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

2026/HP/EP/033

REPUBLIC OF ZAMBIA
HIGH COURT OF ZAMBIA
31 AUG 2026
REGISTRY
P.O. BOX 50067, LUSAKA

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 72, 76, 97, 98, 99, 100 AND 108 OF THE ELECTORAL PROCESS ACT NO. 35 OF 2016 OF THE LAWS OF ZAMBIA, AS AMENDED BY THE ELECTORAL PROCESS (AMENDMENT) ACT NO. 12 OF 2026**

IN THE MATTER OF: **RULE 9 OF THE HIGH COURT (ELECTION PETITION) RULES, 2026 OF THE LAWS OF ZAMBIA**

AND

IN THE MATTER OF: **AN ELECTION PETITION RELATING TO THE LUPOSOSHI CONSTITUENCY PARLIAMENTARY ELECTION HELD ON THURSDAY, 13TH AUGUST, 2026, THE DECLARATION OF THE RESULT THEREOF MADE ON 16TH AUGUST, 2026, AND THE PURPORTED FURTHER DECLARATION OF THE RESULT THEREOF MADE ON 18TH AUGUST, 2026**

BETWEEN:

LAZAROUS CHUNGU BWALYA **PETITIONER**

AND

SHADRECK MWANSA **1ST RESPONDENT**

ELECTORAL COMMISSION OF ZAMBIA **2ND RESPONDENT**

ELECTION PETITION

The Petition of **LAZAROUS CHUNGU BWALYA**, a Zambian National who ordinarily resides at 48 Airstrip Compound in the Luwingu District of the Northern Province of the Republic of Zambia, and for purposes of this Petition, whose address for service is C/o Messrs Joseph Chirwa and Company, Plot No. 10426 Manda Hill Road, Behind Manda Hill Mall, Olympia Park, P.O. Box 37342 in the City and Province of Lusaka **SHOWETH THAT:**

1. Your Petitioner was a candidate at the Parliamentary Election for Lupososhi Constituency, in the Northern Province of the Republic of Zambia, under the sponsorship of the National Reconciliation Party for Unity and Prosperity (hereinafter

referred to as "**NRPUP**"), and accordingly has standing to present this Petition pursuant to Section 98(c) of the Electoral Process Act No. 35 of 2016 ("the Act").

2. The 1st Respondent was a candidate at the Parliamentary Election for Lupososhi Constituency, in the Northern Province of the Republic of Zambia, who was sponsored under the ticket of the United Party for National Development (hereinafter referred to as "**UPND**")

3. The 2nd Respondent is and was at all material times an independent and autonomous statutory body established under Article 229 of the Constitution of Zambia Chapter 1 of the Laws of Zambia as amended by Act No. 2 of 2016, whose mandate includes *inter alia* the management and conduct of elections at presidential, parliamentary, and local government levels.

4. And your Petitioner states that the election was held on the 13th day of August 2026. when **LAZAROUS CHUNGU BWALYA** and **SHADRECK MWANSA** were candidates and the Returning Officer had initially returned **LAZAROUS CHUNGU BWALYA** as being duly elected as Member of Parliament for Lupososhi Constituency on 16th August, 2026 and then later and subsequently declared **SHADRECK MWANSA** as being duly elected as Member of Parliament for Lupososhi Constituency on 18th August, 2026.

FATS RELEVANT TO THE PETITION

5. Your Petitioner states that the election to which this Petition relates was held on the 13th day of August, 2026, when your Petitioner, standing under the NRPUP, and, among others, the 1st Respondent, Shadreck Mwansa, standing under the UPND, were candidates, and Oscar Kafunda, the returning officer for Lupososhi Constituency, having received and tallied the results from all 65 of 65 polling stations in the constituency in accordance with Sections 71 and 72(1) ascertained that out of a total of 23,526 votes were cast, your Petitioner polled 9,533 votes, the 1st Respondent polled 6,890 votes, being the next-highest total, creating a margin of 2,643 votes in your Petitioner's favour, and the remaining candidates polled a total of 6,477 votes between them, and that 626 ballot papers were rejected as invalid.

