The Electoral Process (General) Regulations, 2016

OBJECTION AND DECISION CONCERNING VOTING

I.....being *an election agent/ voter hereby objects to .....of voter's card no ..... being *allowed/refused to vote at..... polling station for the following reasons:

.....

.....

.....

Name of objector.....

NRC No..... Voter's Card No:.....

Signed:.....

Date:.....

I ..... being the duly appointed Presiding Officer for ..... polling station hereby *allow/refuse the above objection on the ground(s) that:

.....

.....

.....

Signed:.....

Date:.....

*delete where inapplicable.

GEN. 16
(*Regulation* 38 (4))
(Complete in triplicate)

REPUBLIC OF ZAMBIA

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

The Electoral Process (General) Regulations, 2016

APPEAL TO THE RETURNING OFFICER

To: The Returning Officer

..... Constituency

..... District

I ..... an *election agent/voter at.....polling station hereby appeal against the decision of the Presiding Officer at the said polling station

*allowing/refusing .....of voter's card no ..... to Vote.

My appeal is based on the ground(s) that .....

.....

.....

Signed.....

Appellant

Date.....

I ..... duly appointed Returning Officer for ..... Constituency hereby

*allow/dismiss the appeal on the ground(s) that.....

.....

Signed:.....

Date: .....

*delete where inapplicable.

GEN. 17
(*Regulation* 40(1))
(Complete in triplicate)

REPUBLIC OF ZAMBIA

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

The Electoral Process (General) Regulations, 2016

CERTIFICATE OF AUTHORITY TO VOTE AT A POLLING STATION FOR PERSONS EMPLOYED ON ELECTION DUTIES

To: Presiding Officer ..... Polling Station
.....Constituency

In accordance with Regulation 42 authority is hereby given for the person specified below to cast his vote at the above polling station:

(i) Full name of voter as shown in the Voters' Roll .....
.....

(ii) Election duty .....

(iii) Name of polling station at which voter entitled to vote.....
.....

(iv) Voter's Card No.....

(v) National Registration Card No.....

....
Name of Returning Officer *Signature of Returning Officer*

Date ..... 20.....

INSTRUCTIONS

1. This certificate may only be issued to a person who is unable to vote at the polling station at which the person is entitled to vote owing to the fact that he or she is employed in an official capacity on election duties at some other polling station.
2. In addition to this certificate, the national registration card and the voter's card must be produced to the Presiding Officer when application is made for a ballot paper.
3. Upon the issue of a ballot paper to the voter this certificate must be surrendered to the Presiding Officer who must attach it to the marked copy of the Voters' Roll.

GEN. 18
(*Regulation* 43 (1))
(Complete in triplicate)

REPUBLIC OF ZAMBIA

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

The Electoral Process (General) Regulations, 2016

BALLOT PAPER ACCOUNT

PRESIDENTIAL/MEMBER OF PARLIAMENT/ MAYOR/COUNCIL CHAIRPERSON/ COUNCILLOR*

Polling Station:..... Constituency: .....
Stream:..... Council:.....
Date:.....

To be completed by Returning Officer on issue of Ballot Papers		To be completed by Presiding/Assistant Presiding Officer at the close of the poll			
Ballot Papers Numbered	Total Number Supplied (1)	Number of used excluding Spoilt ballot papers (2)	Number of Spoilt ballot papers (3)	Number of unused ballot papers (4)	Total Columns 2-4 (This must equal (1))
to					
to					
to					
to					
to					
to					
to					
to					
to					
to					
to					
to					
to					
TOTAL					
Ballot boxes supplied: ..... Ballot boxes used ..... Unused ballot boxes:					

I hereby certify that this is the correct statement of all ballot papers and boxes supplied to me.
Name: .....
Signed: .....
Presiding Officer

*Delete where inapplicable

GEN. 19
(*Regulation* 46 (4))
(Complete in triplicate)

REPUBLIC OF ZAMBIA

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

The Electoral Process (General) Regulations, 2016

STATEMENT OF REJECTED BALLOT PAPERS
PRESIDENTIAL/MEMBER OF PARLIAMENT/ MAYOR/COUNCIL CHAIRPERSON/ COUNCILLOR*

.....Polling Station
..... Constituency
.....Polling Station

Date of Poll .....

Reasons for rejection by Presiding Officer	Total
1. No official Mark	.....
2. Votes shown for more than one candidate	.....
3. Voter identification by mark	.....
4. Unmarked or invalid due to uncertainty	.....
Total number of rejected ballot papers	.....

I .....hereby certify that this is a correct statement of the ballot papers rejected by me as invalid.

Date..... 20 ....

Signature of Presiding Officer

INSTRUCTIONS

1. To be completed by the Presiding Officer at the conclusion of the count after results and before announcement of the results.
2. The rejected ballot papers must be placed together in a marked envelope which must be sealed by the Presiding Officer.

*Delete where inapplicable

GEN. 20
(*Regulations* 49 and 50)
(Complete in triplicate)

REPUBLIC OF ZAMBIA
The Electoral Process Act, 2016
(Act No. 35 of 2016)

The Electoral Process (General) Regulations, 2016

ANNOUNCEMENT OF THE RESULT OF THE POLL
PRESIDENTIAL/MEMBER OF PARLIAMENT/ MAYOR/COUNCIL CHAIRPERSON/ COUNCILLOR*

I ..... being the Presiding Officer for..... .....,
(Presiding Officer's Name in full in BLOCK CAPITAL (Name and Number of Polling Station)
in ..... Constituency do hereby announce that I have, in accordance with the law, counted the votes of the poll in the said polling station and that they have been given to:

	Name of Candidate	Party/Independent	Votes(in figures)
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			
11.			
12.			
13.			
14.			
15.			

I further declare that a total of.....ballot papers have been rejected by me as invalid and that a total of..... votes were cast.
Dated this ..... day of .....20.....
Signed: .....

Name / Party) (Signature	(Name / Party) (Signature	Name/Organization) (Signature
Name / Party) (Signature	Name / Party) (Signature	Name/Organization) (Signature
Name / Party) (Signature	Name / Party) (Signature	Name/Organization) (Signature
Name / Party) (Signature	Name / Party) (Signature	Name/Organizatinn) (Signature
Name / Party) (Signature	Name / Party) (Signature	Name/Organization) (Signature
Name / Party) (Signature	Name / Party) (Signature	Name/Organization) (Signature
Name / Party) (Signature	Name / Party) (Signature	Name/Organization) (Signature
Name / Party) (Signature	Name / Party) (Signature	Name/Organization) (Signature
(Name and Signatures of Agents)	(Name and Signatures of Agents)	(Name and Signatures of Monitors)

Witnessed by:

INSTRUCTIONS

1. This form must be completed in sufficient quantities to give **one** copy to each polling agent by the Presiding Officer. The Presiding Officer must read out aloud the text from the original to the public outside and inside the polling station.
2. The full names of the candidates, party and votes received in figures 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 Returning Officer together with other material at the conclusion of the count. Copies can be given to each candidate/party agents and monitors.

*Delete where inapplicable

GEN. 21
(*Regulations* 49 and 50)
(Complete in triplicate)

REPUBLIC OF ZAMBIA
The Electoral Process Act, 2016
(Act No. 35 of 2016)

The Electoral Process (General) Regulations, 2016

ANNOUNCEMENT OF THE RESULT OF THE POLL
PRESIDENTIAL/MEMBER OF PARLIAMENT/ MAYOR/COUNCIL CHAIRPERSON/ COUNCILLOR*

I ..... being the Presiding Officer for..... District/Constituency/ward,
(Presiding Officer's Name in full in CAPITAL LETTERS
do hereby announce that I have, in accordance with the law, counted the votes of the poll in the said polling station and that they have been given to:.....

	Name of Candidate	Party/Independent	Votes(in figures)
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			
11.			
12.			
13.			
14.			
15.			

I further declare that a total of.....ballot papers have been rejected as invalid and that a total of..... votes were cast.

*The tie of votes recorded has been broken by casting a lot in accordance with the provision of the law. (Delete if not applicable).

I therefore declare that the said.....to be this day duly elected as.....for

Dated this ..... day of .....20.....

Signed: .....

Witnessed by:

Name / Party) (Signature	(Name / Party) (Signature	Name/Organization) (Signature
Name / Party) (Signature	Name / Party) (Signature	Name/Organization) (Signature
Name / Party) (Signature	Name / Party) (Signature	Name/Organization) (Signature
Name / Party) (Signature	Name / Party) (Signature	Name/Organization) (Signature
Name / Party) (Signature	Name / Party) (Signature	Name/Organization) (Signature
Name / Party) (Signature	Name / Party) (Signature	Name/Organization) (Signature
Name / Party) (Signature	Name / Party) (Signature	Name/Organization) (Signature
Name / Party) (Signature	Name / Party) (Signature	Name/Organization) (Signature

INSTRUCTIONS

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 totaling of the votes takes place.
2. The full names of the candidates, party and votes received in figures 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 copy must be retained by the Returning Officer.

*Delete where inapplicable

GEN 22
(*Regulation* 51(1))
(Complete in triplicate)

REPUBLIC OF ZAMBIA

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

The Electoral Process (General) Regulations, 2016
DECLARATION OF RESULT OF THE INITIAL BALLOT- PRESIDENTIAL

Whereas Parliament was dissolved on the ..... day of ....., 20.....
AND WHEREAS an Election to the Office of President was conducted on the ..... day of....., 20.....
NOW THEREFORE,
I (full name of Returning Officer) .....being the Returning Officer for the election to the office of President do hereby DECLARE that I have, in accordance with the law, ascertained the result of such election and the results have been given to:

1. .....
2 .....
3 .....
4. .....
5. .....
6. .....
7. .....

AND WHEREAS, no candidate has received more than fifty percent of the valid votes cast in accordance with Article 101(2) of the Constitution. AND WHEREAS

1. .....
2. .....
3. .....

received the highest and second highest numbers of the valid votes cast.
NOW THEREFORE I, the said Returning Officer do hereby ANNOUNCE THAT the second ballot shall be held on the ..... day of .....20.....
And the candidates shall be,

1. .....
2. .....
3. .....

Signed.....
Returning Officer

Date.....

GEN. 23
(*Regulation* 51 (2))
(Complete in triplicate)

REPUBLIC OF ZAMBIA

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

The Electoral Process (General) Regulations, 2016

DECLARATION OF PRESIDENT-ELECT

WHEREAS Parliament was dissolved on the..... day of ....., 20..... AND WHEREAS an Election to the office of President was conducted on the ..... day of ....., 20.....

NOW THEREFORE, I *(full name of Returning Officer)* .....
being the Returning Officer for the Election to the office of President do hereby declare that I have, in accordance with the law, ascertained the result of such election and the valid votes were given to.

1. .....
2. .....
3. .....
4. .....

I, THEREFORE DECLARE, *(name of elected candidate in block letters)*
.....
to be PRESIDENT- ELECT of the Republic of Zambia, this ..... day of ....., 20.....

Signed .....
Returning Officer

Lusaka
Zambia

*delete whichever is not applicable

GEN. 24
(*Regulation* 53 (3))
(Complete in triplicate)

REPUBLIC OF ZAMBIA

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

The Electoral Process (General) Regulations, 2016

REPORT ON VERIFICATION OF BALLOT PAPER ACCOUNT PRESIDENTIAL/ MEMBER OF PARLIAMENT/MAYOR/COUNCIL CHAIRPERSON/COUNCLLOR

TO: Chief Electoral Officer
Electoral Commission of Zambia
P.O. Box 50274
LUSAKA

I,....., being the Returning Officer for .....

Constituency/district, hereby report that I have, in accordance with Regulation 46 of the above Regulations verified the Ballot Paper Account forms received from the Presiding Officers of every Polling Station in the constituency by comparing them with the total number of ballot papers contained in each ballot box and the total number of unused and spoilt ballot papers delivered to me by Presiding Officers.

The result of such verification is as follows:

1. Total number of ballot papers issued by me to Presiding Officers .....

Details obtained from Ballot Paper Account forms	*Details obtained from physical check by Returning Officer*
2. Number used excluding spoilt ballot papers:	5. Total number of ballot papers contained in the ballot boxes: .....
3. Number of spoilt ballot Papers:	6. Total number of spoilt ballot papers:.....
4. Number of unused ballot Papers:	7. Total number of unused ballot papers returned by Presiding Officers:.....
TOTAL	**TOTAL**

..... Constituency/Ward
..... District

Date: .....

.....
Signature of Returning Officer

Made by the Electoral Commission of Zambia this 9th day of August, 2016.

JUSTICE E. E. CHULU,
Chairperson

JUSTICE C. S. MUSHABATI,
Member

DR. F. NG'NDU,
Member

DR. E.J SIKAZWE,
Member

D. MATONGO,
Commissioner

LUSAKA
[EC/101/5/2 CONF]

GOVERNMENT OF ZAMBIA

STATUTORY INSTRUMENT No. 31 OF 2026

The Electoral Process Act
(Laws, Volume 1, Cap. 13)

The High Court (Election Petition) Rules, 2026
Arrangement of Rules

PART I
PRELIMINARY PROVISIONS

Rule

1. Title
2. Interpretation
3. Practice and procedure

PART II
NOMINATION PETITIONS

4. Petition to challenge nomination of candidate for election as Member of Parliament
5. Answer to nomination petition
6. Trial of nomination petition
7. Decision of Court on nomination
8. Appeal against decision of Court on nomination petition

PART III
ELECTION PETITIONS

9. Petition to challenge election of Member Parliament
10. Answer to election petition
11. Trial of election petition
12. Conclusion of trial of election petition
13. Appeal against decision of Court on election petition

Copies of this Statutory Instrument can be obtained from the Government Printer, P.O. Box 30136, 10101 Lusaka. Price K36.00 each.

PART IV

GENERAL PROVISIONS

14. Service
15. Scheduling conference
6. Status conference
17. Interlocutory applications
18. Consolidation of election petitions
19. Adjournments
20. Amendment of process
21. Default of appearance
22. Withdrawal of nomination petition or election petition
23. Abatement of nomination petition or election petition
24. Commission as respondent
25. Fees
26. Revocation of S.I. No. 426 of 1968

SCHEDULES

IN EXERCISE of the powers contained in section 102 of the Electoral Process Act, the following Rules are made:

PART I

PRELIMINARY PROVISIONS

Title

1. These Rules may be cited as the High Court (Election Petition) Rules, 2026.

Interpretation

2. In these Rules, unless the context otherwise requires—

"Commission" has the meaning assigned to the word in the Act;

"Court" means the High Court established by the Constitution; Cap. 1

"Constitutional Court" means the Constitutional Court established by the Constitution; Cap. 1

"election petition" means an election petition relating to a parliamentary election;

"District Registry" has the meaning assigned to the words in the High Court Act; Cap. 27

"legal practitioner" has the meaning assigned to the word "practitioner" in the Legal Practitioners Act; Cap. 30

"Member of Parliament" has the meaning assigned to the words in the Constitution; Cap. 1

"nomination petition" means a nomination petition relating to a parliamentary election;

"petitioner" means—

(a) in relation to an election petition, a person who signs and presents an election petition and includes a person substituted for a petitioner; and

(b) in relation to a nomination petition, a person who signs and presents a nomination petition;

"Principal Registry" has the meaning assigned to the words in the High Court Act; Cap. 27

"Registrar" has the meaning assigned to the word in the High Court Act; and

"respondent" means a person against whom an election petition or nomination petition is filed in accordance with the Act. Cap. 27

Practice and procedure

3. The jurisdiction vested in the Court to hear and determine a nomination petition or an election petition shall, as regards practice and procedure, be exercised in the manner provided by the Act, these Rules, the High Court Act or any other written law, or by such order of the Court made under the Act or any other written law.

Cap. 27

PART II

NOMINATION PETITIONS

Petition to challenge nomination of candidate for election as Member of Parliament

4. (1) A person who intends to challenge the nomination of a candidate for election as a Member of Parliament shall, within seven days of the close of nominations, file a nomination petition in Form I set out in the First Schedule on payment of a fee set out in the Second Schedule.

(2) A nomination petition referred to under subrule (1) shall disclose the—

(a) name and address of a petitioner or the petitioner's legal practitioner, if any;

(b) facts relied on;

Cap.1

(c) provisions of the Constitution or any other written law relating to nominations relied on; and

(d) relief sought by the petitioner.

(3) A nomination 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 documents to be relied on, if any; and

(e) a bundle of documents, if any.

(4) A nomination petition shall be served on a respondent in accordance with rule 14.

(5) Subject to the Act, a nomination petition shall be personally signed by the petitioner or by all the petitioners if the petitioners are more than one.

Answer to nomination petition

5. (1) A respondent may, within two days of receipt of a nomination petition referred to under rule 4, respond to the nomination petition by filing an answer in Form II set out in the First Schedule on payment of a fee set out in the Second Schedule.

(2) An answer referred to under subrule (1) shall be accompanied by—

(a) an affidavit in opposition;

(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; and

(e) a bundle of documents, if any.

(3) A respondent who does not file an answer to a nomination petition in accordance with this rule shall not participate in the proceedings of the nomination petition.

(4) A respondent shall, within twenty-four hours of filing an answer, serve that answer on the petitioner.

(5) A respondent shall prove service of an answer referred to under subrule (4) by filing an affidavit of service.

(6) A petitioner may, within two days of being served with an answer referred to under subrule (4), file a reply.

(7) A reply referred to under subrule (6) may be accompanied by—

(a) an affidavit in reply;

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

(c) list of authorities and copies of those authorities.

(8) A reply referred to under subrule (6), shall only respond to the issues raised in the answer filed under subrule (1).

(9) A petitioner shall, within twenty-four hours of filing a reply, serve that reply on the respondent.

(10) A petitioner shall prove service of a reply referred to under subrule (9) by filing an affidavit of service.

Trial of nomination petition

6. (1) A nomination petition shall be heard and determined by the Court, in open Court, within twenty-one days from the date of filing the nomination petition.

(2) On the trial of a nomination petition, a verbatim record of all evidence given orally in the trial shall be taken and transcripts of the record shall, at the conclusion of the proceedings, be delivered to the Commission by the Registrar.

Decision of Court on nomination petition

7. (1) The Court shall, at the conclusion of the trial, give the Court's decision and—

(a) give reasons for the decision; or

(b) reserve the reasons for the Court's decision to a later date.

(2) The Court shall, where the Court reserves its reasons for a decision under subrule (1)*(b)* —

(a) give a summary of the decision; and

(b) the date on which the Court shall give its reasons for the decision, which date shall not exceed twenty one days from he last date of the hearing.

Appeal against decision of Court on nomination petition

8. An appeal shall not lie against the decision of the Court in respect of a nomination petition.

PART III

Election Petitions

Petition to challenge election of Member of Parliament

9. (1) A person who intends to challenge the election of a Member of Parliament shall file an election petition in Form III set out in the First Schedule on payment of a fee set out in the Second Schedule.

(2) An election petition referred to under subrule (1) 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

(f) relief sought by a petitioner.

(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 documents to be relied on, if any; and

(e) a bundle of documents, if any.

(4) An election petition shall be served on a respondent in accordance with rule 14.

(5) Subject to the Act, an election petition shall be personally signed by a petitioner or by all the petitioners, if the petitioners are more than one.

(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 subrule (6), a Court shall not hear and determine an election petition or any other proceedings relating to that election petition.

Answer to election petition

10. (1) A respondent may, within five days of receipt of an election petition referred to under rule 9, file an answer in Form II set out in the First Schedule on payment of a fee set out in the Second Schedule.

(2) An answer referred to under subrule (1) shall be accompanied by—

(a) an affidavit in opposition;

(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; and

(e) a bundle of documents, if any.

(3) A respondent who does not file an answer to an election petition under this rule shall not participate in the proceedings of the election petition.

(4) A respondent shall, within two days of filing an answer, serve that answer on the petitioner.

(5) A respondent shall prove service of an answer referred to under subrule (4) by filing an affidavit of service.