6. Your Petitioner states that the said Oscar Kafunda, declared your Petitioner duly elected as Member of Parliament for Lupososhi Constituency on 16th August, 2026 ("the First Declaration"), as recorded in the Declaration of Result (Form GEN 20b) and the Return of Poll (Form ECZ 19) for Lupososhi Constituency, certified copies of which your Petitioner will produce and rely on at the trial of this Petition, and as endorsed and witnessed by the duly accredited election agents, observers and monitors present, including your Petitioner's own polling agent, Lloyd Bwalya.

7. On the 18th of August, 2026, only two days after the First Declaration, and following the matter described in the preceding paragraph, the said Oscar Kafunda, still purporting to act as returning officer for Lupososhi Constituency, purported to issue a second and further declaration ("the Second Declaration") naming the 1st Respondent, as the duly elected Member of Parliament for Lupososhi Constituency, in substitution for your Petitioner.

8. Your Petitioner will aver that the Second Declaration, like the document described in the preceding paragraph, was recorded on a Form GEN 20b reproducing the same total of 23,526 votes cast, the same 626 rejected ballot papers, and the same figures for the third to eighth-placed candidates as the First Declaration, but instead attributing 9,533 votes to the 1st Respondent and 6,890 votes to your Petitioner; and that the persons recorded as witnessing the Second Declaration differed from those who had witnessed the First Declaration, in that your Petitioner's own polling agent and the representative of the Human Rights Commission who had witnessed the First Declaration no longer appeared among them, and a person shown against the 1st Respondent's own party, the UPND, appeared among the witnesses in their place, with the media representative alone being common to both.

9. Your Petitioner will aver that, as at 18th August, 2026, and as at the date of presentation of this Petition, no fresh tally of the items specified under Section 71 of the Act had taken place, no re-vote had occurred or been ordered under Section 75 of the Act, and no correction of any mistake under Section 76 of the Act has been made by, or communicated to your Petitioner as having been made by, the 2nd Respondent, the Electoral Commission of Zambia ("the Commission"), in respect of Lupososhi Constituency.

10. Your Petitioner will aver that no such correction ought to be assumed or inferred in the Commission's favour, your Petitioner never having been informed of any such correction, and that the Second Declaration was accordingly made, and remains, without any stated or apparent legal basis whatsoever.

11. On 20th August, 2026, your Petitioner's advocates, Messrs Joseph Chirwa and Company, wrote to the Chief Electoral Officer of the 2nd Respondent a letter before action headed "Letter Before Action and Request for Confirmation of Results — Lupososhi Constituency", setting out the foregoing facts and requesting that the 2nd Respondent immediately confirm your Petitioner's election as Member of Parliament for Lupososhi Constituency as declared in the First Declaration, and requiring a response within twenty-four (24) hours.

12. By letter dated 21st August, 2026, reference EC/101/7/5, the 2nd Respondent's Chief Electoral Officer, Mr Brown Kasaro, responded that the Commission was awaiting a report from the returning officer for Lupososhi Constituency, that the report was necessary to enable the Commission to fully appreciate the circumstances surrounding the issues raised, and that the Commission was accordingly unable to provide a response to your Petitioner's request, undertaking to revert once the returning officer's report had been received and appreciated.

13. Your Petitioner will aver that the 2nd Respondent's said letter of 21st August, 2026 did not confirm your Petitioner's election, did not purport to correct any mistake under Section 76 of the Act, did not otherwise identify or assert any lawful basis for the Second Declaration, and did not disclose that any report had in fact been received from the returning officer; and that, to the best of your Petitioner's knowledge, information and belief, the 2nd Respondent has not, as at the date of this Petition, taken any further or other action in the matter, nor confirmed your Petitioner's position, nor communicated any purported basis for the Second Declaration.

GROUNDS RELIED ON

14. Your Petitioner will further aver that the Second Declaration was made independently of the foregoing and in any event, made without any lawful power under Section 72 of the Act, in that:

a. Section 72 confers on a returning officer a single, exhaustible power to tally, announce and declare the result of an election upon receipt of the items specified under Section 71 of the Act;

b. that power, once validly exercised in respect of Lupososhi Constituency by the First Declaration, was thereby spent, and no provision of the Act authorises a returning officer to exercise the same power a second time in respect of the same election, whether at the purported direction of the Commission or otherwise, save pursuant to a lawful re-vote under Section 75 or a lawful correction under Section 76 of the Act, neither of which occurred;

c. the Second Declaration was not grounded in any fresh tally of the items specified under Section 71 of the Act, any lawful re-vote under Section 75 of the Act, or any lawful correction under Section 76 of the Act — no correction under Section 76 having been made or shown to exist at all, whether before, on, or after 18th August, 2026; and

15. In the premises, your Petitioner will contend that the Second Declaration is void and of no legal effect from the outset, and that the First Declaration, naming your Petitioner as duly elected Member of Parliament for Lupososhi Constituency, remains, in law, the only valid and subsisting declaration of the result of the election for Lupososhi Constituency.

16. IN THE ALTERNATIVE, and without prejudice to the foregoing, if and to the extent that this Honourable Court holds that the Second Declaration is not void ab initio but requires to be avoided under Part IX of the Act before it can be treated as being of no effect, your Petitioner will aver that:

(a) there has been non-compliance with Section 72 of the Act, being a provision of the Act relating to the conduct of elections, in that the returning officer for Lupososhi Constituency purported to exercise the declaratory function conferred by that section a second time in respect of the same election, contrary to the single, exhaustible structure of that provision;

(b) the election was, by reason of the foregoing, not conducted in accordance with the principle laid down in Section 72 that a constituency's result, once declared upon receipt of the items specified under Section 71 of the Act, is declared once and finally, and is not liable to be reversed by a subsequent,

purported declaration naming a different candidate, save through the process prescribed by Part IX of the Act; and

(c) such non-compliance affected the result of the election, in that it was the sole and direct cause of the purported change in the declared winner of the election from your Petitioner to the 1st Respondent, within the meaning of Section 97(2)(b) of the Act.

17. Your Petitioner will further aver that Section 97(4) of the Act does not avail the 1st Respondent or the 2nd Respondent, in that the Second Declaration, even if characterised as an act done by an election officer in breach of that officer's official duty, is not an act that "did not affect the result" of the election within the meaning of that subsection, the very act complained of being the mechanism by which the declared result was purportedly altered.

18. Your Petitioner will aver that, by virtue of the foregoing, the conduct of the returning officer for Lupososhi Constituency in making the Second Declaration contravened Section 72 of the Act; and that, in the absence of any Section 76 correction shown or known to your Petitioner to have been made by the 2nd Respondent, no such correction should be assumed in the Respondents' favour, and Section 76 of the Act affords the Respondents no lawful basis for the Second Declaration.

WHEREOF your Petitioner PRAYS for a determination and declarations that:

i. the purported Second Declaration naming the 1st Respondent, Shadreck Mwansa, as duly elected Member of Parliament for Lupososhi Constituency, be declared void and of no legal effect; alternatively, be avoided pursuant to Section 97(2)(b) of the Act;

ii. your Petitioner, Lazarous Chungu Bwalya, be declared to have been, and to remain, duly elected as Member of Parliament for Lupososhi Constituency;

iii. the 2nd Respondent be directed, pursuant to Section 108(5) of the Act, to publish in the Gazette confirmation that your Petitioner is the duly elected Member of Parliament for Lupososhi Constituency;

iv. the costs of and occasioned by this Petition be borne by the Respondents; and

v. any other or further relief this Honourable Court may deem fit.

Dated at Lusaka this _____ day of _____ 2026.