(6) A petitioner may, within five days of being served with an answer under subrule (1), file a reply.

(7) A reply referred to under subrule (5) may be accompanied by—

(a) an affidavit in reply;

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

(c) a list of authorities and copies of those authorities.

(8) A reply referred to under subrule (6), shall only respond to the issues raised in the answer filed under subrule (1).

(9) A petitioner shall serve a reply referred to under subrule (6), on the respondent within two days of filing the reply.

(10) A petitioner shall prove service of a reply under subrule (9) by filing an affidavit of service.

Trial of election petition

11. (1) An election petition shall be heard and determined by the Court, in open Court, within ninety days from the date of filing of the election petition.

(2) Subject to the Act, on the trial of an election petition, a verbatim record of all evidence given orally in the trial shall be taken and transcripts of the record shall, at the conclusion of the proceedings, be delivered to the Commission by the Registrar.

Conclusion of trial of election petition

12. Subject to the Act, the Court shall, at the conclusion of the trial of an election petition, make a determination as to the validity or invalidity of an election.

Appeal against decision of Court on election petition

13. A person who is dissatisfied with the decision of the Court may, within fourteen days of the decision, appeal to the Constitutional Court.

PART IV

GENERAL PROVISIONS

Service of nomination petition or election petition

14. (1) A petition filed in accordance with—

(a) rule 4 shall be served by a petitioner on a respondent within twenty-four hours of filing the nomination petition; or

(b) rule 9 shall be served by a petitioner on a respondent within five days of filing the election petition.

(2) Subject to subrule (5), service of a nomination petition or an election petition under subrule (1) shall be personally served on a respondent or at the address shown in the nomination papers filed with the Commission.

(3) A petitioner may, where the petitioner fails to effect personal service of a nomination petition or an election petition referred to under subrule (1) make an application for substituted service within twenty four hours of failing to effect personal service.

(4) The Court shall, on receipt of an application under subrule (3) and where the Court is satisfied that personal service cannot be effected on a respondent, order that service be effected by—

(a) a registered letter addressed to the respondent at the postal address shown in the nomination paper;

(b) advertisement in a daily newspaper of general circulation in the Republic; or

(c) electronic mail.

(5) A petitioner shall prove service of a nomination petition or an election petition under this rule by filing an affidavit of service.

Scheduling conference

15. (1) The Court shall summon the parties to a scheduling conference—

(a) in the case of a nomination petition, within twenty-four hours of the filing of the nomination petition; or

(b) in the case of an election petition, within seven days of filing the election petition.

(2) The Court shall, at a scheduling conference referred to under subrule (1), issue directions or orders—

(a) that the Court considers necessary; and

(b) which shall be strictly adhered to by the parties.

(3) The Court shall, at a scheduling conference—

(a) set a date for—

(i) a status conference; and

(ii) the hearing of a nomination petition or election petition as the case may be; and

(b) determine any outstanding issues.

Status conference

16. The Court shall, at a status conference referred to under rule 15(3)—

(a) confirm compliance of directions or orders issued under rule 15(2); and

(b) determine any outstanding issues.

Interlocutory applications

17. (1) Subject to subrule (3), a party may make an interlocutory application to be heard and determined by the Court.

(2) The Court may give directions or orders in relation to any interlocutory matter.

(3) Despite subrule (1), an interlocutory application shall not be raised seven days before commencement of trial.

Consolidation of nomination petition or election petition

18. The Court shall, where more than one nomination petition or election petition is filed relating to the same nomination or election, consolidate the nomination petitions or election petitions and hear and determine the petitions at the same time.

Adjournments

19. (1) A party may apply to the Court to adjourn a hearing.

(2) A party who intends to apply for an adjournment in accordance with subrule (1) shall, not less than ten days before the date set for the hearing, file a notice of an intention to adjourn.

(3) The Court shall only grant an application for an adjournment in compelling and exceptional circumstances as the Court may determine.

Amendment of process

20. (1) A party may, with leave of the Court, at any stage of the proceedings and before a hearing, amend process filed by that party.

(2) The Court shall, where the Court grants leave to a party to amend process under subrule (1), allow the other party to respond to the amendment as the Court may determine.

Default of appearance

21. (1) The Court may, where a petitioner does not appear at the time and place appointed for the hearing of a nomination petition or an election petition, strike-off or dismiss the nomination petition or election petition.

(2) The Court may, where a respondent does not appear at the time and place appointed for the hearing of a nomination petition or an election petition—

(a) proceed to hear the nomination petition or election petition; or

(b) adjourn the hearing on terms that the Court considers appropriate.

(3) A petitioner may, where a nomination petition or an election petition is struck off under subrule (1), within two days of the nomination petition or election petition being struck off, apply to the Court to restore the nomination petition or election petition, failing which the nomination petition or election petition shall stand dismissed.

(4) The Court shall restore a nomination petition or an election petition where the Court is satisfied that an application under subrule (3) has merit.

Withdrawal of nomination petition or election petition

22. (1) Subject to the Act, a petitioner may with leave of Court at any stage of the proceedings and before conclusion of the proceedings, apply to withdraw a nomination petition or an election petition.

(2) The Court may grant a party leave to withdraw a nomination petition or an election petition on terms that the Court may consider appropriate.

(3) The Court shall hear and determine an application to withdraw a nomination petition or an election petition referred to under subrule (1) within two days of receipt of the application.

(4) A petitioner shall not, where the petitioner withdraws a nomination petition or an election petition, file a fresh nomination petition or an election petition in respect of the same nomination or election.

Abatement of nomination petition or election petition

23. Subject to section 105 of the Act, where a sole petitioner or the survivor dies, no further proceedings shall be heard on a nomination petition or an election petition.

Commission as respondent

24. The Commission may be cited by a petitioner as a respondent in a nomination petition or an election petition.

Office hours

25. For purposes of filing a document under these Rules, the offices of the Court in the Principal Registry and District Registry shall be open to the public on week days, other than Saturdays, Sundays or public holidays, from 08:30 hours to 18:00 hours.

Fees

26. The fees set out in the Second Schedule are payable for the matters specified in that Schedule.

Revocation of S.I. No. 426 of 1968

27. The Electoral Petition Rules, 1968, are revoked.

FIRST SCHEDULE

(*Rule* 5, 6, 10 and 11)

PRESCRIBED FORMS

Form I
(*Rule* 4(1))

IN THE HIGH COURT FOR ZAMBIA **20../H.../No...**

AT THE.....REGISTRY

HOLDEN AT .....

(Civil Jurisdiction)

IN THE MATTER OF:

AND

IN THE MATTER OF:

BETWEEN

..... **PETITIONER(S)**

AND

..... **RESPONDENT(S)**

NOMINATION PETITION

The Petition of .....(name of petitioner), whose address for service is ....., shows that:

1. Your petitioner is (capacity in which petitioner challenges nomination) .....

2. And your petitioner states that the nomination of ..... (name of nominated candidate) was announced on the .....day of ..... 20..... by the Commission.

3. Facts relied on:

(here state the facts on which the petitioner relies)

And your petitioner says that:

.....

.....

4. Relief:

WHEREOF your petitioner prays that:

.....

.....

Signed (petitioner only)

NOTE: The Petition *MUST BE* accompanied by the following documents (**Checklist**):

1. (a) affidavit verifying facts;

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

   (c) list of authorities and copies of the authorities cited;

   (d) list and description of documents to be relied on, if any; and

   (e) bundle of documents, if any.

2. *DO NOT* state any evidence

3. You can complete details on additional paper.

4. File affidavit of service after serving the respondent.

Form II

(*Rules* 5(1) and 10(1))

HIGH COURT FOR ZAMBIA **20../H...../No....**

AT THE..... REGISTRY

HOLDEN AT.....

(Civil Jurisdiction)

IN THE MATTER OF:

AND

IN THE MATTER OF:

BETWEEN

..... **PETITIONER(S)**

AND

..... **RESPONDENT(S)**

ANSWER

The respondent responds as follows (respond to each and every allegation):

(a).....

(b).....

(c).....

Signed (respondent only)

NOTE: The Answer to the nomination petition or election petition *MUST BE* accompanied by the following documents **(Checklist):**

1. (a) affidavit in opposition;
   (b) skeleton arguments of not more than fifteen pages in font size 12 and with double spacing;
   (c) list of authorities and copies of the authorities cited;
   (d) list and description of documents to be relied on, if any; and
   (e) bundle of documents, if any.
2. *DO NOT* state any evidence.
3. You can complete details on additional paper.
4. File affidavit of service after serving the petitioner.

Form III

(*Rule* 9(1))

IN THE HIGH COURT FOR ZAMBIA **20../H...../No....**

AT THE..... REGISTRY

HOLDEN AT.....

(Civil Jurisdiction)

IN THE MATTER OF:

AND

IN THE MATTER OF:

BETWEEN

..... **PETITIONER(S)**

AND

..... **RESPONDENT(S)**

ELECTION PETITION

The Petition of .....(name of petitioner), whose address for service is....., shows that:

1. **Your petitioner is (choose which of the following is applicable)**

   (a) **a person who lawfully voted;**

   (b) **a person who lawfully had a right to vote;**

   (c) **a person claiming to have had a right to be nominated as a candidate at the election to which the election petition relates;**

   (d) **a person claiming to have had a right to be elected at the election to which the election petition relates;**

   (e) **a person claiming to have been a candidate at the election to which the election petition relates; or**

   (f) **the Attorney-General.**

2. **And your petitioner states that the election was held on the .....day of ..... 20.....when (name of petitioner(s))..... and (name of respondent(s)) ..... were candidates and the returning officer has returned ..... (name of elected candidate) as being duly elected.**

3. **Grounds relied on:**

And your petitioner says that:

(here state the facts and grounds on which the petitioner relies)

.....

.....

.....

4. Relief:

WHEREOF your petitioner PRAYS for a declaration that:

(a) the election of the respondent be declared void;

or

(b) ..... be declared duly elected.

Signed (Petitioner only)

NOTE: The Petition *MUST BE* accompanied by the following documents (Checklist);

1. (a) affidavit verifying facts;
   (b) skeleton arguments of not more than fifteen pages in font size 12 and with double spacing;
   (c) list of authorities and copies of the authorities cited;
   (d) a list and description of documents to be relied on, if any;
   (e) bundle of documents.
2. *DO NOT* state any evidence.
3. You can complete details on additional paper.
4. File affidavit of service after serving the respondent.

SECOND SCHEDULE

PRESCRIBED FEES
(*Rule 26*)

No.	*Item*	*Fee Units*
1.	Sealing any amendment	85
2.	Filing summons in chambers	85
3.	Filing summons for restoration	277.5
4.	Sealing a commission or letter of examination or application not specifically provided for	112.5
5.	Filing depositions	112.5
6.	Application for copies of the notes of the Judge (per page)	55
7.	Filing a Praecipe for a writ of subpoena for each witness	85
8.	Filing a Writ of Subpoena	85
9.	Filing commissioned affidavit	27.5
10.	Personal general search for every name	27.5
11.	General search for unspecified number of times in a calendar	2, 777.5
12.	On search for appearance of any other search (including an inspection) not otherwise provided	27.5
13.	Certificate of Urgency	140
14.	Filing an order in chambers	55
15.	On setting or approving an advertisement or any other document or deed (other than Judgment or order)	85
16.	On entering or setting any matter for hearing in court, except where otherwise provided	277.5
17.	Filing any other judgment or order	85
18.	Any notice provided for	277.5
19.	For copies of documents or proceedings (per page or part thereof))	55
20.	For certifying a copy, an office copy and in addition if under seal	20
21.	On taxation of a Bill of Costs	112.5
22.	Election or nomination petition	2, 777.5
23.	On filing application for leave to the Court (the Notice)	85
24.	On leave being granted to appeal to the Court (the Order)	85
25.	On hearing an appeal (the Judgment)	112.5
26.	Commissioning or Certification	82.5
27.	Notarisation (per page)	370

NOTE: *These fees payable the High Court are stipulated in fee units. To arrive at the amount payable, a conversion rate of 40 ngwee (Statutory Instrument No. 25 of 2024) for each fee unit is used.*

M. MALILA,
Chief Justice

LUSAKA
11th May, 2026

IN THE SUPREME COURT FOR ZAMBIA SCZ/EP/01/2002
HOLDEN AT LUSAKA
(Constitutional Jurisdiction)

IN THE MATTER OF AN ELECTION PETITION
And
IN THE MATTER OF an application under Article 41(2) of the Constitution of Zambia
And
IN THE MATTER OF regulation 15 made pursuant to the Electoral Act, 1991
And
IN THE MATTER OF the Presidential Elections held in Zambia between the 27th and 31sat December, 2001

BETWEEN:

ANDERSON KAMBELA MAZOKA 1ST PETITIONER

AND

LEVY PATRICK MWANAWASA 1ST RESPONDENT

AND

THE ELECTORAL COMMISSION OF ZAMBIA 2ND RESPONDENT

AND

THE ATTORNEY-GENERAL 3RD RESPONDENT

CORAM: SAKALA, CJ., LEWANIKA, DCJ, CHIRWA, CHIBESAKUNDA, MAMBILIMA. CHITENGI, SILOMBA JJS
On 11th February, 2003 and 15th May 2003.

For the 1st Petitioner: Prof. M.P. MVUNGA of Mvunga Associates
J. MWIMBU of Mwimbu & Company

For the 1st Respondent: Dr. J.B. SAKALA, SC of J.B. Sakala & Co
S.C. MALAMA of Jacques & Partners
M. MUNDASHI of Mulenga Mundashi & Co.

For the 2nd and 3rd Respondents G. KUNDA, SC., Attorney-General
S.NKONDE, Solicitor-General
J. JALASI, Principal State Advocate.

RULING

LEWANIKA DCJ., delivered the Ruling of the court.

Authorities referred to:

1. A.G. Vs Times Newspapers Ltd, 1974, A.C. p 273.

On 6th February, 2003 we issued a subpoena against the 1st Petitioner to show cause why he should not be cited for contempt of this court arising from an article published in the Post Newspaper of 3rd February, 2003.

The article was on the front page of the Post of that day and was in bold headline reading **"CHILUBA, MWANAWASA ARE THIEVES - MAZOKA."** The article then went on to state quoting, the relevant parts only, ***"Chiluba and Mwanawasa are thieves"*** UPND President Anderson Mazoka has charged.

> *"Addressing a campaign rally on Saturday at Shimukuni primary school in Chibombo for the Keembe parliamentary by-elections scheduled for Thursday this week, MAZOKA said there was no money for development because former President Frederick CHILUBA, President Levy MWANAWASA, former intelligence chief, Xavier CHUNGU, former Finance Minister Katele KALUMBA and former Zambia Airforce Commander Lt. Gen. Ronnie SHIKAPWASHA shared the spoils in plundering national wealth.*
>
> *"They are all thieves," Mazoka charged. "Such leaders have contaminated blood and are incurable, so avoid them including Shikapwasha"*
>
> *Mazoka said while the MMD spent K16 billion in 2001 elections, President Mwanawasa on a single day got K200 million.*
>
> *"If I brought the K16 billion to you today, your friends will finish harvesting their maize in fields while you will still be counting the bundles but the MMD plundered it," he said.*

This article came to our attention because in it, the 1st Petitioner was allegedly commenting on the evidence adduced before this court in the on going Presidential Election Petition in a manner that could prejudice the holding of a fair trial.

In his evidence to this court, the 1st Petitioner said that he had seen the article complained of but that he had not read it in the context that the court is asking him to look at it and that he never heard the reports in the electronic media. He said that he did not call PW 45 a thief and that his speech at the meeting was in the vernacular and there could have been distortions in the interpretation. He said that there were a lot of speeches at the meeting and a lot of things attributed to him were not said by him. He said that there were a lot of questions asked about the proceedings in the Presidential Election Petition and in reply he told the people that he would be in contempt of court if he made any comment on the proceedings. He said that President MWANAWASA had said that people should not vote for those who had plundered the economy and he felt obliged to reply that neither their candidate nor himself were associated with the plunder of the economy. He agreed that he did mention that if all the money were used, there would be development. He said that he mentioned K16 billion but did not associate it with the court proceedings and denied that he mentioned K200 million. He reiterated that he addressed the meeting in vernacular and that there

were many speakers and he believed that the speeches were consolidated and put in his name. He said that as a Petitioner, he had complained about comments made by the 1st Respondent in the Post and that he would await the outcome of the petition. That it has never been his intention to undermine the authority of the court and that he had telephoned his chairman for publicity to make a retraction but this was not done and that this was in relation to the same publication. He said that he did not say that CHILUBA and others were thieves and neither did he say that the present leaders were contaminated with blood. He said he made a calculation of President MWANAWASA's travel expenses and he agreed that he did say that the first lady was given K700 million for a trip to Livingstone.

The court also subpoenaed the author of the article, one Lemmy MOONZE, who is employed by the Post Newspapers as a reporter. In his evidence to the court he said that on 1st February, 2003 he traveled to Keembe to cover election meetings to be addressed by the UPND. He was in the company of Sakwiba SIKOTA and they drove to Mubimba ward which was the first point of the rally. He said that he had a note book in which he was recording contemporaneously. He said that although there were other speakers he restricted himself to cover only SIKOTA and MAZOKA. He said that he covered two rallies on the same day. The second rally was at Shimukuni School. From the rally they drove to the campaign camp for the UPND after which he was brought back to Lusaka by the

UPND Member of Parliament for Chilanga, Captain MOONO, who took him straight to his house as it was after 2200 hours. On the following day, he went to the office to write the story after which he told his news editor that he was through with his work. The news editor went through the story and then told him to go home and rest. He said that he had his notebook with him and from it he would be able to identify the rallies that he covered. He said that the 1st petitioner spoke in Tonga whilst he recorded in English. At the first rally the 1st petitioner thanked the electorate for having voted for him in 2001 even before seeing him physically. He said that it pained him to see the extent of poverty in Zambia and yet nothing is being done to alleviate it. That if the nation is denied a chance to develop the people would become slaves and this could lead to civil war. That there is a disease that Zambia is developing into. He said we love Zambia, it is not trees or grass but you the people. That those of you who read the bible are familiar with the story of Solomon. That it was the story of two women who were fighting over a child. That we shall not destroy Zambia as UPND and that for as long as he lives he will take UPND to State House. That when UPND was started in 1998 people doubted it. That we told MMD that they had killed the country and the economy but they did not listen. That the poverty, diseases and hunger in Zambia are not from natural causes, but by the failure of the leadership elected in office. That he wants the country to be out of hunger and that God gave us water and land

that there is no way out of hunger other than agriculture. That food relief humiliates and will not take us forward. That UPND would distribute fertilizer for free. That agriculture is neglected as without feeder roads it is impossible to improve agriculture. Agriculture was about animals which are now gone because of corridor disease. That the wealth of a nation is in individual ownership of property and that if individuals are poor the country is impoverished. That he wanted to serve this nation because it was Zambia that educated him. He begged the MMD to stop copying the UPND manifestos as free education under UPND was up to Grade 12 and not 8. He said President MWANAWASA at the official opening of Parliament had agreed that MMD had no brains and this is why he intends to steal MPs from the opposition and UPND in particular. He wanted his party to go into power because his members of Parliament are not thieves as all of them have houses of their own. That the intelligence that UPND had brought should work for Zambia. He said that the K200 million that MWANAWASA got in a single day was nothing. He said MMD spent K16 billion on the 2001 elections and if I brought this to you to count, your friends would complete harvesting while you are still counting. That MWANAWASA, in one year spent K90 billion, while the first lady spent K700 million in Livingstone in three days. He reminded the electorate that they all paid tax through V.A.T. and that this is the money being wasted. He said there is money and they are eating it. He said

that on the fateful day when the late MAPUSHI died, K100 million in cash was found in the vehicle. He said it was part of the K150 million from the Bank of Zambia. On SHIKAPWASHA, he called on the electorate to tell SHIKAPWASHA that MAZOKA wants the K2 million that SHIKAPWASHA borrowed in 1990. He said you do not give leadership to such people. He promised free education and medical care and that hunger would be finished. That the MMD destroyed Zambia in eleven years and it must remain where it belongs, in the dustbin. That there was no Lenje, Tonga or Lozi as we are all Zambians and no tribe can run Zambia without the others. That when trouble comes to a country it does not choose tribes and that you would cause incredible bloodshed by campaigning on tribal lines.

The witness said that he also took notes of the rally at Shimukuni. At this rally the 1st Petitioner also spoke in Tonga and repeated some of the things he had said at the earlier rally. He then said that we are sure that we won the 2001 elections even though it was stolen from us. That we shall not throw stones because we love Zambia. We are determined and will never go back. He said that they tell us that there is no money, but there is no money because of stealing. CHILUBA, MWANAWASA, SHIKAPWASHA and KATELE are all thieves. The witness said at this point they were overwhelmed by rain and everybody scampered and it was the end of the rally. The witness said that he wrote the story

from the notes that he took and produced the notebook which became exhibit C1. He said that he was not with CHIFUWE as he was covering President MWANAWASA who was also campaigning in Keembe. He said that he saw the article when it appeared in the paper and that what appeared in the paper represent what MAZOKA said at the rally. He said that the 1st petitioner had said that CHUNGU also stole money. That the 1st Petitioner had also said that CHUNGU revealed in court that MWANAWASA had received K200 million in one day.

Cross examined by Prof. MVUNGA, the witness said the 1st Petitioner was speaking in Tonga and he was recording in English as he was more comfortable to record in English. He agreed that he did not mention CHUNGU in his notes. He said the 1st petitioner had said that he did not want to comment on the case in court but did not stick to it. He said it was a campaign rally for the Keembe by-election. He said that he was aware that the 1st Petitioner had complained about some articles that had been written about him in the Post. He agreed that the 1st petitioner did not see the story before it was published. He reiterated that the 1st Petitioner had called MWANAWASA a thief. He said that he was aware that Patrick CHISANGA had dropped a demand for a retraction before the 1st Petitioner was summoned. That CHISANGA suspended the retraction because of the meeting they were supposed to hold. He said that he became a journalist in April, 2002.

Cross examined by Mr. MWIMBU, he said that the principles of journalism are that one should write a balanced story. He said that the third paragraph of the story was from the 1st Petitioner and that the fourth paragraph does not refer to getting money from a particular person.

At the conclusion of the evidence of the witness, Prof. MVUNGA addressed us on behalf of the 1st Petitioner. He said that a citation for contempt not in the face of the court is premised on a fundamental understanding that the authority of the court should not be undermined on a matter pending before the court. He said that in his research he could not find a better authority than that of the ATTORNEY-GENERAL VS TIMES NEWSPAPERS, 1974 A.C. at page 273 and in particular the rationale as propounded by Lord DIPLOCK on page 309. He said that even if we were to assume that what was attributed to the 1st petitioner was correct, it does not offend any of the principles set out in the case above. That the Keembe meeting was a campaign meeting and there was no reference made to the proceedings in this court. That there was no evidence to show that the 1st Petitioner said anything about the petition or its preferred conclusion. That it cannot be said that the 1st Petitioner's comments erode public confidence in the institution of the court.

He further said that it is not admitted that the 1st Petitioner said the words referred to in the article in question. That in his testimony, he has vehemently

denied having said so. Further that the 1st petitioner made efforts at a retraction at the earliest opportunity before he was summoned. The retraction was not published and that this was confirmed by the testimony of the witness called by the court. He urged us to accept the 1st petitioner's testimony and that he should not be cited for contempt.

We have considered the evidence adduced by the 1st Petitioner and the witness called by the court who was the author of the article in question and we are satisfied that the 1st petitioner uttered the words attributed to him in the article. The reference to the K16 billion allegedly used by the MMD in the 2001 elections and K200 million allegedly given to the 1st Respondent in a single day arise from the evidence of PW 45 in these proceedings, and these proceedings are still pending. Of the persons who were called thieves, the 1st Respondent is a party to these proceedings and both PW 45, Xavier CHUNGU and PW 48 Dr. Katele KALUMBA were witnesses.

In the case of ATTORNEY-GENERAL VS TIMES NEWSPAPER LTD (1) referred to us by counsel for the 1st Petitioner it was held that it was contempt of court to publish material which prejudged the issue of pending litigation or was likely to cause public prejudgment of that issue. Lord DIPLOCK in the same case at page 309 succinctly put it as follows:-

> ***"The due administration of justice requires first that all citizens should have unlimited access to the constitutionally established courts of***

criminal or civil jurisdiction for the determination of disputes as to their legal rights and liabilities; secondly, that they should be able to rely upon obtaining in the courts the arbitrament of a tribunal which is free from bias against any party and whose decision will be based upon these facts only that have been proved in evidence adduced before it in accordance with the procedure adopted in courts of law; and thirdly, that once the dispute has been submitted to a court of law, they should be able to rely upon there being no usurpation by any other person of the function of that court to decide it according to law. Conduct which is calculated to prejudice any of these three requirements or to undermine the public confidence that they will be observed as contempt of court."

Lord DIPLOCK went on further to say at page 310:-

"...similarly 'trial by newspaper,' i.e. public discussion or comment on the merits of a dispute which has been submitted to a court of law or on the alleged facts of the dispute before they have been found by the court upon the evidence adduced before it, is calculated to prejudice the third requirement; that parties to litigation should be able to rely upon there being no usurpation by any other person of the function of that court to decide their dispute according to law. If to have recourse to civil litigation were to expose a litigant to the risk of public obloquy or to public prejudicial discussion of the facts or merits of the case before they have been determined by the court, potential suitors would be inhibited from availing themselves of courts of law for the purpose for which they are established."

As we have stated above, not only does the 1st Petitioner comment on the evidence adduced before this court, upon which this court has not decided, but he also casts aspersions on the integrity and character of one of the parties to the petition, as well as two witnesses, who were in fact called by the Petitioners. This, in our view, amounts to contempt of court and we so find.

Having found the 1st Petitioner guilty of contempt, we now must consider an appropriate sentence to impose on him. On 12th November, 2002 when we

dealt with a notice of motion to cite a reporter and editor of the Monitor Newspaper for contempt, we gave notice that we viewed with great concern the statements in the press and comments by the media and some individuals on this particular petition. We gave a warning that we would deal sternly with any individual, be they ordinary persons or politicians or the media, who would make comments or statements on the petition or the evidence adduced this far, which would tend to undermine the holding of a fair trial. Our warning seems to have fallen on deaf ears. What makes the 1st Petitioner's conduct more reprehensible is that he is a party to these proceedings and must have been fully aware of the concerns we expressed in the past and the warning that we gave on statements and comments on the ongoing petition. Having regard to what we have said earlier on, we are satisfied that a fine in the sum of three million Kwacha would be an appropriate sentence on the facts of this case. We so fine the 1st Petitioner which fine is to be paid within seven days of the date hereof failing which, he will serve three months simple imprisonment.

.....

E.L. Sakala
CHIEF JUSTICE

.....

D.M. Lewanika
DEPUTY CHIEF JUSTICE

.....

D.K. Chirwa

SUPREME COURT JUDGE

.....

L.P. Chibesakunda

SUPREME COURT JUDGE

.....

I.M.C. Mambilima

SUPREME COURT JUDGE

.....

P. Chitengi

SUPREME COURT JUDGE

.....

S.S. Silomba

SUPREME COURT JUDGE

SELECTED JUDGMENT NO. 51 OF 2018

IN THE CONSTITUTIONAL COURT OF ZAMBIA	Appeal No. 10/2016
AT THE CONSTITUTIONAL REGISTRY	2016/CC/A016
HOLDEN AT LUSAKA	2016/CC/A042

(Constitutional Jurisdiction)

IN THE MATTER OF:	ARTICLE 47(2), 51, 54, 72(2)(c) AND 73(1) OF THE CONSTITUTION OF ZAMBIA CHAPTER 1 VOLUME 1 OF THE LAWS OF ZAMBIA
AND	
IN THE MATTER OF:	SECTION 81, 89, 97(1), 98(c), 99 AND 100(2) OF THE ELECTORAL PROCESS ACT NO. 35 OF 2016
IN THE MATTER OF:	CODE OF CONDUCT RULES 12, 15(a)(h)(k)
AND	
IN THE MATTER OF:	MUNALI CONSTITUENCY ELECTIONS HELD IN ZAMBIA ON THE 11TH AUGUST 2016

REPUBLIC OF ZAMBIA
CONSTITUTIONAL COURT OF ZAMBIA
16 NOV 2018
REGISTRY 2
P O BOX 50067, LUSAKA

BETWEEN:

NKANDU LUO (PROF)	1ST APPELLANT
THE ELECTORAL COMMISSION OF ZAMBIA	2ND APPELLANT
AND	
DOREEN SEFUKE MWAMBA	1ST RESPONDENT
ATTORNEY GENERAL	2ND RESPONDENT

Coram: Sitali, Mulenga, Mulembe, Munalula and Musaluke, JJC

On 20th April, 2018 and 16th November, 2018

For the 1st Appellant:	Mr. B. Mutale, SC, and Ms. M. Mukuka of Messrs. Ellis & Company
	Mr. E. Silwamba, SC, of Messrs. Eric Silwamba, Jalasi and Linyama Legal Practitioners

	Mr. M. Lungu of Messrs. Lungu Simwanza & Company
For the 2nd Appellant:	Mr. R. Mwala and Mr. K. Wishimanga of Messrs. A.M. Wood & Company
For the 1st Respondent:	Dr. H. Mbushi of Messrs. HBM Advocates
	Mr. K. Mweemba of Messrs. Keith Mweemba Advocates
	Mr. G. Phiri of Messrs. PNP Advocates
For the 2nd Respondent:	Ms. T. Nkunika, State Advocate

JUDGMENT

Mulembe, JC, delivered the Judgment of the Court.

Cases referred to:

1. Michael Mabenga v Sikota Wina and others (2003) Z.R. 110
2. Brelsford James Gondwe v Catherine Namugala Appeal No. 175 of 2012
3. Anderson Kambela Mazoka and others v Levy Patrick Mwanawasa and others (2005) Z.R. 138
4. Steven Katuka and Law Association of Zambia v The Attorney General and 64 Others, selected Judgment No. 29 of 2016
5. Akashambatwa Mbikusita Lewanika and Others v Fredrick Jacob Titus Chiluba (1998) Z.R. 79
6. Mubika Mubika v Poniso Njeulu, SCZ Appeal No. 114 of 2007
7. Mulondwe Muzungu v Elliot Kamondo 2010/EP/001
8. Chizonde v The People (1975) Z.R. 85
9. Mubita Mwangala v Inonge Mutukwa Wina, Appeal No. 80 of 2007
10. Nakbukeera Hussein Hanifa v Kibule Ronald and another (2011) UGHC 64
11. Giles Chomba Yamba Yamba v Kapembwa Simbao, Selected Judgment No.6 of 2018
12. Abiud Kawangu v Elijah Muchima, Appeal No. 8 of 2017

13. Valsamos Koufou v Anthon Greenberg (1982) Z.R. 30
14. Mlewa v Wightman (1995/1997) Z.R. 171
15. August v Electoral Commission and others [1999] ZACC 3
16. Augustine Kapembwa and another v Attorney General (1981) Z.R. 127
17. Raila Amolo Odinga and another v Independent Electoral and Boundaries Commission and 2 others Petition No. 1 of 2017
18. Wilson Masauso Zulu v Avondale Housing Project Limited (1982) Z.R. 172
19. Austin Liato v Sitwala Sitwala, Selected Judgment No. 23 of 2018
20. Saul Zulu v Victoria Kalima (2014) Z.R. 14
21. Chrispin Slingwa v Stanley Kakubo, Appeal No. 7 of 2016
22. Richwell Siamunene v Sialubalo Gift, Selected Judgment No. 58 of 2017
23. Thorp v Holdsworth [1876] 3 Ch D 637
24. British Airways Pension Trustees Ltd v Sir Robert McAlpine & Sons Ltd (1994) 45 Con. L.R. 1
25. Christopher Lubasi Mundia v Sentor Motors Limited (1982) Z.R. 66
26. London Passenger Transport Board v Moscorp [1942] A.C. 332

Legislation referred to:

1. Electoral Process Act No. 35 of 2016
2. Electoral Process (General) Regulations 2016
3. Constitution of Zambia (Amendment) Act No. 2 of 2016

Other works referred to:

1. Phipson on Evidence, 18th edition
2. Concise Oxford English Dictionary, 12th Edition, Oxford University Press
3. Pocket Oxford Dictionary & Thesaurus, 2nd Edition, Oxford University Press
4. Halsbury's Laws of England, 5th Edition, Volume 38A, LexisNexis
5. Zambian Civil Procedure: Commentary and Cases, Volume 1, Lexis Nexis

This is an appeal against the Judgment of the High Court which nullified the election of the 1st Appellant, Nkandu Luo, who

to view the video clip in the presence of all the parties and give a ruling stating whether or not the video was the same video viewed during the trial. In his ruling, availed to this Court in Supplementary Record of Appeal filed on 29th March, 2018, the learned Judge in the court below confirmed the authenticity of the video. In addition, during this process the video was misplaced within the High Court. The appeal was finally heard on 20th April, 2018.

We, therefore, wish to guide the High Court and the local government election tribunals that where a piece of evidence is tendered and viewed during the trial of an election petition, the same should be properly marked and admitted in evidence and placed in the custody of the court or tribunal. This will avoid unnecessary delays as encountered in this case.

We now turn back to this appeal. The background of this appeal is that the 1st Appellant and the 1st Respondent, Doreen Sefuke Mwamba, stood as candidates for Member of Parliament for Munali Constituency in the 11th August, 2016 general elections. The 1st Appellant contested the seat on a Patriotic Front Party (PF) ticket. The 1st Respondent participated as a

candidate for the United Party for National Development (UPND). There were six other contestants. Five stood on various political parties' tickets while one was independent. The 1st Appellant emerged victorious with 37,935 votes and was declared duly elected Member of Parliament for Munali Constituency. The 1st Respondent came in second having polled 24,628 votes. The six other candidates shared the remaining valid votes cast as follows: Mike Mposha, MMD – 11, 122; Antonio M. Mwanza, FDD – 4,651; Sydney P. Kaweme, Independent – 893; Vincent Chaile, RRP – 831; Mutale Mwila, UNIP – 373; Boston G. Chifita, Rainbow – 294.

Aggrieved by the outcome of the election, the 1st Respondent filed a petition seeking, among other things, a declaration that the 1st Appellant's election as Member of Parliament for Munali Constituency was null and void. In her petition, the 1st Respondent alleged that prior to the election, the 1st Appellant held herself out as Cabinet Minister and used public resources towards her campaign. Further allegations were that on 8th August 2016, the 1st Appellant sponsored violent cadres who attacked the 1st Respondent's campaign bus in Mtendere and

that on 11th August, 2016 a PF councillor, in PF regalia, campaigned in a polling station in full view of the police and the 2nd Appellant's officials. It was also alleged that PF polling agents were allowed to wear PF regalia inside the polling station and that on 11th August, 2016 the 1st Respondent was refused entry to Vera Chiluba School polling station by the 1st Appellant and one Kaizer Zulu, who closed the gate. It was also alleged that the 2nd Appellant refused to provide Form GEN12 to the 1st Respondent's polling agents, resulting in their inability to submit the correct total of the results she obtained at each polling station.

The 1st Respondent claimed that as a consequence of the alleged illegal practices committed by the 1st Appellant and her agents and the failure of the 2nd Appellant to conduct the election fairly, the majority of voters were prevented from electing their preferred candidate.

The learned trial Judge, in his verdict, pointed out that the provisions of the law in section 97(2)(a) of the Electoral Process Act No. 35 of 2016 (henceforth "the Act") were very clear in providing circumstances under which a parliamentary election may be nullified. The trial Judge reminded himself that the

burden of proof rested on the petitioner and that the standard of proof required is that allegations raised must be proved to a fairly high degree of convincing clarity, citing **Michael Mabenga v Sikota Wina and others**[1], **Brelsford James Gondwe v Catherine Namugala**[2] and **Anderson Kambela Mazoka v Levy Patrick Mwanawasa**[3] for authority. In this regard, the learned trial Judge noted that the allegations in the petition were outlined in paragraph 5 under seven sub-heads and proceeded to consider the same seriatim.

In regard to the allegation of the 1st Appellant holding herself out as Cabinet Minister, the court below found that it was not in dispute that during the campaign for the Munali seat, the 1st Appellant was a Cabinet Minister. That this was only stopped by the decision of this Court in **Steven Katuka and Law Association of Zambia v The Attorney General and 63 others**[4]. The court below found that this part of the allegation in paragraph 5(i) of the petition was proved. And on the alleged abuse of public resources, the court below stated that it was not in dispute that Cabinet Ministers were entitled to a Government motor vehicle, public fuel and public driver, but what was in

dispute was that the 1st Appellant used the said public resources in her campaign. Though the trial Judge acknowledged that the 1st Appellant had her personal motor vehicles which she used during her campaign, he stated that he had not seen evidence to show that she truly did not use a Government vehicle as well. The trial Judge was of the view that the lacuna in the 1st Appellant's testimony was that he had not seen any Government guideline to preclude a minister from using Government resources during campaign.

The court below noted that the 1st Appellant was seen being driven in a Government vehicle with a Zambian flag accompanied by a Toyota Noah branded in PF colours and that PW5 saw the 1st Appellant distributing PF campaign materials at a house in Kaunda Square. Although the trial Judge noted that the 1st Respondent's witnesses had difficulties in describing the Government vehicle, he was satisfied that they were describing the same motor vehicle and that the allegation was proved. The court below also found that to the extent that the 1st Appellant held the office of minister illegally, her salary was paid to her

illegally and that she used it to the disadvantage of the 1st Respondent who did not have access to Government funds.

In regard to the allegation that the 1st Appellant sponsored violent cadres who attacked the UPND campaign bus in Mtendere on 8th August, 2016, the learned trial Judge held that he had seen no evidence to show or even to suggest that the 1st Appellant sponsored cadres to attack the UPND campaign bus. However, as the 1st Appellant was not at the scene of the attack, the Court below disagreed with her position that the attackers were not PF cadres and found that the allegation had succeeded.

On the allegation that a PF Councillor was campaigning in a polling station dressed in PF regalia in full view of the police and the 2nd Appellant's officials, the court below found that this allegation was not sufficiently supported by evidence and dismissed it. The court below also found no credible evidence to support the allegation of persons wearing PF regalia inside the polling station at Chainda Catholic Church.

In respect of the allegation that the 1st Respondent was refused entry to Vera Chiluba School Polling Station, the Court below noted that there were two disputes to this allegation. First,

that the 1st Appellant was in the company of one Kaizer Zulu. Secondly, that the 1st Respondent was denied entry. After reviewing the evidence on this aspect, the trial Judge stated that it was immaterial whether or not the 1st Appellant was in the company of Kaizer Zulu. That the material fact was, in the view of the learned trial Judge, a demonstration of double standards where the 1st Appellant was allowed entry into the polling station and the 1st Respondent was denied entry. The court below dismissed the testimony of RW12, the returning officer for Munali Constituency, who testified that it was not possible for the 1st Appellant and Kaizer Zulu to close the gate to the polling station. According to the court below, RW12 was untruthful on account that he purported to testify to events which happened in his absence. Thus, the trial court adjudged that the 1st Respondent was not allowed to monitor the elections in which she was a participant and found that the allegation was proved.

The allegation against the 2nd Appellant was that it refused to provide Form GEN12 to UPND polling agents. That this caused the polling agents not to submit the correct number of votes the 1st Respondent obtained at each polling station. The

court below found that the inadequacy of Form GEN12 affected all participants and found that the failure by the 2nd Appellant to avail the GEN 12 forms did not help to build confidence in the Munali Constituency election. That it was a lapse on the part of the 2nd Appellant and no one could positively ascertain whether or not the votes cast in favour of the 1st Respondent were fully accounted for. Thus, the court below found that the allegation had been proved.