_____

THE PETITIONER

This Petition was settled by: _____

Messrs Joseph Chirwa and Company
Plot No. 10426 Manda Hill Road, Behind
Manda Hill Mall, Olympia Park
Tel: +260975756793
Email: admin@chirwalaw.com
LUSAKA
ADVOCATES FOR THE PETITIONER

To: **THE 1st RESPONDENT**
Shadrick Mwansa
LUSAKA

THE 2nd RESPONDENT
The Electoral Commission of Zambia
Elections House, Haile Selassie Avenue,
P.O. Box 50274
LUSAKA

IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
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2026/HP/EP/033

(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

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REPUBLIC OF ZAMBIA
HIGH COURT OF ZAMBIA
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BETWEEN:

LAZAROUS CHUNGU BWALYA — PETITIONER

AND

SHADRECK MWANSA — 1ST RESPONDENT

ELECTORAL COMMISSION OF ZAMBIA — 2ND RESPONDENT

SKELETON ARGUMENTS AND LIST OF AUTHORITIES IN SUPPORT OF ELECTION PETITION

IF IT MAY PLEASE THIS HONOURABLE COURT, these are the Petitioner's Skeleton Arguments filed in support of the Election Petition challenging the validity of the purported second declaration of the 1st Respondent as Member of Parliament for Lupososhi Constituency, made on 18th August, 2026, without any lawful basis, ever having been made or shown by the Electoral Commission of Zambia to justify it. The Petitioner shall rely on the following authorities:

LEGISLATION:

1. The Constitution of Zambia (Amendment) Act, Number 2 of 2016.

2. The Electoral Process Act, Number 35 of 2016 as amended by The Electoral Process (Amendment) Act, Number 12 of 2026.
4. The High Court (Election Petition) Rules, 2026.

CASES AND OTHER AUTHORITY:

1. Mutale v Munaile SCZ Judgment No. 14 of 2007.
2. Attorney-General and Another v Lewanika and Others (1993–1994) Z.R. 164.
3. Black's Law Dictionary (definitions of "Declaration" and "Declare").
4. Independent Electoral and Boundaries Commission v Maina Kiai & 5 Others, Civil Appeal No. 105 of 2017; [2017] eKLR (Court of Appeal of Kenya)
5. Morgan v Simpson [1975] QB 151 (Court of Appeal of England and Wales).
6. Mohinder Singh Gill & Anr. v. Chief Election Commissioner, New Delhi & Ors., AIR 1978 SC 851 (Constitution Bench, Supreme Court of India).
7. Besigye v Museveni & Anor, Election Petition No. 1 of 2001, Supreme Court of Uganda

A. INTRODUCTION

1. At this juncture, it is the Petitioner's submission that what needs to be determined is, first, whether the purported second declaration of the 1st Respondent as Member of Parliament for Lupososhi Constituency is valid, or is void, alternatively liable to be avoided under Part IX of the Electoral Process Act No. 35 of 2016 ("the Act"); and, second, whether the First Declaration naming the Petitioner remains the true and subsisting result of the election for Lupososhi Constituency.

B. THE LAW UPON WHICH THE PETITION IS PREMISED

2. Article 73(1) of the Constitution of Zambia (Amendment) Act, Number 2 of 2016, provides that:

> 'A person may file an election petition with the High Court to challenge the election of a Member of Parliament.'

3. Article 73(4) of the Constitution further provides that a Member of Parliament whose election is petitioned holds the seat in the National Assembly pending the determination of the election petition, confirming that it is only a determination of this Honourable Court, and not an administrative act of the 2nd Respondent, that can lawfully displace a Member's declared status.
4. Taking into consideration the foregoing authority, the Electoral Process Act No. 35 of 2016 provides, under Section 72(1), as substituted by the Electoral Process (Amendment) Act No. 12 of 2026, that:

> '72. (1) A returning officer shall, on receipt of the items specified under section 71, tally the results received from a polling station in a constituency, district and ward and shall— (a) announce the results of the votes for the presidential, Member of

Parliament, mayoral, council chairperson or councillor elections; and (b) declare the results of the votes for the Member of Parliament, mayoral, council chairperson or councillor election.'

5. Section 76 of the Act, under the marginal note "Correction of mistakes", provides that:

'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.'

6. Section 97 of the Act provides, so far as is material, that:

'(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 ... shall be void if, on the trial of an election petition, it is proved to the satisfaction of the High Court or a tribunal ... 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.'