The next allegation was that the 1st Respondent managed to provide her polling agents at Kalikiliki Polling Station with GEN12 forms but the presiding officer was stopped from signing the same by PF cadres. The trial court held that for reasons already given in regard to the allegation of refusal to provide Form GEN12, the allegation succeeded.

The learned trial Judge summed up his findings by stating that the elections in Munali Constituency were not contested on level ground. That the 1st Appellant abused Government resources in her campaigns and that the campaigns in Munali Constituency were marred by violence, which reached a crescendo on 8th August, 2016 and was capable of influencing

abuse of Government resources and that such abuse materially affected the outcome of the polls in Munali Constituency.

Ground Two

The court below erred in law and fact when it annulled the poll in Munali Constituency based on the attack of a UPND bus in Mtendere on 8th August 2016 without evidence linking the appellant or her campaign agent to the said act.

Ground Three

The court below misdirected itself in law and fact when it held that the first respondent was denied entry into Vera Chiluba School Polling Station and such denial materially affected the outcome of the poll in Munali Constituency.

Ground Four

The lower Court erred in law and fact when it held that the non-provision of GEN 12 forms to all the candidates' polling agents materially affected the outcome of the polls.

The 2nd Appellant advanced five grounds of appeal as follows:

Ground One

The learned trial Judge misdirected himself in law and in fact when he nullified the Munali Parliamentary seat on the basis of the alleged illegal and unfair practices committed by the Appellant without establishing that the alleged illegal and unfair practices affected the parliamentary election results, contrary to the law.

Ground Two

The learned trial Judge misdirected himself in law and in fact when he held that the 1st Respondent had proved her allegations as contained in paragraph 5(v) of the Petition, contrary to the evidence on the record.

Ground Three

The learned trial Judge misdirected himself in law and in fact when he found that paragraph 5(vi) of the Petition had been proved without any evidence to support such finding.

Ground Four

The learned trial Judge misdirected himself in law and in fact when he held that the 1st Respondent's allegation as contained in paragraph 5(vii) of the Petition had been proved, contrary to the law and evidence on the record.

Ground Five

The learned trial Judge misdirected himself in law and in fact when he held that the Appellant failed to conduct transparent, free and fair elections contrary to the provisions of the law and evidence on the record.

In the interests of brevity and orderliness, we propose to address some of the 1st Appellant's and 2nd Appellant's grounds of appeal together. In this regard, we first address the 1st Appellant's grounds one and two of the appeal separately. We then proceed to consider the 1st Appellant's ground 3 together with the 2nd Appellant's ground two. Ground four of the 1st Appellant's appeal is considered together with the 2nd Appellant's grounds one, three, four and five.

In support of the appeal, the 1st Appellant filed detailed and lengthy heads of argument on 25th January, 2017. Ground one of the appeal challenges the finding of the court below that the continued stay of the 1st Appellant in office created an irrebutable presumption of abuse of Government resources and that such abuse materially affected the outcome of the election in Munali Constituency. The 1st Appellant began by giving a detailed

outline of the applicable legal principles in election petitions. Calling in aid various case authorities, including **Lewanika v Chiluba,**[5] **Mubika Mubika v Poniso Njeulu**[6] and **Mazoka v Mwanawasa,**[3] the 1st Appellant submitted, *inter alia*, that the burden of proof lies upon the party who substantially asserts the affirmative of the issue and that it must be established, with convincing clarity, that the malpractice complained of was widespread and affected the outcome of the election. It was the 1st Appellant's position that cogent evidence must support the discharge of the burden of proof under section 97(2) of the Act. It was contended that while the learned trial Judge reminded himself on the burden and standard of proof in election petitions, he did not apply the law accordingly.

Further, that even though the trial Judge reminded himself that the petitioner was not allowed to bring in evidence other than evidence connected to and supporting the pleadings, he still relied on extraneous and irrelevant matters to arrive at some findings. That the trial Judge relied on the use of presumptions in finding that the allegations were proved. The 1st Appellant submitted that though the law of evidence in certain instances

allows presumptions, authorities on the burden and standard of proof in election petitions clearly point to the fact that any matter alleged had to be proved to a high standard of convincing clarity.

The 1st Appellant asserted that the finding of the court below that she illegally held herself out as a Cabinet Minister throughout the campaign period was a misapprehension of the holding of this Court in **Steven Katuka**[4] and that the misapprehension informed most parts of the lower court's judgment and tainted its reasoning.

On the allegation that the 1st Appellant used her official car in the campaigns, it was the 1st Appellant's position that the approach the learned trial Judge adopted in resolving the conflicting evidence given by the 1st Appellant on one hand and the 1st Respondent on the other, in which different descriptions of the 1st Appellant's car were given, shows that he did not apply the correct standard of proof. That the trial Judge's finding that he had not seen any evidence to show that the 1st Appellant truly did not use a Government vehicle showed that he placed the burden of proof on the 1st Appellant to lead evidence that she did not use a Government vehicle. The 1st Appellant contended that

the finding was a clear misdirection and that the allegation should be found not to have been proved as the 1st Respondent had not discharged the burden of proof. It was the 1st Appellant's contention that the 1st Respondent merely saw her being driven to inspect a Government project, which did not constitute campaigning. It was contended that there were discrepancies in the evidence as to the make of the vehicle and the witnesses could not recall the vehicle registration number. The 1st Appellant further asserted that PW5 was a partisan witness with an interest to serve, citing **Mulondwe Muzungu v Eliot Kamondo**[7] and **Chizonde v The People**[8] for support. It was submitted that the court below made no adverse finding against the 1st Appellant and, therefore, that there was no basis upon which it could have resolved the dispute in favour of the 1st Respondent.

In regard to the alleged use of Government funds, the 1st Appellant contended that there was no evidence in support led by the 1st Respondent; that the money the 1st Appellant used in the campaigns came from her gratuity and well-wishers and that the finding that she had used her salary for campaigns was perverse as there was no evidence to support such a finding. Further,

that the finding by the court below to the effect that the alleged use of government funds by the 1st Appellant affected the 1st Respondent who had no access to such funding was a misdirection as the act complained of ought to affect the outcome of the election and not a contestant. The 1st Appellant argued that the court below was not entitled to use presumptions or make adverse inferences without specific evidence being led on an allegation.

The 1st Appellant submitted, in the alternative, that even if it was proved to the requisite standard that she used a Government vehicle and funds, the court below was still not entitled to nullify the election on this ground because it was not proved that the use of a Government vehicle and funds affected the outcome of the election. It was contended that in terms of section 97(2)(a) of the Act, evidence must be led to prove that the majority of voters were or may have been prevented from electing their preferred candidate, citing **Mubita Mwangala v Inonge Mutukwa Wina**[9] for support. It was the 1st Appellant's further contention that the court below relied on the PF's use of the slogan *"boma ni boma"* as proof that she used her ministerial

position to intimidate her opponents; but that there were no witnesses called to testify that they were intimated or did not vote for their preferred candidate on account of the slogan.

In ground two, the 1st Appellant challenged the lower court's annulment of the election in Munali Constituency based on the attack of the UPND bus in Mtendere on the 8th August, 2016 without evidence linking the 1st Appellant or her election agent to the said attack. It was submitted that under section 97(2)(a) of the Act, the first test to apply for nullification of an election is proof that either the candidate or her election agent committed the act complained of; that it was a clear departure from section 93(2)(a) of the Electoral Act 2006 which required proof of any malpractice that affected the outcome of the election. The 1st Appellant submitted that the court below found that there was no evidence to show, or even to suggest, that she sponsored cadres to attack the UPND bus but it still proceeded to find that the allegation was proved. It was argued that the finding was not only contradictory but perverse and that it was a misdirection to proceed to examine the matter further after the court had found that the 1st Appellant was not connected to the attack.

Citing **Mazoka v Mwanawasa**[3] and **Mabenga v Wina**[1] to support the point, it was submitted that the finding that the 1st Appellant had not sufficiently shown what measures she took to control her supporters illustrated the lower court's misapprehension of the burden and standard of proof in an election petition. The 1st Appellant argued that the burden to prove that she sponsored the violent cadres lay with the 1st Respondent who had made the allegation; that the 1st Appellant could not be expected to demonstrate measures taken to "cage" supporters as she had no burden of proof to discharge. We were referred to the case of **Brelsford James Gondwe v Catherine Namugala**[2], where the Supreme Court said:

> **"The appellant having failed to prove his case no reasonable court would call upon the respondent to adduce evidence in rebuttal. In any event there was nothing to be rebutted and only courts where injustice is practiced would brave calling the respondent to adduce evidence in rebuttal in these circumstances."**

The 1st Appellant maintained that the finding of the court below fell outside the ambit of the pleading and the law. And citing **Lewanika v Chiluba**[5] it was further submitted that even if the violent cadres were PF members, a candidate was not responsible for the actions of all their party members. Further, that the finding by the court below that the attack was widely

reported by the media thereby spreading fear and leading to a low turnout at a UPND rally on 10th August, 2016 was not supported by evidence.

The combined submissions on ground three of the 1st Appellant's appeal and ground two of the 2nd Appellant's appeal were to the effect that the court below misdirected itself in law and fact when it held that the 1st Respondent's allegation that she was denied entry into Vera Chiluba polling station was proved and that such denial materially affected the outcome of the election.

The 1st Appellant submitted that the objection to the finding of the court below on this aspect was twofold. First, that the court below did not address itself to the pleadings but merely discredited RW12 on the ground that he was untruthful. The 1st Appellant contended that there was no evidence to prove the allegation that the 1st Appellant, acting with one Kaizer Zulu, closed the gate and prevented the 1st Respondent from entering Vera Chiluba polling station to see her polling agents. It was contended that the finding of unfair treatment was irrelevant as it was not pleaded.

Secondly, it was submitted that under section 97(4) of the Act, it has to be demonstrated, through evidence, that the misfeasance by an electoral officer affected the outcome of the election, which the 1st Respondent failed to do. We were referred to pages 60, 61, 62 and 70 of the record of appeal to support the point that the court below failed to consider the 1st Appellant's evidence that she had not been allowed into Vera Chiluba polling station, contrary to the 1st Respondent's claim. We were also referred to page 881 of the record to show that the 1st Appellant never admitted to having been allowed entry into the said polling station and that it was for the 1st Respondent (as petitioner) to prove all allegations to a fairly high degree of convincing clarity.

On its part, the 2nd Appellant submitted that no evidence was adduced at trial to support the allegation that the 1st Appellant and Kaizer Zulu closed the gate and refused the 1st Respondent access to her polling agents. It was further submitted that since in cross-examination the 1st Respondent conceded that the allegation was not true, the matter should have ended there and the allegation dismissed. The 2nd Appellant impugned the finding of the court below that the allegation in the

pleadings had been proved, arguing that the court below misdirected itself as it is trite that evidence must support the pleadings. It was the 2nd Appellant's contention that in arriving at his conclusion, the trial Judge wrongfully accepted and applied the 1st Respondent's testimony to the effect that she was locked out of the polling station by a police officer while the 1st Appellant was allowed to go in. That the court below erred in its finding that there was a demonstration of double standards, thereby resulting in unfairness on the part of the 2nd Appellant's conduct of the elections. It was submitted that at Vera Chiluba polling station, there was an incident where a group of individuals wanted to vote after the close of the poll; that, as testified by RW12, all voters on the queue were instructed to get inside the polling station and the presiding officer closed the gate. That the learned trial Judge's conclusion that RW12 was untruthful had no basis and RW12's testimony ought to have been considered by the court in making its finding.

As indicated earlier, ground four of the 1st Appellant's appeal and grounds one, three, four and five raised in the 2nd Appellant's appeal are related. Submissions on ground four of the

1st Appellant's appeal were to the effect that the court below erred in law and in fact when it held that the non-provision of Form GEN12 to all the candidates' polling agents materially affected the outcome of the polls. The 1st Appellant submitted that the 1st Respondent's allegation was that the 2nd Appellant refused to provide Form GEN12 to UPND polling agents and, as such, the 1st Respondent was unable to ascertain the correct number of votes she received at each polling station. Citing section 49 of the Electoral Process (General) Regulations, it was the 1st Appellant's contention that, in the instant case, failure to countersign Form GEN12 could not be the ground or basis to nullify the election if the court below found that each candidate was affected. That there is a high threshold to be surmounted where misfeasance on the part of electoral officers is alleged pursuant to section 97(2)(b) of the Act.

The 2nd Appellant, in its third ground of the appeal, contended that the learned trial Judge misdirected himself in law and in fact when he found that the allegation that the 2nd Appellant refused to provide Form GEN12 to the 1st Respondent's polling agents was proved and also, in ground four, that the

presiding officer at Kalikiliki polling station was stopped from signing copies of Form GEN12 by PF agents. And in its ground one, the 2nd Appellant contended that the trial Judge misdirected himself in law and in fact when he nullified the election in Munali on the basis of the alleged illegal and unfair practices without establishing that the same affected the election results.

The 2nd Appellant submitted that Form GEN12 refers to the Announcement of the Result of the Poll and is in fact Form GEN20 in the Electoral Process (General) Regulations and is used at a polling station to indicate the total number of votes obtained by a candidate at the polling station. Further, that as the 1st Respondent testified, Form GEN12 is important as it is used to convey information to the totaling centre. And as RW12 testified, the 2nd Appellant provides the document to the presiding officer, who must prepare the document and validate it by signing it and then it is made available to polling agents to countersign. The 2nd Appellant emphasised that it is copies of authenticated documents that are made available to the polling agents.

It was contended that the crux of the matter was whether or not the 2nd Appellant refused to provide Form GEN 12 to the

UPND polling agents. It was the 2nd Appellant's view that the learned trial Judge glossed over the 2nd Appellant's evidence with the result that the full significance of certain aspects of the evidence was not appreciated. It was submitted that the trial Judge ought to have considered the evidence of the 1st Respondent and PW5 cautiously. That the 1st Respondent was a UPND candidate and PW5 was a UPND polling agent and the trial Judge relied on their evidence without caution as to the self-interest of the witnesses. The case of **Nakbukeera Hussein Hanifa v Kibule Ronald and another**[10] was cited for support.

It was the 2nd Appellant's further submission that the trial Judge erred when he accepted and relied on the evidence in collateral matters and that the finding of the court below was based on an unbalanced evaluation of evidence. It was the 2nd Appellant's contention that PW5 was not a credible witness as her testimony contained various untruths on collateral matters and the court below ought not to have believed and accepted her evidence. The 2nd Appellant maintained that it did not refuse to provide Form GEN12 to the 1st Respondent's polling agents as the form was readily available to polling agents who were present at

the polling station after voting, counting and totaling of votes was done.

The 2nd Appellant submitted that, faced with two conflicting versions of events, the court below, in its finding, merely relied on the evidence of the 1st Respondent's witnesses. That had the trial Judge taken into consideration the evidence of RW12, that winning and losing candidates alike left the polling stations before the GEN12 forms were compiled by the 2nd Appellant, he would not have concluded as he did. It was submitted that the non-availability of polling agents at completion of the election process could not possibly be regarded as refusal by the 2nd Appellant to provide copies of Form GEN12.

The 2nd Appellant maintained that the lower court's finding that the 1st Respondent was unable to have the correct total of the results due to failure by the 2nd Appellant to provide Form GEN12 was not supported by evidence. It was submitted that the court below did not take into account the 2nd Appellant's evidence to the effect that there were alternative sources of information that were provided. It was also submitted that RW12 testified that aside from the provision of Form GEN12 to the

polling agents present, the presiding officer announced the results publicly, which gave an opportunity to the parties to hear and record the correct totals. Further, that the "Zero Form", a larger version of Form GEN12 was posted outside the polling station. It was the 2nd Appellant's contention that the 1st Respondent and her agents had numerous sources provided by the 2nd Appellant to obtain the total results received by each candidate at each polling station. The 2nd Appellant maintained, therefore, that there was nothing wrong with the presiding officer refusing to sign a document that was provided or prepared by the 1st Respondent's agents as the agents could not authenticate the results endorsed thereon.

It was the 2nd Appellant's contention that even assuming the allegations of procedural irregularities or non-compliance with the law were true, the acts complained of affected all the candidates. That this was acknowledged by the trial Judge himself when he noted that both winners and the losers did not sign the Form GEN 12. The case of **Mazoka v Mwanawasa**[3] was cited for authority. In addition, the 2nd Appellant relied on its submissions filed in the court below appearing at pages 468 to

469 of the record of appeal and also adopted the 1st Appellant's arguments in so far as they were applicable to the 2nd Appellant's appeal. The 2nd Appellant submitted that the court below erred in law and in fact when it found that the 2nd Appellant failed to conduct transparent, free and fair elections in Munali Constituency and urged us to set aside the lower court's finding.

In oral submissions, Mr. Mutale, SC, submitted that the first three allegations in the petition upon which the election of the 1st Appellant was nullified were founded on the interpretation of section 97(2)(a) of the Act. It was State Counsel's position that the lower court's interpretation was seriously misconceived. Citing our decision in **Giles Chomba Yamba Yamba v Kapembwa Simbao,**[11] Mr. Mutale, SC, argued that the petitioner needed to prove the misconduct with crystal clear evidence, and that the majority of the electorate were prevented from electing their preferred candidate.

Mr. Mutale, SC, contended that the 1st Respondent failed to discharge her obligation to produce cogent evidence that the 1st Appellant did abuse Government resources during her campaign, citing our decision in **Abiud Kawangu v Elijah Muchima**[12] for

support. State Counsel further submitted that the 1st Respondent had failed to adduce evidence that the 1st Appellant or any of her agents were involved in attacking the 1st Respondent's campaign bus or that the incident was widespread in Munali Constituency. He submitted that the incident was isolated and that the video evidence involving the attack on the campaign bus was irrelevant as it only testified to one incidence of violence in Mtendere ward of the Munali Constituency and did not assist the 1st Respondent in confirming that the violence was widespread. Also, that RW10 confirmed at page 948 of the record of appeal that the incident was the only incident of violence that the 2nd Appellant heard of in Mtendere ward.

Turning to the allegation that the 1st Appellant and Kaizer Zulu closed the gate and denied the 1st Respondent entry to Vera Chiluba polling station, it was State Counsel's contention that the lower court's finding was perverse as it was not supported by evidence and that the 1st Respondent confirmed in her testimony that it was incorrect as the 1st Appellant was not responsible for closing the gate and that Kaizer Zulu was not at the polling

station. Mr. Mutale, SC, submitted that the finding of the court below should be set aside for being perverse.

On the allegation of failure to provide GEN12 forms, State Counsel submitted that the same were anchored on section 97(2)(b) of the Act. He contended that the 1st Respondent failed to adduce any evidence confirming that the failure to provide GEN12 forms by the 2nd Appellant affected the results of the entire Munali Constituency. Mr. Mutale SC, added that from a total of 80,727 votes, 37,935 were cast in favour of the 1st Appellant while 42,792 was the total cumulative votes cast in favour of the opposing candidates, showing that the majority voted against the 1st Appellant. That this went against the allegation that any conduct of the 1st Appellant affected the majority from voting for a candidate of their choice.

Mr. Lungu, learned co-counsel for the 1st Appellant, added that the court below misdirected itself on the burden and standard of proof in election petitions, as set out in various case authorities. Referring to page 52 of the record of appeal, Mr. Lungu submitted that the learned trial Judge misdirected himself when he appeared to reverse the burden of proof on the allegation

of use of Government resources, placing the burden of proof on the 1st Appellant to show the existence of guidelines concerning use of Government resources in campaigns. It was submitted that it ought to have been the 1st Respondent (as petitioner) to adduce evidence on the use of Government resources and that the finding of the court below was liable to reversal.

On the allegation of violence, learned counsel Mr. Lungu submitted that a case falls or stands on its pleadings and that the court below found as a fact that there was no evidence that it was the 1st Appellant who sponsored the violent cadres that attacked the UPND campaign bus. That the allegation having not been proved, the court below misdirected itself when it continued to delve into the matter as regards the widespread nature of the violence.

Learned counsel for the 2nd Appellant, Mr. Mwala, relied entirely on the 2nd Appellant's written heads of argument filed on 23rd January, 2017.

In opposing this appeal, the 1st Respondent relied on heads of argument filed on 20th January, 2017. In regard to ground

one, the 1st Respondent submitted that by her own admission, the 1st Appellant bad stated that she was a Government Minister in the Ministry of Gender, holding a constitutional office and, therefore, a public servant. Our attention was drawn to the 1st Respondent's submissions in the court below at pages 377 to 378 of the record of appeal and to our judgment in **Steven Katuka.**[4] It was contended that the candidature of the 1stAppellant in the 11th August, 2016 general election was unlawful as she had failed to comply with the Constitution by failing to vacate her ministerial position before she decided to stand as a candidate in Munali Constituency. That the 1st Appellant could not benefit from a contravention of the law, citing **Valsamos Koufou v Anthon Greenberg**[13] for authority.

And quoting extensively from the case of **Mabenga v Wina**[1] for support, it was the 1st Respondent's contention that the 1st Appellant had admitted to getting an unlawful salary from May to July 2016. Further, that there was abundant evidence on record that the 1st Appellant had used a Government vehicle in her campaigns and occupied a Government house, contrary to regulation 15(1)(k) and (l) of the Electoral Code of Conduct. It

was contended that the learned trial Judge was on firm ground when he found that the 1st Appellant used Government resources and that that affected the 1st Respondent who had no access to such resources.

In regard to ground two, the 1st Respondent began by recounting some of the testimonies on the incident of 8th August, 2016 in Mtendere and discounted the 1st Appellant's assertion that the UPND had engaged in acts of violence. Referring to the testimony of RW4 and the 1st Appellant regarding an alleged act of violence by UPND cadres on 10th August, 2016 at RW4's house and in which the 1st Appellant's vehicle and another vehicle were allegedly damaged, it was the 1st Respondent's contention that the alleged attack by the UPND was a manufactured story. It was submitted that the petition was filed on 26th August, 2016 and the report was made on 27th September, 2016. Further, that the police report at page 190 of the record of appeal made no reference to the 1st Appellant's Toyota Noah vehicle; that in essence no report was made to the police. It was the 1st Respondent's position that the foregoing confirmed the evidence of RW10 at page 948 of the record of appeal that no other

incidence of violence was reported in Munali Constituency apart from the reported incident of 8th August, 2016.

In response to the 1st Appellant's assertion that the findings of the court below at page J53 of the judgment, to the effect that the UPND rally at Mahatma Ghandi grounds failed because of fear of an attack by PF cadres, were not supported by any evidence, it was the 1st Respondent's contention that the 2nd Appellant's own witness, RW10, confirmed that the 2nd Appellant learnt of the 8th August, 2016 incident through the media. It was submitted that many voters in Munali Constituency saw or heard of the violence that occurred on that day and were prevented from electing a candidate of their choice.

On the 1st Appellant's claim that she had no knowledge of the persons who sponsored the violence of 8th August, 2016, the 1st Respondent referred to the case of **Mlewa v Wightman**[14] where it was held that the question of personal knowledge was irrelevant. It was the 1st Respondent's position that the principles of the electoral system and process are well stated in section 3(a), (b), (c) and (d) of the Act, citing the case of **Mulondwe Muzungu v Eliot Kamondo**[7] and the South African case of **August v**

Electoral Commission and others[15] which, according to the 1st Respondent, emphasized the importance of universal adult suffrage and free and fair elections.

On the question of an appellate court interfering with the findings of the trial court, the 1st Respondent drew our attention to the case of **Augustine Kapembwa and another v Attorney General**[16] which outlines when an appellate court can interfere with the findings of the trial court.

Learned counsel for the 1st Respondent, Mr. Phiri, opened his oral submissions by discounting the 1st Appellant's understanding of this Court's holding in **Giles Chomba Yamba Yamba**[11] as it applied to the allegation of abuse of Government resources. Referring to page J75 of that judgment, Mr. Phiri quoted the following excerpt:

> **"It should be borne in mind that that decision came two days before the elections of 11th August, 2016. Its effect, therefore, is post 9th August, 2016, and not before."**

Mr. Phiri argued that understanding the decision hinged on the word "effect"; that the Court was referring to the order directed to the ministers to pay back salaries and that the 1st Respondent failed to see how that could be interpreted to mean

that the stay of the Ministers in office post dissolution of Parliament was legal. That the order to pay back was a result of the illegality that was perpetrated.

Counsel was brief in his response to ground two of the appeal, arguing that though the 1st Appellant was, admittedly, not seen in the video directing the attack on the bus, ground two should fail as the aspect of her election agents had not been specifically addressed. When probed by the Court to show, from the record, evidence linking the 1st Appellant or her election agents to the attack, Mr. Phiri conceded that he had not seen any direct evidence of her sponsorship of violence on the record but maintained that the link could only be seen to the extent that the 1st Appellant benefited from what happened because the incident had an effect on the election.

In opposing ground three, counsel submitted that the court below was clear in stating that the 1st Respondent was denied entry into the polling station and that this was unfair treatment. That as the record showed, this was not rebutted. We were referred to page 61 of the record of appeal where the court below held that there was a demonstration of double standards to the

detriment of the 1st Respondent who by law had a right to access the polling station.

On ground four, Mr. Phiri submitted that the 1st Respondent had evidence of the non-availability of GEN12 forms at 14 polling stations. Counsel argued that the GEN12 form was a primary document for recording results from polling stations in the 2016 elections and that the absence of the form at 14 polling stations would have a material effect on any election. Mr. Phiri referred the Court to a portion of the judgment of the court below at page 65 of the record of appeal where the learned trial Judge lamented the alleged lapses on the part of the 2nd Appellant. That the non-availability of Form GEN12 was a finding of fact that was proved.

In regard to the 1st Appellant's assertion that the trial Judge had shifted the burden of proof on the allegation of abuse of Government resources, Mr. Phiri referred to the following excerpt of the judgment of the court below at page 52 of the record of appeal:

> **"In the contrast, there is evidence from the Petitioner that the 1st Respondent was seen driven in a government motor vehicle with a Zambian flag flying during campaigns."**

Mr. Phiri contended that there was no proposition advanced from the 1st Appellant as to why the finding should be interfered with and we were urged to dismiss the appeal.

In supplementing the arguments, Dr. Mbushi submitted in regard to ground one that evidence from the 1st Respondent's witnesses, such as PW5 who allegedly saw the 1st Appellant in a Government vehicle with a flag, supported the fact of the 1st Appellant's abuse of Government resources. Further, that the 1st Appellant, in her own words, informed the court below that she was living in a Government house and was receiving a salary from which she paid her workers, citing the case of **Mabenga v Wina**[1] for support. Dr. Mbushi contended that the 1st Appellant did use public resources as the evidence to that effect was not challenged. And in regard to the attack on the UPND campaign bus on 8th August, 2016, it was Dr. Mbushi's contention that, as confirmed by RW10, the incident was known throughout the constituency. That violence is illegal no matter the perpetrator and urged this Court to take the issue of violence very seriously.

Learned counsel Mr. Mweemba addressed grounds four, two and one in that order. He opened his submissions by stating

that it was not the position of the law that if it could not be proved that a candidate or their agents was involved in an illegality, the election could not be annulled. Mr. Mweemba argued that Zambia was a democracy and that the interpretation of the law must be looked at in the context of democracy and the fundamental principles that govern it. He contended that the Electoral Process Act could not be read in isolation but should be interpreted in the context of Zambia as a constitutional democracy, citing the Kenyan case of **Raila Amolo Odinga and another v Independent Electoral and Boundaries Commission and 2 others.**[17] Mr. Mweemba argued that one of the fundamental principles of democracy, which also applies to elections, is citizen participation and sovereignty of the people. That people have a right to participate without being intimidated. Counsel also cited government accountability and transparency and the principle of regular, free and fair elections.

Submitting on ground four of the appeal, Mr. Mweemba argued that the law does not provide for quantitative analysis as to whether the election was materially affected or not, hence the use of the word 'may' in section 97 of the Act. Counsel referred

us to Articles 8 and 9 of the Constitution on the national values and principles, that section 97 of the Act should be interpreted in light of the same.

Reiterating his point that there was nothing in the Act that suggested that if a candidate was not linked to a malpractice the election could not be annulled, Mr. Mweemba argued that the 8th August, 2016 attack on the UPND bus in Mtendere was widely known as it was in both the print and electronic media. That the 2nd Appellant was part of the proceedings and if it was found wanting, the election could still be nullified even if the 1st Respondent had not proved that the 1st Appellant or her agents were liable. Counsel contended that the court has the power to nullify an election if the principles of democracy are breached.

In opposing ground one, Mr. Mweemba contended that the Ministers' stay in office was illegal from the time Parliament was dissolved. That as the record showed, the 1st Appellant had conceded to remaining in office after the dissolution of Parliament. Counsel wound up his submissions by urging this Court not to interfere with the judgment of the court below, citing

Wilson Masauso Zulu v Avondale Housing Project Limited[18] for authority.

The 1st Appellant filed heads of argument in reply on 23rd February, 2017. In regard to the 1st Respondent's assertion that the 1st Appellant was not qualified to stand as Member of Parliament for Munali Constituency because she was a constitutional office holder, the 1st Appellant cited Article 266 of the Constitution to argue that Ministers and Members of Parliament were excluded from the definition of 'public officer' and 'constitutional office holder'. It was submitted that Article 266 aforesaid puts it beyond doubt that not all persons acting in or holding a public office are public officers for purposes of interpreting the provisions of the Constitution. The 1st Appellant argued that the 1st Respondent's assertion was misconceived and should be dismissed. Further, it was the 1st Appellant's contention that, contrary to the 1st Respondent's assertion, there is nowhere in the record, including the portions relied on by the 1st Respondent, where the 1st Appellant referred to herself as a constitutional officer holder or public servant, thus triggering the provisions of Article 70(2)(b) of the Constitution. That the 1st

Appellant's evidence was simply that she served as Minister of Gender following the dissolution of Parliament, up to the delivery of the judgment of this Court in **Steven Katuka.**[4] It was further contended that the 1st Respondent's proposition on the alleged failure by the 1st Appellant to vacate her ministerial position before deciding to contest the Munali seat was not supported by any authority.

On the 1st Respondent's comparison of the present case and **Mabenga v Wina**[1] on the question of abuse of Government resources in election campaigns, it was the 1st Appellant's contention that the issue was not one of access to public resources but the use of such resources for campaign purposes. That regulation 7(1)(l) and 7(2) relied on in **Mabenga v Wina**[1] was couched in terms similar to regulation 15(1)(k) of the current Electoral Code of Conduct. It was submitted that the 1st Respondent had not addressed the use of Government facilities for campaign purposes and, therefore, no parallel could be made between the present case and **Mabenga v Wina**[1].

In regard to issues arising in ground two, it was the 1st Appellant's contention that it was the court below in its judgment

that found the UPND liable for perpetration of violence. That if the 1st Respondent wished to challenge this finding, she ought to have filed a cross-appeal in accordance with the rules of this Court. As the 1st Respondent had not done so, it was submitted that arguments concerning that finding ought to be dismissed. In the alternative, the 1st Appellant submitted that RW10 did not testify that the UPND did not engage in acts of violence in Munali Constituency. That to the contrary, RW10's evidence was that the 2nd Appellant had reached the conclusion that supporters of the PF and the UNPD had been involved in a violent incident on 8th August, 2016 in Mtendere. Further, that RW10 did not testify that the PF supporters were the perpetrators and UNPD supporters the victims. That the 2nd Appellant admonished both the PF and the UPND.

In regard to the 1st Respondent's argument that RW10's evidence confirmed media reports on the 8th August, 2016 incident, it was the 1st Appellant's position that RW10 did not indicate who received the media report, which media or news outlets and access by the majority of the voters of the said media in Munali constituency. Also, that RW10 did not indicate what

was reported and how and whether any video or photographs of anything relating to the incident were published or televised. The 1st Appellant submitted that it is the duty of a petitioner to adduce evidence to a high degree of convincing clarity that the majority of voters in a constituency were or may have been affected by the misconduct alleged and that, in this case, the 1st Respondent had failed to adduce evidence to that effect.

To augment, State Counsel Mutale contended that the judgment of the court below ought to be set aside. He submitted that the 1st Respondent did not adduce any evidence of abuse of Government resources and urged the Court to discredit the evidence of PW5. And on the 8th August, 2016 attack on the UPND campaign bus, Mr. Mutale, SC., argued that no witness was called to identify the perpetrators of the violence. That even if the perpetrators were identifiable, it would have been pertinent for the court to ascertain whether they were the legitimate election agents of the 1st Appellant as defined by the Act.

State Counsel Mr. Silwamba, supplementing, referred this Court to section 97(2)(a)(ii) of the Act, arguing that the law was clear that to nullify an election the malpractice must be

committed by the candidate or her agents and that the majority must have been prevented from electing a candidate of their choice. Further, that section 97(3) of the Act is clear on the role of an election agent. Our attention was also drawn to the following excerpt of the judgment of the court below at page 63 of the record of appeal:

> **"The allegation concerning lack of or the inadequacy of Form Gen12 did not affect the Petitioner alone. Suffice to state that it affected all the participants in that Parliamentary race."**

Mr. Silwamba, SC, submitted that the 1st Respondent had not cross-appealed that finding of the court below. He submitted that this Court addressed the issue of Form GEN12 in **Giles Chomba Yamba Yamba.**[11]

Mr. Lungu added that the **Steven Katuka**[4] case distinguished between whether the Ministers' stay in office after dissolution of parliament was void or voidable and did not create an irrebuttable presumption on the abuse of Government resources. He contended that the 1st Respondent still had to adduce evidence that Government resources were abused. And on the 8th August, 2016 incident of violence, counsel submitted that nullification on the basis of generalized violence was not

pleaded in the court below and the 1st Respondent was not entitled to go outside the pleadings. And in regard to determining the effect on the majority, Mr. Lungu discounted the 1st Respondent's argument that it was not possible to quantify the claim that the majority of voters were precluded from electing their preferred candidate, citing the case of **Mubika Mubika v Poniso Njeulu**[6] for support.

Mr. Mwala, on behalf of the 2nd Appellant, submitted that the 2nd Appellant called in a witness, RW12, who testified that Form GEN12 was provided at every polling station in excess of 20 copies per election. Mr. Mwala argued that the court below glossed over RW12's evidence and chose to accept the evidence of PW5 who, in his view, was discredited. Drawing our attention to page 65 of the record of appeal, Mr. Mwala submitted that the court below misdirected itself in finding that the failure to countersign a GEN12 form amounted to a failure to provide the document at polling stations, citing section 49(2) of the Electoral Process (General) Regulations and the case of **Mazoka v Mwanawasa**[3] for support.

We are grateful to the parties for the detailed submissions advanced in this appeal. We have carefully considered the grounds of appeal and the written and oral submissions for and against this appeal. We have also given careful consideration to the judgment of the court below and the evidence on record. From the outset, it is clear to us that this appeal attacks the judgment of the court below on aspects of both law and fact. The key question in this appeal is whether the learned Judge in the court below was on firm ground when he found that all the allegations brought against the 1st Appellant and the 2nd Appellant were proved in accordance with the requirements of the current electoral laws based on which he proceeded to nullify the election of the 1st Appellant as Member of Parliament for Munali Constituency in the 11th August, 2016 general elections.

This Judgment comes at a time when this Court has had occasion to pronounce itself on key aspects of the new electoral legal regime as espoused by the Act. That notwithstanding, before we proceed to address the grounds of appeal in the instant case, we find it imperative, and in order to put things in context, to

restate our position on the current state of the law governing the nullification of elections in Zambia.

Section 97(2) of the Act is central to the judicial resolution of electoral disputes. Section 97(2)(a) is couched in the following terms:

> **"97. (2). An election of a candidate as a Member of Parliament, mayor, council chairperson or councillor shall be void if, on the trial of an election petition, it is proved to the satisfaction of the High Court or 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 the 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;"**

As earlier stated, we have, in unequivocal terms, stated our position on the above provisions. In order for a petitioner to successfully have an election annulled pursuant to section 97(2)(a), there is a threshold to surmount. The first requirement is for the petitioner to prove to the satisfaction of the court, that the person whose election is challenged personally or through his

duly appointed election or polling agents, committed a corrupt practice or illegal practice or other misconduct in connection with the election; or that such malpractice was committed with the knowledge and consent or approval of the candidate or his or her election or polling agent. Sections 81 to 95 in Part VIII of the Act and also relevant provisions of the Electoral Code of Conduct outline the corrupt or illegal practices or misconduct in the electoral process.

In addition to proving the electoral malpractice or misconduct alleged, the petitioner has the further task of adducing cogent evidence that the electoral malpractice or misconduct was so widespread that it swayed or may have swayed the majority of the electorate from electing the candidate of their choice. Recently in **Austin Liato v Sitwala Sitwala**[19] we said:

> **"...it is not sufficient for a petitioner to prove only that a candidate committed an illegal or corrupt practice or engaged in other misconduct in relation to the election without proof that the illegal or corrupt practice or misconduct was widespread and prevented or may have prevented the majority of the voters in the constituency, district or ward from electing a candidate of their choice."**

We reaffirm the above position.

> "...we wish to assert that it cannot be seriously disputed that parliamentary election petitions have generally long required to be proved to a standard higher than on a mere balance of probability. 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..., no less a standard of proof is required. It follows also that the issues raised are required to be established to a fairly high degree of convincing clarity."

We have also expressed agreement with the sentiments expressed in **Brelsford James Gondwe v Catherine Namugala**[2] that:

> "The burden of establishing any one of the grounds lies on the person making the allegation and in election petitions, it is the petitioner in keeping with the well settled principle of law in civil matters that he who alleges must prove. The ground(s) must be established to the required standard in election petitions namely a fairly high degree of convincing clarity."

It is the foregoing principles and law that will guide this Court in determining the issues raised in this appeal.

Ground one is to the effect that the learned Judge in the court below erred in law and in fact when he held that the continued stay of the 1st Appellant in office as a Cabinet Minister created an irrebuttable presumption of the abuse of Government resources and that such abuse materially affected the outcome of the election in Munali Constituency. The 1st Respondent submitted that the court below was on firm ground when it found

that the 1st Appellant had used Government resources during the campaign and that that adversely affected the 1st Respondent. That by her own admission, the 1st Appellant stated that she was a Minister in the Ministry of Gender and, thus, she had failed to comply with the Constitution when she did not vacate her ministerial position before standing as a candidate in Munali Constituency. Further, that there was abundant evidence on record that the 1st Appellant had used a Government vehicle and that she was occupying a Government house, contrary to regulation 15(1)(k) of the Electoral Code of Conduct.

However, under cross-examination as shown at page 604 of the record of appeal, the 1st Respondent failed to adduce evidence that the 1st Appellant did in fact use her ministerial salary and allowances in the campaign. And as shown at page 633 of the record of appeal, the 1st Respondent could not recall the registration number of the Government vehicle she allegedly saw the 1st Appellant in and could not state the name of the Government driver allegedly used by the 1st Appellant during the campaign.

It was also the 1st Respondent's testimony that the 1st Appellant, as Minister, inspected on-going Government projects in the constituency, although, as shown at page 590 of the record of appeal, the 1st Respondent conceded that she was aware of some of the developmental projects the 1st Appellant initiated since her election as Member of Parliament in 2011. The 1st Respondent also testified that she was denied permission by the police to hold meetings while the 1st Appellant was allowed to freely have public meetings because she was a Minister.

PW5, Wendy Lwendo Michelo, a polling agent, testified that during the campaign she saw the 1st Appellant being driven in a white Government vehicle with a flag on it in Kaunda Square Stage 2 and that a Noah bus in PF colours was following behind. As shown at page 737 of the record of appeal, PW5 described the alleged Government vehicle as "white in colour similar to a Hardbody" but conceded to not having details of the driver. At page 730 of the record of appeal, PW5 stated that the 1st Appellant distributed chitenge materials at a house.

In rebuttal, the 1st Appellant denied using public resources in her campaign. She argued that the 1st Respondent failed to

adduce cogent evidence that the 1st Appellant abused Government resources in the course of her campaign for the Munali parliamentary seat. At page 874 of the record of appeal, the 1st Appellant testified that she knew the regulations and rules and did not remember using Government transport, fuel or driver on any day. It was her testimony that her salary was meagre and she raised K100,000 from well-wishers and also used her gratuity from Parliament in the sum of K88,000 to fund her campaign. The 1st Appellant testified that she had two personal vehicles, a Toyota Noah and a Toyota Regius, lined up for her campaign and did not use her official Government vehicle, a gray Land Rover Discovery.

RW1, Steven Chanda, the 1st Appellant's Campaign Strategist, RW2, Humphrey Tembo, a business man and RW3, Martin Mwanza, in charge of planning, also testified that the 1st Appellant did not use Government transport during the campaign as alleged but that she had designated her two personal vehicles to the campaign. RW4, Watson Mtonga, also testified that the 1st Appellant did not use a Government vehicle or driver during the campaign. RW1 added that there were other personal vehicles

from volunteers used in the 1st Appellant's campaign and that RW2 or himself drove the 1st Appellant during the campaign.

We have carefully considered the submissions on this ground and the evidence on record. From our perspective, the key question that falls for our consideration is whether, on the totality of the evidence on this aspect, the 1st Appellant, in her capacity as Minister, utilized public or Government resources towards her campaign contrary to the provisions of the electoral laws and regulations and that such malpractice affected the majority of the electorate in Munali Constituency as required by section 97(2)(a) of the Act.

Regulation 15(1)(k) of the Electoral Code of Conduct provides as follows:

> **"15(1) A person shall not –**
>
> ...
>
> **(k) use Governmental or parastatal transportation or facilities for campaign purposes, except that this paragraph shall not apply to the President and the Vice President in connection with their respective offices;"**

The provision is clear. Use of Government or public resources by any person in the course of a campaign is proscribed except for the President and the Vice President. The allegation against the 1st Appellant is essentially that she fell

afoul of regulation 15(1)(k) aforesaid in her pursuit of the Munali parliamentary seat.

According to the record, the learned Judge in the court below was of the view that the lacuna in the 1st Appellant's testimony was that he had not seen any guideline to preclude a minister from using Government resources during the campaigns. The specific words of the learned trial Judge at page 52 of the record of appeal were as follows:

> **"The lacuna in her evidence is that I have not seen any government guideline to preclude a Minister from using government resources such as a government motor vehicle during campaigns. Ministers had government resources at their disposal...."**

The 1st Appellant submitted that the court below misdirected itself when it shifted the burden of proof on the allegation that she used a Government vehicle in the campaign; also, that there were discrepancies in the evidence regarding the make of the Government vehicle allegedly used by the 1st Appellant. Further, that the trial Judge did not apply the correct standard of proof in election petitions and relied on presumptions in finding that the allegations were proved. The 1st Appellant further argued that the court below misapprehended the holding

of this Court in **Steven Katuka**[4], which tainted its reasoning and that it failed to distinguish between void and voidable acts.

We note that at page 48 of the record of appeal, the learned trial Judge reminded himself of the applicable principles on the burden and standard of proof in election petitions. His exact words were:

> **"I now remind myself that the burden of proof rests on the Petitioner. In an election petition like the one in casu, the standard of proof required though a civil matter is higher than 'on a balance of probabilities' in order that the allegations raised must be proved to a fairly high degree of convincing clarity."**

We agree with the learned trial Judge on the correct position of Zambian jurisprudence as far as election petitions are concerned. However, we also note that the 1st Appellant argued that in considering the issues in ground one, the learned trial Judge shifted the burden of proof from the 1st Respondent, the petitioner in the court below, to the 1st Appellant, who was the respondent. Mr. Mutale, SC, for the 1st Appellant, drew our attention to this Court's decision in **Abiud Kawangu v Elijah Muchima**[12] where we said at page J19 to J20:

> **"We agree with the Respondent's submission that the burden lay on the Appellant as Petitioner in the court below to prove the allegations made in his petition against the Respondent. This is because the one alleging... carries the burden of proving all the allegations. He must**

> prove the allegations to the required standard with cogent evidence otherwise no judgment will be entered in his favour."

We reaffirm that position here. In particular, we emphasise that the burden resting squarely on the shoulders of the person alleging is to adduce cogent evidence to prove the allegation, without which judgment will not go in his or her favour. In the instant case, the 1st Respondent is the one that brought the allegation against the 1st Appellant that she abused Government resources to propel her campaign for the Munali parliamentary seat. Thus, it was incumbent upon the 1st Respondent to demonstrate, with convincing clarity by way of cogent evidence, the affirmative of the allegation to the effect that the 1st Appellant committed electoral infractions contrary to regulation 15(1)(k) of the Electoral Code of Conduct. We, therefore, find it odd that the trial Judge placed the burden on the 1st Appellant to prove that indeed she did not use or abuse Government or public resources in her bid to secure the Munali parliamentary seat. The learned trial Judge clearly misdirected himself despite having reminded himself of the settled position of the law on who bore the burden of proof. At page 52 of the record of appeal, the trial Judge said:

> "Ministers had government resources at their disposal. It was left solely to the Ministers themselves whether or not to avail themselves of

those government resources, of which the 1st Respondent denies having used government resources."

Evidence on the record shows, as the trial Judge acknowledged, that the 1st Appellant denied availing herself of Government resources in her campaign. We have not seen any concrete evidence on the record from the 1st Respondent to show, with convincing clarity, that the 1st Appellant, despite her denials, actually abused Government resources as alleged and, as a consequence, committed a breach of the law prohibiting abuse of Government resources in election campaigns.

Our firm view is that the 1st Respondent failed to establish with convincing clarity that the 1st Appellant abused Government resources in her campaign, contrary to regulation 15(1)(k) of the Code of Conduct. Further, there was no evidence adduced by the 1st Respondent to show how the alleged misconduct affected the majority of the electorate. The 1st Respondent's evidence on this allegation clearly failed the test required in section 97(2)(a) of the Act and we, accordingly, reverse the finding of the court below on this aspect.

On the alleged use of a Government vehicle by the 1st Appellant during the campaign, evidence on record shows that

there were discrepancies on the type of Government vehicle the 1st Appellant allegedly used. At page 589 of the record of appeal, the 1st Respondent could not say for certain what kind of Government vehicle she saw the 1st Appellant in but said it was white in colour and "looked like a Prado VX." PW5, under cross-examination at page 737 of the record of appeal, described it as "white in colour similar to a Hardbody." The 1st Appellant herself testified at page 877 of the record that her official vehicle was a gray Land Rover Discovery and her personal-to-holder vehicle was a gold Toyota GX. The learned trial Judge's position, as stated at page 52 of the record of appeal, was as follows:

> "Truly, the 1st Respondent had her personal motor vehicles, namely, a Toyota Noah and a Toyota Regius which she used during her campaigns but I have not seen evidence to show that she truly did not use a government motor vehicle as well." (emphasis added)

Clearly, the learned trial Judge accepted the 1st Appellant's evidence and made a finding of fact that she had her personal vehicles which she used in her campaign. What is perplexing to us is that the trial Judge also expected the 1st Appellant to demonstrate that she truly did not use a Government vehicle as well. Again, this was a clear reversal of the burden of proof on this aspect and a misdirection on the part of the trial Judge. We

reiterate our position that the 1st Respondent bore the burden of proof and the onus was on her to prove her allegations with convincing clarity. Given the clear discrepancies in her testimony and that of her key witness PW5, as to the type of Government vehicle allegedly used by the 1st Appellant and that no evidence was adduced on the identity of the alleged Government driver, we find that the 1st Respondent did not discharge that burden. In the absence of clear and convincing evidence on this point, we cannot support the finding of the court below.

Another aspect on this ground is that the 1st Appellant used her salary as Cabinet Minister towards the campaign. The 1st Respondent, at page 604 under cross-examination could not specifically point to what the 1st Appellant used her salary and allowances on during the campaign, insisting only that she knew as a fact that the 1st Appellant continued to get her salary despite being adopted as a candidate for Munali constituency; this, she said, was unfair. In rebuttal, the 1st Appellant's position was that she used her gratuity from Parliament and funds from well-

wishers to finance her campaign; that she used her salary to pay domestic workers and for personal upkeep.

The position of the court below at pages 53 to 54 of the record of appeal was as follows:

> "Indeed that was an admission that the salary which she was paid was spent on her campaigns. She was paid that salary as a Minister, the office which she held illegally. To the extent that she held the office of Minister illegally it follows that even the salaries which accrued to her were paid illegally, she was not entitled to that money. Those salaries were government money which she used to fund her campaigns." (emphasis added)

It is not in dispute that the 1st Appellant held the position of Cabinet Minister during the 2016 election campaign period. However, the flaw in the learned trial Judge's finding is that it was made on a mere assumption that because the 1st Appellant was a Cabinet Minister then she must have used her earnings towards the campaign. As we have noted already, the 1st Respondent in her testimony could not say how the 1st Appellant used her salary, except to maintain that she knew as a fact that the 1st Appellant was receiving her salary. We have also not seen any evidence on record to demonstrate that the alleged malpractice prevented or may have prevented the majority of the electorate from electing their preferred candidate.

Taking into account the evidence before the court below, we find that the requirements of section 97(2)(a) of the Act were not satisfied in regard to the issues raised under this ground. We find that ground one of this appeal has merit. We accordingly reverse the finding of the court below and hold that the 1st Respondent did not prove, with convincing clarity, that the 1st Appellant abused government or public resources in her campaign as alleged.

In ground two, the 1st Appellant contends that the court below erred in law and in fact when it annulled the poll in Munali Constituency based on the attack of a UPND campaign bus in Mtendere on 8th August, 2016 without evidence linking the 1st Appellant or her election agent to the said act of violence. The 1st Respondent's testimony was to the effect that as her campaign entourage approached Mtendere on 8th August, 2016, they saw "a group of PF members" running towards their direction and the other vehicles in her procession scampered in all directions. The male cadres on the bus tried to block the PF supporters but were no match for them and the alleged PF members came onto the bus and attacked the 1st Respondent and threatened to rape her.

The 1st Respondent testified that she lost consciousness; that when she regained consciousness, she found herself in a taxi surrounded by female residents of the area; that the PF cadres regrouped and came towards the taxi and the taxi driver abandoned her at a house about 100 metres from the scene of the bus attack. The 1st Respondent testified that some police officers came on the scene and later she ended up at Levy Mwanawasa Hospital.

PW2, Christopher Hamoonga, testified that on 8th August, 2016, before the UPND campaign bus reached Mtendere main market, a group of people he described as clad in PF regalia run towards the bus armed with stones and machetes. That he jumped off the bus and went to observe the incident from a distance and heard the attackers talking about raping the 1st Respondent and that they removed UPND campaign materials from the bus. In re-examination, as shown at page 666 of the record, PW2 stated that the distance from the scene of the attack to Mtendere East where the 1st Appellant was holding meetings was about three to four kilometres. PW3, Joseph Chilekwa, filmed the attack.

PW6, Kelvin Pilati Hamwete's testimony was that he was at a bus station waiting for a friend when he witnessed PF youths organizing themselves and giving each other t-shirts. He telephoned the UPND Youth Chairperson who advised him to wait at the station. Shortly afterwards PW6 saw what he described as a "small Canter" from which was playing a UPND party song; that when it reached the market, the PF youths chased the vehicle. Then he was informed that the UPND bus had been attacked and that one person had been killed.

In her testimony, the 1st Appellant denied any connection to, or knowledge of the attack on the UPND campaign bus. She asserted that she was in Mtendere East, about five kilometres away, when RW6, Rachel Phiri Nyangu, called her to warn her not to proceed to Mtendere because of the violent incident.

RW1 testified that the 1st Appellant did not sponsor the attack on the UPND campaign bus; that the 1st Appellant was five kilometres away in Mtendere East at the material time. RW2's evidence was that he was with the 1st Appellant in Mtendere East when she received a telephone call on the incident and abandoned her plans to meet marketeers in Mtendere. RW3's

testimony was to the effect that on 8th August, 2016, the 1st Appellant planned meetings in Mtendere and Mtendere East. That the 1st Appellant was in Mtendere East conducting door-to-door meetings when her team received information about the violent incident in Mtendere and the planned meetings were abandoned.

RW4 also testified that on the material day, he was at Mtendere market waiting for the 1st Appellant, who was in Mtendere East conducting door-to-door meetings; that the 1st Appellant was scheduled to meet some women at the market to lobby for their support. RW4 stated that he received a telephone call from RW6 informing him about the incident and that she had communicated to the 1st Appellant and RW1. That the planned meeting at Mtendere market was then abandoned. RW6 testified that on 8th August, 2016 she saw a red double decker bus coming from the direction of Kabulonga. That the bus stopped and three people clad in UPND regalia alighted and started hurling stones at people who were on the road side. She confirmed calling RW1, RW4 and the 1st Appellant, who informed

her that she (the 1st Appellant) was in Mtendere East addressing a small meeting.

As the record of appeal shows at page 922, RW10, Crispin Nasilele Akufuna, Public Relations Manager for the 2nd Appellant, testified that in July 2016, the 2nd Appellant suspended campaigns in Lusaka due to rising levels of intolerance which escalated into violence, including loss of life and damage to property. That the suspension of campaigns was meant to remind political parties of their obligations under the Electoral Code of Conduct. RW10 also testified that the 2nd Appellant strongly condemned the violence in Mtendere in a national address, urging both the PF and the UPND to remind their supporters not to engage in violence.

We have viewed the video evidence and given careful consideration to the submissions and the evidence on record on this ground of appeal. As the learned Judge in the court below rightly observed, it is not in dispute that on the afternoon of 8th August, 2016, violence erupted in Mtendere in which a UPND campaign bus and its occupants came under attack. What is in dispute is whether or not the 1st Appellant perpetrated the violent

act against the 1st Respondent and, as a consequence, violated the electoral laws and regulations.

In order for us to appreciate the real issue in controversy, we find it necessary to restate the allegation as it appeared in paragraph 5(ii) of the petition as shown at page 73 of the record of appeal and which reads as follows:

> **"That on the 8th August 2016 on or about 15:00 hours, she sponsored violent cadres in Mtendere and attacked us and destroyed the party campaign bus."**

The allegation in paragraph 5(ii) of the petition is very specific and unequivocal. In our understanding, the 1st Respondent clearly claimed that the 1st Appellant sponsored the attack on the UPND campaign bus on 8th August, 2016 resulting in its destruction. According to the **Concise Oxford English Dictionary** a sponsor is, *inter alia*, a person taking official responsibility for the actions of another. The **Pocket Oxford Dictionary & Thesaurus** includes the words "backer", "promoter", "supporter" and "contributor" as synonyms of the word "sponsor". In effect, therefore, the allegation of the 1st Respondent was that the 1st Appellant backed, promoted or contributed to the violent attack on the UPND campaign bus.

Regulation 15(1)(a) of the Electoral Code of Conduct states:

> **"A person shall not –**
>
> **(a) cause violence or use any language or engage in any conduct which leads or is likely to lead to violence or intimidation during an election campaign or election;"**

Also, section 83(1)(g) of the Act says:

> **"A person shall not directly or indirectly, by oneself or through any other person –**
>
> **...**
>
> **(g) unlawfully prevent the holding of any political meeting, march, demonstration or other political event."**

The foregoing provisions show that the law proscribes violence, intimidation and similar conduct in the electoral process. The Act in section 83(1)(g) also prohibits the unlawful prevention, by any person, of the stated political activities. As we have already noted, it is not in dispute that the UPND campaign bus was attacked in Mtendere on 8th August, 2016. The key question, as we see it, is whether or not the violent attack on the UPND campaign bus was directly or indirectly perpetrated by the 1st Appellant as alleged by the 1st Respondent in her petition in the court below. At page 54 of the record of appeal, the learned trial Judge stated as follows:

> **"There is no dispute that the UPND campaign bus was attacked in Mtendere on 8th August, 2016 at about 15.00 hrs. There are only two disputes. The first dispute is that the attackers of that UPND bus were sponsored by the 1st Respondent. The 1st Respondent vehemently**

denied sponsoring cadres to attack that UPND campaign bus. I have seen no evidence to show or even to suggest that the 1st Respondent sponsored cadres to attack that UPND campaign bus." (emphasis ours)

It is unequivocal from the holding of the learned trial Judge that, though the attack on the UPND campaign bus happened, there was no evidence to link the 1st Appellant, or even to suggest her connection or contribution, to the violent incident. We have also carefully searched the record on this aspect and we have not seen evidence connecting the 1st Appellant to the incident.

As we noted *supra*, the first requirement in section 97(2)(a) of the Act is for the petitioner in an election petition to prove, with convincing clarity, and on the basis of cogent evidence, that the candidate whose election is disputed engaged in a corrupt or illegal practice or other misconduct in connection with the election. In the instant case, the court below found no evidence connecting the 1st Appellant to the attack on the UPND campaign bus. The learned Judge went as far as stating that there was nothing to even suggest that the 1st Appellant conducted herself as alleged by the 1st Respondent. None of the witnesses, including the 1st Respondent herself, proffered evidence directly addressing the allegation as it was framed in the petition. All the

testimony was to the effect that violence had erupted in Mtendere on the afternoon of 8th August, 2016 in which the UPND campaign bus and its occupants were attacked by alleged PF supporters. At page 49 of the record of appeal, the learned trial Judge reminded himself that the petitioner's evidence must support the pleadings which are in the petition. Citing **Saul Zulu v Victoria Kalima,**[20] the trial Judge said:

> **"The Petitioner is not allowed to bring in any evidence other than the evidence which is connected to the pleadings and goes to support those pleadings. Put simply, pleadings in an election petition are allegations by the Petitioner against the Respondent(s). What this means is that the Petitioner cannot go at sea, the Petitioner is restricted only to the evidence which is supportive of the allegations outlined in the petition. If the Petitioner or indeed any witness for the Petitioner adduces evidence which does not support the pleadings then that evidence is irrelevant and inadmissible to the extent of its irrelevancy."**

And referring to the cases of **Michael Mabenga v Sikota Wina,**[1] **Brelsford James Gondwe v Catherine Namugala**[2] and **Anderson Mazoka v Levy Mwanawasa,**[3] the trial Judge categorically said:

> **"What this means is that I must look out only for evidence which supports the pleadings in the petition."**

We have carefully perused the record and, having viewed the video which was availed to us on the violence in Mtendere on 8th August, 2016, we find that there is no evidence supporting the allegation as couched in paragraph 5(ii) of the petition as shown

at page 73 of the record of appeal, that the 1st Appellant sponsored violent cadres to attack the 1st Respondent's campaign bus.

The next question that arises is, if the 1st Appellant was not personally involved, could she still be culpable indirectly? Under section 97(2)(a)(ii) of the Act, an election can be annulled on account of a corrupt or illegal practice or other misconduct committed in connection with the election "with the knowledge and consent or approval of a candidate or of that of a candidate's agent or polling agent." The 1st Appellant testified at pages 879 to 880 of the record of appeal that at the time of the attack on the UPND bus, she was conducting her own activities and did not know of the 1st Respondent's programme on the material day; that she just got a warning call from RW6 about what was happening in Mtendere and was advised not to proceed there for her planned campaign activities.

We have perused the record on this aspect and note that the 1st Respondent did not adduce any evidence to show that the 1st Appellant knew of the attack or that any of her duly appointed election agents were involved or knew or approved of the incident.

That there were violent clashes involving political party cadres and supporters during the 2016 campaign period is indisputable. The testimony of RW10 confirmed that there were rising levels of violence in Lusaka leading to the 2nd Appellant suspending campaigns in July, 2016. Also, that the 2nd Appellant strongly condemned the violence in Mtendere in a national address. At page 922 to 923 of the record of appeal, RW10 said:

> **"The Commission also condemned in very strong terms the violence that occurred specifically in Mtendere through a national address and cited both the ruling PF and the UPND to ensure that they as a party or parties followed provisions of the code of conduct and remind their supporters not to engage in violence."**

We wish to say from the outset that we frown upon and condemn all forms of electoral violence. We are of the firm view that elections must be conducted in a peaceful environment and in strict adherence to the Electoral Code of Conduct.

However, for purposes of the instant case, the key issue that falls for our consideration is whether or not the 1st Appellant, as a candidate, or through her election agents knew or approved of the violent incident of 8th August, 2016 in Mtendere. According to the court below, the 1st Appellant had "not sufficiently shown to the court what measures she took in order to cage her

supporters and/or agents whose violent conduct had then become a notorious fact..."

As already mentioned, the 1st Appellant, whose election was annulled by the court below, was a candidate for the PF party. At page 55 of the record of appeal, the court below said the following:

> "The second dispute is that the attackers of that UPND campaign bus were PF cadres. The 1st Respondent denied that they were PF cadres. I do not agree with the 1st Respondent. I say so because there is evidence that the 1st Respondent was not at the scene of the attack....The 1st Respondent can, therefore, not know whether those attackers of the UPND campaign bus were PF or not because she was not at the scene of the attack and did not see the attackers for her to positively say they were not PF cadres."

And at page 67 of the record of appeal, the trial Judge concluded thus:

> "There is evidence that the campaigns in Munali Constituency Parliamentary elections were marred with violence. This violence reached a crescendo when on 8th August, 2016 the UPND campaign bus was attacked by PF cadres. Apart from saying that she was not at the scene of the attack and that she did not know of the attack, F/Nkandu Luo has not sufficiently shown to the court what measures she took in order to cage her supporters and/or agents whose violent conduct had then become a notorious fact even to the 1st Respondent."
> (emphasis ours)

The 1st Appellant contended that the finding by the learned trial Judge was perverse and a misdirection as she could not be expected to demonstrate measures taken to "cage" her supporters

as she had no burden of proof to discharge and that the finding of the court below fell outside the ambit of the pleading and the law.

We agree with the 1st Appellant. From our perspective, it appears that the trial Judge not only reversed the burden of proof on this allegation but apportioned blame onto the 1st Appellant for violent acts that PF supporters or cadres generally could have been engaged in during the campaign. As a consequence, the trial Judge held that the allegation was proved.

The law as provided in section 97(2)(a)(ii) of the Act is very clear. In his evaluation of the evidence before him, and having initially determined that the 1st Appellant was not personally involved, the learned trial Judge should have carefully considered whether, in the totality of the evidence available to him on this aspect, the 1st Appellant, or her duly appointed election agent, was responsible for the attack on the UPND campaign bus within the terms of section 97(2)(a)(ii) of the Act. The trial Judge did not do that. Instead, we note that he held the allegation as proved simply on his finding that there were PF cadres involved and that the 1st Appellant did not show what measures she took to control

her supporters. This was a gross misdirection on the part of the learned trial Judge. Recently in **Crispin Siingwa v Stanley Kakubo,**[21] we cited with approval, as we have done in our earlier decisions, the holding of the Supreme Court in the case of **Lewanika v Chiluba**[5] wherein it said:

> **"...a candidate is only answerable for those things which he has done or which are done by his election agent or with his consent. In this regard, we note that not everyone in one's political party is one's election agent since...an election agent has to be specifically so appointed."** (emphasis added)

Section 2 of the Act defines "election agent" as:

> **"a person appointed as an agent of a candidate for the purpose of an election and who is specified in the candidate's nomination paper."**

Also, regulation 55(1) of the Electoral Process (General) Regulations 2016 reads as follows:

> **"A candidate shall name an election agent in the nomination paper and, subject to the other provisions of this regulation, the person named shall be the election agent of the candidate for the purpose of that election."**

As we have stated above, in the holding of the court below as reflected at page 67 of the record of appeal, the trial Judge said the 1st Appellant needed to show "measures she took" to "cage her supporters and/or agents." State Counsel Mutale had submitted that no witness was called to identify the perpetrators of the violence and that even if they were identifiable, it was

pertinent for the court below to ascertain whether they were the legitimate election agents of the 1st Appellant as defined by the Act.

We agree. A careful perusal of the record reveals that the 1st Respondent did not adduce a shred of evidence to support the involvement of the 1st Appellant's duly appointed election agents in the violent act. Neither was it shown in evidence that the 1st Appellant or her election agents knew of the attack on the UPND campaign bus. According to the record, the 1st Appellant only became aware of what had transpired when she was informed by telephone.

That cadres or supporters of the PF were implicated in the attack is not enough to attach responsibility to the 1st Appellant or her duly appointed election agents and to annul the election on the basis of section 97(2)(a)(ii) of the Act. In **Richwell Siamunene v Sialubalo Gift**[22] we said the following:

> **"Mere proof that the UPND supporters were indeed involved in the said acts does not warrant an inference being drawn that the Respondent had directly or indirectly incited the UPND supporters to act as they did. To so hold would amount to speculation and it is not the duty of this Court to make assumptions based on nothing more than party membership and candidacy in an election."**

Our firm view is that, in the circumstances of the instant case, the threshold in section 97(2)(a)(ii) aforesaid was not reached. Considering the gravity of the allegation and taking into account the fact that the occurrence of the attack was not in dispute, the court below should have seriously assessed the evidence before it on this aspect in light of the clear requirements of section 97(2)(a)(ii). The 1st Respondent had brought to our attention the holding in **Mlewa v Wightman**[14] as reflected at page 424 of the record of appeal, to the effect that it does not matter who the wrongdoer is. Our firm position is that that argument is not tenable under the current electoral law as espoused in section 97(2) of the Act and we accordingly discount it.

Learned counsel Mr. Phiri, for the 1st Respondent, had submitted that though there was nothing on the record to show that the 1st Appellant sponsored the attack on the UNPD bus, ground two should still fail as the 1st Appellant benefitted from what happened because the incident had an effect on the election. We disagree. The onus was on the 1st Respondent, to demonstrate with convincing clarity, in terms of the current electoral law, that the 1st Appellant or her election agents were

directly or indirectly connected to the alleged violent act. In this regard, our views in **Richwell Siamunene v Sialubalo Gift**[22] were that:

> **"When section 83 is read with section 97, it is clear that the violence or threat of violence must be perpetrated by the candidate or with the candidate's knowledge and approval or consent or that of his election or polling agent. In order for the candidate to be liable for the illegal practice or misconduct, it must be shown to be that of his official agent; there must be proof to the required standard that he had both knowledge of it and approved or consented to it; or that his election or polling agent had knowledge and consented to or approved of it."**

We reaffirm that position.

We further find as untenable the argument by learned counsel Mr. Mweemba that the election could still be nullified as long as the 2nd Appellant was part of the proceedings even if the 1st Respondent had not proved that the 1st Appellant or her agents were liable for the attack on the campaign bus as alleged in the petition.

We agree with State Counsel Mutale that the 1st Respondent failed to adduce evidence that the 1st Appellant or any of her election agents were involved in attacking the 1st Respondent's campaign bus. Further, there was no evidence that the violence was with the 1st Appellant's knowledge, consent or approval or that of her agents. We also find that the learned trial Judge

veered from the specific allegation as contained in paragraph 5(ii) of the petition to hold that it had been proved, on the basis of which he nullified the election of the 1st Appellant. We accordingly reverse the finding of the court below and hold that, on the totality of the evidence on record, the 1st Respondent failed to prove the allegation and that the court below did not properly address itself to the correct position of the law on the issues surrounding the allegation. Ground two has merit and it succeeds.

Ground three for the 1st Appellant and ground two for the 2nd Appellant challenge the holding of the court below that the 1st Respondent was denied entry into Vera Chiluba School polling station and that the denial materially affected the outcome of the election in Munali Constituency. The 1st Respondent testified that at around 20:20 hours on poll day, she went to Vera Chiluba Polling Station in Mtendere. She stated that the 1st Appellant and one Kaizer Zulu were permitted to enter the polling station while the 1st Respondent and her delegation were denied entry by a police officer despite introducing herself as a candidate, a situation she characterized as unfair.

Under cross-examination, when referred to her allegation under paragraph 5(v) of the petition claiming that the 1st Appellant and Kaizer Zulu closed the gate to the polling station and prevented her and her agent from seeing her polling agents, the 1st Respondent conceded that the allegation was not correct. It was her testimony that the 1st Appellant was not responsible for the gate at Vera Chiluba Polling Station.

The 1st Appellant, in rebuttal, contended that the allegation by the 1st Respondent was not true and that Kaizer Zulu was not part of her campaign team. She stated that she had to beg the police and the 2nd Appellant's officers to allow her to enter the polling station.

RW3 testified that it was not possible to close the gate as alleged by the 1st Respondent as it was guarded by the police. RW12, Emmanuel Makulila, the returning officer for Munali Constituency, also testified that it was not possible for the 1st Appellant and Kaizer Zulu to close the gate. He stated that the law provided that polling opened and closed at 06:00 hours and 18:00 hours respectively. It was his further testimony that at Vera Chiluba polling station, there was a group of people who

wanted to vote after the close of the station; that the presiding officer closed the gate and kept the key himself.

In her submissions, the 1st Appellant particularly took issue with the following excerpt in the lower court's judgment at page 61 of the record of appeal:

> **"The material fact is that there was a demonstration of double standards when one parliamentary candidate, namely, F/Nkandu Luo of the PF was allowed entry into the polling station, yet at almost the same time entry into the same polling station was denied to F/Doreen Sefuke Mwamba of the UPND who was also a parliamentary candidate in the same constituency. This was unfair treatment to the petitioner."**

The 1st Appellant contended that the court below did not address itself to the pleadings but merely discredited the testimony of RW12 on ground that he was untruthful. That the finding of unfair treatment was irrelevant as it was not pleaded.

The 2nd Appellant submitted that as the 1st Respondent had admitted in cross-examination that the 1st Appellant and one Kaizer Zulu did not lock her out of the polling station, the matter should have ended there. That it was trite law that the evidence must support the pleadings and that the court below wrongfully accepted and applied the 1st Respondent's testimony to the effect that she was locked out of the polling station by a police officer

while the 1st Appellant was allowed to go in. It was the 2nd Appellant's contention that the 1st Respondent's allegation that the 1st Appellant and Kaizer Zulu closed the gate was not truthful and that the trial Judge erred when he found that there was a demonstration of double standards, resulting in unfairness on the part of the 2nd Appellant's conduct of the elections.

We have carefully looked at the evidence on the record, the parties' submissions and the holding of the court below on this aspect of the appeal. The key issue, as we see it, is whether the court below was on firm ground to find that the allegation, as framed in paragraph 5(v) of the petition, had been proved.

The 1st Appellant and the 2nd Appellant, in their respective submissions, have argued that the learned trial Judge went outside the pleading in reaching his decision. At page 60 to 61 of the record of appeal, the court below said:

> **"There was no dispute that F/Nkandu Luo who was a Parliamentary Candidate for Munali Constituency went to Vera Chiluba School Polling Station. There are only two (2) disputes. The first dispute is that F/Nkandu Luo was in the company of the said M/Kaizer Zulu. The second dispute is that the Petitioner was denied entry into the polling station. The evidence on this aspect is clear. I have gone through this evidence. I have taken note of the frantic efforts which the Petitioner did in order to be allowed into the polling station. These efforts included self-introduction by the Petitioner that she was an interested party being a Parliamentary Candidate in Munali Constituency. This effort fell on deaf ears. Whether F/Nkandu Luo was in the company of the said M/Kaizer Zulu or not is immaterial. The material fact is that**

> there was a demonstration of double standards when one Parliamentary Candidate, namely, F/Nkandu Luo of the PF was allowed entry into the polling station, yet at almost the same time entry into the same polling station was denied to F/Doreen Sefuke Mwamba of the UPND who was also a Parliamentary Candidate in the same constituency. This was unfair treatment to the Petitioner." (emphasis added)

The learned trial Judge then proceeded to discount the testimony of RW12 on this aspect, saying that RW12 was not there when the alleged incident happened. At page 62 of the record, the trial Judge concluded as follows:

> **"I am satisfied that this allegation in the pleading has been proved."** (emphasis added)

It is significant to note that the allegation in paragraph 5(v) of the petition, as shown at page 73 of the record of appeal, was very specific and succinct. It reads:

> **"(v) That on the 11th August 2016, at Vera Chiluba School polling station Nkandu Luo and Kaizer Zulu closed the gates and refused me and my agent from seeing our polling agents."**

The issue in controversy, as we see it, was that the 1st Appellant and Kaizer Zulu blocked the 1st Respondent and her agent from entering the named polling station and, as a consequence, prevented her from seeing her polling agents. That there was unfair treatment or a demonstration of double standards was not the nature of the allegation. In **Mazoka v Mwanawasa**,[3] the Supreme Court guided as follows:

> "The function of pleadings is very well known, it is to give 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. Once the pleadings have been closed, the parties thereto are bound by the pleadings and the court has to take them as such."

And in the old English case of **Thorp v Holdsworth,**[23] Jessel MR outlined the function of pleadings as follows:

> "The whole object of pleadings is to bring the parties to an issue...to prevent the issue being enlarged, which would prevent either party from knowing...what the real point to be discussed and decided was."

In **British Airways Pension Trustees Ltd v Sir Robert McAlpine & Sons Ltd,**[24] Saville L.J. observed that pleadings:

> "...are not a game to be played at the expense of the litigants, nor an end in themselves, but a means to the end, and that end is to give each party a fair hearing." (emphasis added)

The 2nd Appellant submitted that in arriving at his conclusion, the learned trial Judge wrongfully accepted and applied the 1st Respondent's testimony to the effect that she was locked out of the polling station by a police officer while the 1st Appellant was allowed to go in. In her evidence in chief, the 1st Respondent said at page 567 of the record:

> "My Lord on polling day about 20:20 hours I went to Vera Chiluba Polling Station in Mtendere. The candidate for the PF Professor Nkandu Luo and the special adviser to the President, Kaizer Zulu were permitted to enter the polling station whilst I who was a candidate was not allowed in."

From our perspective, the record shows that the evidence adduced at trial did not address the allegation. The 1st Respondent's evidence was at variance with what she pleaded in the petition on this aspect. She did not call any other witness to testify on this issue.

The question then is, what is the effect of this on the appeal? Though only of persuasive value to this Court, we find the case of **Christopher Lubasi Mundia v Sentor Motors Limited**[25] instructive where it was held that where the pleadings are at variance with the evidence adduced in court, the case fails since the case is completely recast without actual amendment of the claim. In that case, Chirwa J, as he then was, cited the case of **London Passenger Transport Board v Moscrop**[26] where Lord Russell of Killowen said:

> "I have already stated my difficulty in justifying this implication, but, with it as the basis of their order, the Court of Appeal made a declaration that the representation clause was void. This appears to me to have been a complete re-casting of the respondents' alleged cause of action and the matter was unfortunately carried through without amendment of the statement of claim. This should not be so. Any departure from the cause of action alleged, or the relief claimed in the pleadings should be preceded, or at all events, accompanied, by the relevant amendments, so that the exact cause of action alleged and relief claimed shall form part of the Court's record, and be capable of being referred to thereafter should necessity arise. Pleadings should not be 'deemed to be amended' or 'treated as amended.' They should be amended in fact." (emphasis added)

We are persuaded. More so because Zambian jurisprudence on election petitions has long required that the petitioner must prove all the allegations with a high degree of convincing clarity, above the balance of probabilities required in ordinary civil matters. There is no evidence on the record that the pleading in paragraph 5(v) of the petition was amended with leave of the court to reflect the issues the 1st Respondent brought up in her testimony. We further note that the 1st Respondent pointed out what she termed a typographical error only under cross-examination. In cross-examination, the exchange between State Counsel Mutale and the 1st Respondent, as shown at pages 605 to 606, was as follows:

> **"Q: ...Yes Mrs. Mwamba, in paragraph 5(v) of the petition this is what you said, 'On 11th of August, 2016 at Vera Chiluba School polling station Nkandu Luo and Kaizer Zulu closed the gate and refused me and my agents from seeing our polling agents." Would you like to correct that?**
>
> **A: Yes, my Lord. Just one word of correction which must have been a typing error which says that she closed the gate, explaining that she is the one who closed the gate. The policeman closed the gate.**
>
> **Q: So it is not correct to say Professor and Kaizer Zulu closed the gate?**
>
> **A: No, it is not right.**
>
> **Q: And that she was not in charge or responsible for that gate?**
>
> **A: My Lord, the issue in this statement is not the gate the issue has become the gate because of the closing because it is mentioned that Professor Nkandu Luo and Kaizer closed the gates. My Lord the issue**

here is the unfairness that even Kaizer Zulu who was not a candidate in Munali....

Q: Mrs. Mwamba, just answer the question I read the paragraph and you have said it is not correct. Professor Luo was not responsible for that gate, do you agree?

A: Yes I agree, my Lord.

Q: Yes that is the position. My Lord, that is all from the 1st Respondent. Much obliged."

We have taken the liberty to reproduce what transpired in the court below for emphasis. We note from the above exchange that in the face of cross-examination, the 1st Respondent revised the nature of her allegation from what was specifically pleaded in the petition to matters that were not pleaded under the guise of a typographical error. She clearly conceded that her allegation was not true; in other words, it was a falsehood. This, in our view, called into question the credibility of the 1st Respondent, an issue the court below should have interrogated.

The 1st Respondent claimed in her testimony that a police officer prevented her access to the polling station. If that were the case, our considered view is that the 1st Respondent should have been specific in her petition. We agree with the 1st Appellant and the 2nd Appellant that the learned trial Judge erred in accepting evidence on matters that were not pleaded. The

learned author of **Zambian Civil Procedure: Commentary and Cases**, volume 1, puts it as follows at page 565:

> **"Pleadings constitute the spine and sprinkle of a suit on which the fate of the case of a plaintiff or defendant depends. Thus the case of a party is articulated in a pleading and no relief based on any ground not set out in the pleadings can be granted by the court. Parties to a suit are bound by the pleadings. It is the case that has been pleaded that has to be proved and consequently, the decision of the court cannot be based on grounds not set out in the pleadings of the parties."**

What the 1st Respondent required to prove in the court below is that the 1st Appellant, acting with one Kaizer Zulu, took charge of the gates at Vera Chiluba Polling Station and prevented the 1st Respondent from entering the polling station to see her polling agents. That is the burden which the 1st Respondent needed to discharge. The 1st Respondent failed the test on this aspect as no evidence was adduced to support the allegation as framed in the petition. The net effect is that the threshold required to be established pursuant to section 97(2)(a) of the Act was not reached. We find that no electoral offence was established against the 1st Appellant or her election agent in relation to the allegation in paragraph 5(v) of the petition.

We do not agree with the court below that "the allegation in the pleading" had been proved. We, accordingly, find merit in

ground three of the 1st Appellant's appeal and ground two of the 2nd Appellant's appeal and they succeed.

Ground four of the 1st Appellant's appeal and grounds one three, four and five of the 2nd Appellant's appeal impugn the finding of the court below that the non-provision of GEN12 forms to all the candidates' polling agents materially affected the outcome of the election in Munali Constituency and that the 2nd Appellant failed to conduct transparent, free and fair elections in Munali Constituency. The 1st Respondent's testimony was to the effect that the 2nd Appellant did not provide adequate amounts of Form GEN12. That she made photocopies of the same which were then distributed to Chainda, Chakunkula, Mtendere and Kalingalinga wards. Also, that polling agents were using note books that they were given to record results. It was also the 1st Respondent's testimony that on 12th August, 2016, she went to Kalikiliki polling station where she discovered that there had been a dispute on figures to be written on the GEN12, though it was later resolved after a recount.

PW5 testified that on 12th August, 2016, at the Community Hall Munali Ward 33 Masasa, PF cadres stormed the polling

station, causing confusion, simply because a demand for Form GEN12 had been made. That a police officer managed to calm the situation and asked the PF cadres to leave the polling station. PW5 further testified that the 2nd Appellant's officials said they did not give GEN12 forms to polling agents, advising that they (polling agents) write in their note books. That on further insistence, the agents were given the Presidential form which they then photocopied at the market and returned the original.

Under cross-examination, PW5 contradicted the testimony of the 1st Respondent in regard to the point at which photocopies of the GEN12 form were given to the UPND polling agents. At page 757 of the record of appeal, PW5 conceded that the 1st Respondent testified that all polling agents were given GEN12 forms. When asked to clarify her earlier position that the polling agents were writing in note books and yet she had admitted that the 1st Respondent had supplied copies of Form GEN12, PW5 failed to reconcile the two contradictory positions.

The 1st Appellant contended that the 1st Respondent failed to adduce any evidence confirming that the failure to provide GEN12 forms by the 2nd Appellant affected the results in the

entire constituency. Also, that the failure to sign or countersign GEN12 forms could not form the basis for nullification if each candidate was affected, citing section 49 of the Electoral Process (General) Regulations.

The gist of the 2nd Appellant's detailed submissions on this aspect of the appeal was that the issue for determination was the alleged refusal by the 2nd Appellant to provide GEN12 forms to the 1st Respondent's polling agents and whether, as a result, the 1st Respondent was not able to have the correct total of results. It was the 2nd Appellant's position that PW5 was not a credible witness as her testimony contained various untruths on collateral matters and the court below ought not to have believed and accepted the evidence of PW5. Citing regulation 49(2) of the Electoral Process (General) Regulations, it was submitted that the court below misdirected itself in finding that the failure to countersign a Form GEN12 amounted to a failure to provide the document to polling stations. That non-availability of polling agents at completion of the election process could not be regarded as refusal by the 2nd Appellant to provide copies of Form GEN12.

RW12 testified that it was not true that the 2nd Appellant refused to provide Form GEN12 to polling agents. That one of his duties as returning officer was to ensure that all documentation was provided to polling stations and that not less than 20 copies each per election of Form GEN12 was given to presiding officers in all the 47 polling stations.

We have carefully considered the submissions and the evidence on record on these grounds of appeal. In our considered view the key issue that falls for our determination is whether the 2nd Appellant fell afoul of section 97(2)(b) of the Act by allegedly abrogating or neglecting its duty to supply adequate numbers of Form GEN12, which dereliction of duty materially affected the election in Munali Constituency. Related to that is the claim that polling agents did not countersign some of the GEN12 forms, affecting the 1st Respondent's ability to know the correct results.

It is trite that in terms of Article 229(2)(b) of the Constitution the 2nd Appellant has the mandate to conduct elections. And as we observed in **Giles Chomba Yamba Yamba v Kapembwa Simbao,**[11] the 2nd Appellant fulfils its functions by

ensuring that the requirements of the Act are respected and observed in the electoral process. A key requirement in the conduct of elections by the 2nd Appellant is the provision of election materials. Pursuant to regulation 4(1)(a) of the Electoral Process (General) Regulations, the 2nd Appellant appoints a returning officer for each constituency, district or ward. According to regulation 29(1)(b) of the Regulations aforesaid, the returning officer shall, as part of the preparations for the taking of a poll in a polling station within the returning officer's constituency, district or ward:

> **"provide each presiding officer with such number of ballot boxes, ballot papers, official seals, official marks, the voters' roll relating to the polling station and such other things as may be necessary for the taking of the poll;"** (emphasis ours)

RW12 was the returning officer for Munali Constituency in the 11th August, 2016 general elections. As we have already noted, in his testimony he confirmed that one of his duties was to ensure that all documentation was provided to the polling stations and that not less than 20 copies each per election of Form GEN12 was given to presiding officers in all the 47 polling stations in Munali Constituency. On the other hand, the 1st

Respondent's contention is that the 2nd Appellant failed to deliver on its duty to supply adequate GEN12 forms.

As we noted in **Giles Chomba Yamba Yamba,**[11] section 97(2)(b) of the Act calls for the annulment of elections in the event that there has been non-compliance with the principles laid down in the Act in as far as the conduct of elections is concerned. Section 97(2)(b) reads:

> **"97. (2) The election of a candidate as a Member of Parliament, mayor, council chairperson or councillor shall 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- ....;**
>
> **(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 provision and that such non-compliance affected the result of the election;"** (emphasis added)

Thus, a person challenging the election of a candidate on the basis of section 97(2)(b) must demonstrate, with cogent evidence, that there was non-compliance with the provisions of the Act relating to the conduct of an election and that the non-compliance affected the result of the election. We must, however, be quick to point out that not every electoral infraction on the part of the 2nd Appellant's officials attracts the ultimate sanction

of annulment of an election. Section 97(2)(b) is made subject to section 97(4) of the Act, which is in these terms:

> "(4) An election shall not be declared void by reason of any act or omission by an election officer in breach of that officer's official duty in connection with an election if it appears to the High Court or a tribunal that the election was so conducted as to be substantially in accordance with the provisions of this Act, and that such an act or omission did not affect the result of that election." (emphasis added)

It is clear from the above provision that where there has been substantial compliance with the provisions of the Act, an election cannot be annulled on the basis of section 97(2)(b) of the Act. The learned authors of **Halsbury's Laws of England**, 5th Edition, Volume 38A, also state at paragraph 667 that:

> **"No election is to be declared invalid by reason of any act or omission by the returning officer or any other person in breach of his official duty in connection with the election or otherwise of the appropriate elections rules if it appears to the tribunal having cognizance of the question that the election was so conducted substantially in accordance with the law as to elections, and that the act or omission did not affect its result. The function of the Court in exercising this jurisdiction is not assisted by consideration of the standard of proof but, having regard to the consequences of declaring an election void, there must be a preponderance of evidence supporting any conclusion that the result was affected."**

In the instant case, the learned trial Judge held as follows at page 65 of the record of appeal:

> "There are some Form Gen12 which are partially signed. This confirms the allegation by the Petitioner that there were no Form Gen12 at polling stations. The failure by the Electoral Commission of Zambia to avail Form Gen12 did not help to build confidence in the electoral process in Munali constituency Parliamentary elections. There was a total absence of transparency and it is the Electoral Commission of Zambia who are responsible for the failure to build confidence in the

> electoral process ...as well as the total absence of transparency. This was a lapse on the part of the Electoral Commission of Zambia and the result is that no one can positively ascertain whether or not the votes cast in favour of the Petitioner were fully accounted for. In this regard, the Electoral Commission of Zambia has let down the people of Munali constituency and the Petitioner was personally affected." (emphasis ours)

Earlier at page 63 of the record, the trial Judge had found as follows:

> "The allegation concerning the lack of or the inadequacy of Form Gen12 did not affect the Petitioner alone. Suffice to state that it affected all the participants in that Parliamentary race."

We find it contradictory on the part of the learned trial Judge that he initially determined that the problem of Form GEN12 affected all participants in the poll only to isolate the 1st Respondent as having been personally affected and ultimately finding that the allegation had been proved. It is worth noting that in his holding *supra*, the trial Judge noted that some GEN12 forms were partially signed and that that confirmed the allegation by the 1st Respondent that there were no Form Gen12 at polling stations. We are perplexed because at page 63 of the record of appeal, the learned trial Judge made this clear statement:

> "I have seen Form Gen12 for each polling station in Munali Constituency."

From our perspective, the foregoing unequivocal statement was a clear finding of fact by the court below and confirmation that Form GEN12 was available at all the polling stations in Munali Constituency contrary to the 1st Respondent's assertion. We do not agree that a finding that some GEN12 forms were partially countersigned equates to non-availability of the document at polling stations. Further, the record of appeal shows at pages 215 to 262 that the 2nd Appellant produced in evidence all the GEN12 forms for the 47 polling stations in Munali Constituency, a fact confirmed by the court below as indicated above.

The record of appeal shows that the learned trial Judge addressed the allegation relating to Form GEN12 at pages 62 to 65. We have carefully looked at this portion of the judgment of the court below. Our considered view is that the learned trial Judge did not properly evaluate the evidence on this aspect as against the 1st Respondent's allegation that the 2nd Appellant failed to supply adequate amounts of the Form GEN12. For instance, we note that the trial Judge never made any reference to the testimony of RW12 who had testified that he issued not

less than 20 copies of Form GEN12 per election to the presiding officers at all the 47 polling stations and that the evidence was before court. A careful perusal of the record shows that this aspect of RW12's testimony was not challenged in cross-examination.

We hold that the issues surrounding the 1st Respondent's allegation that there were inadequate supplies of Form GEN12 in Munali Constituency should have been carefully considered and measured against the threshold in section 97(2)(b) of the Act as read with section 97(4). We have not seen any evidence on record proving with convincing clarity the allegation made by the 1st Respondent that the 2nd Appellant abrogated its duty pursuant to section 97(2)(b) aforesaid. We, accordingly, reverse the finding of the court below on the ground that it is one which, on a careful assessment and evaluation of the evidence before it, the court below would not have reached.

We now turn to the connected aspect of signing and countersigning Form GEN12. We note that after confirming that he had seen all GEN12 forms for all the 47 polling stations, the learned trial Judge observed that GEN12 forms for 14 polling

stations were "not signed at the back". Further, after naming the 14 polling stations, the trial Judge said at page 64 to 65 of the record of appeal:

> "In the wake of the demands by the Petitioner and her agents to comply with the provisions of Form Gen12, I have seen no reason why Form Gen12 for all the above fourteen (14) polling stations were not signed by polling agents....Interesting to note is that it is not only the losers who did not sign Form Gen12 in those polling stations but the winners as well."

We have had occasion to address the issue of signing and countersigning of Form GEN12 in recent decisions. The provisions of the law on the signing and countersigning of the election results are well stated. Paragraph 5(2) of the Electoral Code of Conduct reads:

> "An election agent or polling agent shall counter sign the election results duly announced or declared by a presiding officer or returning officer, as the case may be, except that failure to countersign the election results by such election agent or polling agent shall not render the results invalid." (emphasis added)

Also, regulation 49(2) of the Electoral Process (General) Regulations, to which we were referred by the 2nd Appellant, provides:

> "The presiding officer shall announce how the votes have been cast for each candidate in Form GEN20 set out in the Schedule, and how many have been rejected in the polling station and may require if present, election agents or monitors to countersign the results, except that failure to countersign the election results does not render the results invalid." (emphasis added)

In addressing the importance of Form GEN12 in the electoral process, the learned trial Judge had this to say at page 63 of the record of appeal:

> "This issue...is an important matter in the conduct of elections and in the spirit of promoting transparency and building confidence in the electoral system. It is important because Form Gen12 is a document for the Electoral Commission of Zambia which is used in an election at polling stations to record election results both in figures and in words. The design of Form Gen12 shows that polling agents should append their names in full and signature at the back of that Form Gen12. Even if the use of Form Gen12 is not couched in mandatory terms, when a dispute of this magnitude arises, compliance as to the way it is supposed to be filled in becomes a necessity." (emphasis added)

We agree with the learned trial Judge that Form GEN12 plays an important role in our electoral process and that its proper use enhances transparency and confidence in the electoral system. In **Giles Chomba Yamba Yamba,**[11] we said the following when addressing the question of Form GEN12 at page J70:

> "We venture to say the ideal situation of course is that all the people required to sign for the election results should sign to enhance transparency in the electoral process."

And in **Lewanika v Chiluba**[5] the Supreme Court put it thus:

> "The flaws of all types which we have said were established, of course, did not reflect well on those managing the electoral process. Many of them can and should be addressed in order to enhance our democratic profile and in order to engender greater confidence in the electoral process."

We endorse those views. Considering that elections provide a means for the governed to express their will as to who is to govern them, those managing the electoral process must, as far as possible, work on and eliminate any flaws in the process.

The record shows that out of the 47 polling stations in Munali Constituency, GEN12 forms for 14 of those were not signed by any polling agent. According to the court below, this amounted to a total absence of transparency and a lapse on the part of the 2nd Appellant as, in the lower court's view, no one could positively ascertain whether or not the votes cast in favour of the 1st Respondent were fully accounted for.

The problem we see with the position taken by the court below is that, despite finding that both the losing and winning sides in Munali Constituency did not countersign the Form GEN12 in the named polling stations, the court below isolated the 1st Respondent as the candidate whose votes cast in her favour could not be positively accounted for. Our considered view is that this was an unbalanced approach to the issue by the court below. In our view, the non-signing of Form GEN12 for the 14 polling stations affected all the participating candidates. In

our recent decisions, we have cited with approval the case of **Mazoka v Mwanawasa,**[3] where the Supreme Court said:

> **"We accept that there were flaws, incompetency and dereliction of duty on the part of the Electoral Commission of Zambia. This is exemplified by the late delivery of the election materials and insufficient supply of Presidential ballot papers in the complaining constituencies which led to the delays and extension of the gazetted voting period. However, in our view, any negative impact arising out of these flaws affected all candidates equally and did not amount to a fraudulent exercise favouring the 1st Respondent."**

We remain persuaded by that position.

Most importantly, however, the law, as we have cited it above, clearly stipulates that failure to countersign the election results by election or polling agents does not render the results invalid. The court below found as a fact that all GEN12 forms for all the polling stations in Munali were exhibited in evidence before it. In that regard, we are of the view that, as far as this aspect is concerned, the 2nd Appellant conducted the election in Munali Constituency in substantial conformity with the requirements of the law and it should not have been a basis for nullifying the election. Further, we have not seen, from the record, cogent evidence to show how the non-signing of GEN12 forms for the named polling stations affected the overall result in the 2016 Munali parliamentary election. It is our firm view that the election in Munali Constituency was conducted substantially

in accordance with the provisions of the Act. We find ground four of the 1st Appellant's appeal and grounds one, three, four and five of the 2nd Appellant's appeal meritorious and they succeed.

All the 1st Appellant's grounds of appeal and the 2nd Appellant's grounds of appeal have succeeded and, therefore, the entire appeal succeeds. Accordingly, we set aside the decision of the court below to nullify the election and declare that the 1st Appellant, Nkandu Luo, was duly elected as Member of Parliament for Munali Constituency.

We order that each party bear their own costs of this appeal and in the court below.

.....

A. M. Sitali
Constitutional Court Judge

.....

M. S. Mulenga
Constitutional Court Judge

.....

E. Mulembe
Constitutional Court Judge

.....

M. M. Munalula
Constitutional Court Judge

.....

M. Musaluke
Constitutional Court Judge

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**

1ST RESPONDENT'S SKELETON ARGUMENTS IN OPPOSITION TO ELECTION PETITION

MAY IT PLEASE THIS HONOURABLE COURT these are the 1st Respondents Skeleton Arguments in Opposition to the Election Petition challenging the declaration of the 1st Respondent as duly elected.

LEGISLATION

1. The Electoral Process Act No. 35 of 2016;
2. The High Court (Election Petition) Rules, 2026.

CASES

1. Anderson Kambela Mazoka & Others v Mwanawasa & 2 Others (SCZ EP 1 of 2002; SCZ EP 2 of 2002) [2018] ZMSC 391;
2. Nkandu Luo & Another v Mwamba & Another (Appeal 10 of 2016) [2018] ZMCC 254 (16 November 2018);

1.0 PREFACE

1.1 By way of background, the Petitioner commenced this matter against the Respondents claiming for the following reliefs:

(a) The declaration of the 1st Respondent as winner of the Parliamentary Seat for Chama South Constituency be declared null and void,

(b) That the 2nd Respondent be Ordered to a re-run the Parliamentary Election for Chama South Constituency,

(c) That the Petitioner be awarded other reliefs as the Court may deem fit.

(d) The Petitioner be awarded Legal Costs.

1.2 The facts alleged by the Petitioner are that the 1st Respondent and his supporters were involved in bribery, vote buying, spreading of falsehood statements, and collection of National Registration Cards prior to the declaration that the 1st Respondent was duly elected. The Petitioner alleges that he was disadvantaged by the 1st Respondent's actions.

1.3 The Petitioner alleges that in Chama South Parliamentary Elections, he polled 3,220 votes while the 1st Respondent got 4,338 votes.

1.4 The Petitioner alleges breaches to the provisions of the Electoral Commission Act and the Code of Conduct set out in the Schedule to the Act and that this disregard resulted in the Election of the 1st Respondent to the Petitioner's detriment.

2.0 The Law

2.1 My Lady/ Lord, elections are governed by the provisions of the Electoral Process Act and the relevant regulations and guidelines. The role of the Returning Officer in the election is to tabulate results received from the Presiding Officers at the polling stations. This mandate arises from the provisions of Section 72 (1) (b) of the Electoral Process Act which provides as follows:

"(1) Upon receipt of the items mentioned in section seventy-one, a returning officer shall tally the results of the votes received from the polling station in the constituency, district and ward and shall—

(b) declare the results for the National Assembly and Ward election."

2.2 My Lady/ Lord, Section 97 (1) & (2) of the Electoral Process Act provides as follows:

"(1) An election of a candidate as a Member of Parliament, mayor, council chairperson or councillor shall not be questioned except by an election petition presented under this Part.

(2) The election of a candidate as a Member of Parliament, mayor, council chairperson or councillor shall 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 provision 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"

2.3 My Lady/ Lord, Petitions are made in accordance with the aforementioned proviso and in the case of **Nkandu Luo & Another v Mwamba & Another (Appeal 10 of 2016) [2018] ZMCC 254** it was held as follows:

> **"In addition to proving the electoral malpractice or misconduct alleged, the petitioner has the further task of adducing cogent evidence that the electoral malpractice or misconduct was so widespread that it swayed or may have swayed the majority of the electorate from electing the candidate of their choice."**

2.4 In the case of **Anderson Kambela Mazoka & Others v Mwanawasa & 2 Others (SCZ EP 1 of 2002; SCZ EP 2 of 2002) [2018] ZMSC 391** it was held as follows:

> **"The standard of proof must depend on the allegations pleaded. Given the national character of the exercise where all the votes in the country form a single electoral college, the proven defects must be such that the majority of the voters are prevented from electing the candidate whom they preferred; or that the election is so flawed that the defects seriously affect the result which can no longer reasonably be said to represent the true free choice and free will of the majority of the voters.**
>
> **As regards burden of proof, the evidence adduced must establish the issues raised to a fairly high degree of convincing clarity."**

2.5 My Lady/ Lord, the burden of proof rests on the Petitioner to prove the allegations advanced. It is clear that there is no convincing clarity from the issues raised that the Petitioner was duly elected. The said allegations of breaches to the Electoral Process Act are non-existent as all electoral rules and guidelines were followed.

2.6 My Lady/ Lord, the issues raised by the Petitioner are inconsequential as they do not affect the final declaration of the 1st Respondent as duly elected as declared by the 2nd Respondent. From the declaration made by the 2nd Respondent on the 16th day of August, 2026 and the Private Voter Tabulation, it is clear that the 1st Respondent was duly elected, hence there

is no basis to nullify the announcement and declaration of the 1st respondent as duly elected.

2.7 My Lady/ Lord, the Petitioner has failed to demonstrate how the 1st Respondent or his supporters were connected to the said allegations. The above cited provisions rest solely upon the Petitioner to demonstrate by way of evidence which could be in a form of pictorial evidence or video to which in casu the Petitioner has lamentably failed to do.

3.0 CONCLUSION

3.1 My Lady/ Lord, due to the foregoing, we submit that the Petition has no merit as the process of tallying votes was transparent and consultative. The 1st Respondent was duly elected and correctly announced. We therefore submit that the Petition has no merit and should be dismissed.

WE HUMBLY SUBMIT

Dated at Lusaka this day of 2026

Drawn by: .....

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LUSAKA
ADVOCATES FOR THE 1ST RESPONDENT