7. Section 98 of the Act further provides that an election petition may be presented by, among others, 'a person claiming to have been a candidate at the election to which the election petition relates' (Section 98(c)), and Section 99 provides that the reliefs which may be claimed are a declaration that the election was void, or a declaration that any candidate was duly elected.
8. Section 100(3) of the Act requires an election petition to be presented not later than fourteen days after the date on which the result of the election to which it relates is duly declared, and Section 108(1) requires the High Court or tribunal, at the conclusion of the trial, to determine whether the respondent, or any other, and which, person, was duly elected.

C. THE MEANING OF "DECLARE" AND "DECLARATION" UNDER THE ACT

9. Neither "declare" nor "declaration" is defined in the Act, notwithstanding that the whole of Part VI turns on the returning officer's act of declaring a result under Section 72(1)(b), and notwithstanding that it is the "declaration" of a result that Sections 76, 97, 100(3) and

108 all take as their reference point. Where a statute uses an ordinary legal term without defining it, that term must be given its ordinary and accepted legal meaning (Mutale v Munaile SCZ Judgment No. 14 of 2007, applying Attorney-General and Another v Lewanika and Others (1993–1994) Z.R. 164).

10. Black's Law Dictionary Eighth Edition defines 'declare' as:

> "A formal statement, proclamation, or announcement, esp. one embodied in an instrument."

11. On this ordinary and accepted legal meaning, a declaration is, by definition, a formal and conclusive act — a proclamation 'embodied in an instrument' which, once made, fixes and makes known the state of affairs it pronounces upon. It is not, on this meaning, an announcement capable of repetition, reversal or contradiction by a subsequent, inconsistent pronouncement of the same kind, made by the same office, touching the same subject-matter, save where the enactment creating the power to declare expressly permits reconsideration, variation or revocation. Section 72 of the Act contains no such express permission; nor, for the reasons given below, does Section 76.

12. Properly construed in light of the ordinary legal meaning of 'declare' and 'declaration', the power conferred on a returning officer by Section 72(1)(b) is therefore a power to make one formal, conclusive pronouncement of the result of an election, upon receipt of the materials specified under Section 71 of the Act — a power which is spent once validly exercised. The First Declaration accordingly exhausted the returning officer's power under Section 72 in respect of the Lupososhi Constituency election, and what purports to be the Second Declaration is not a further, valid exercise of that same power at all, but an act done without it, and is for that reason a nullity rather than merely a second 'declaration' competing with the first.

D. THE FINALITY OF A DECLARATION: A DECLARED RESULT MAY BE VARIED ONLY THROUGH THE JUDICIAL PROCESS

13. The proposition developed above — that a 'declaration' is, on its ordinary and accepted legal meaning, a formal and conclusive pronouncement not open to informal repetition, reversal or contradiction — is not a novel or parochial one. It reflects a principle of general application in Commonwealth electoral law: that once a returning officer or equivalent electoral officer has declared the result of an election, that declaration is final, and any variation of it — whether to correct an alleged error, to give effect to a fresh allegation of irregularity, or to install a different candidate as the winner — may lawfully be achieved

only through the judicial process created for that purpose, and not by any further administrative act of the electoral commission or its officers.

14. This principle finds direct and forceful expression in the decision of the Court of Appeal of Kenya in *Independent Electoral and Boundaries Commission v Maina Kiai & 5 Others, Civil Appeal No. 105 of 2017; [2017] eKLR*, cited here as persuasive authority. Although that case concerned the tallying and declaration of presidential election results, the reasoning of the Court is of general application to the finality of an electoral officer's declaration and is directly instructive. The Court of Appeal held that results declared at the constituency level are final and may not be altered, varied, confirmed or reversed by the electoral commission itself, holding in terms that:

> 'the results announced by the presiding officer at the polling station are final and no entity, not even the national returning officer, can alter those results.'

15. The Court rejected the submission that statutory and regulatory provisions permitting the commission to 'confirm' or verify declared results conferred any power to alter them, holding that to treat a declared result as merely provisional, subject to revision by the commission itself, would be 'impractical, slow and in breach of' the constitutional requirements that an electoral process be accurate, verifiable, accountable and transparent, and warning against vesting 'such sweeping and boundless powers' in any single authority. That reasoning applies with equal, if not greater, force here: if a declared result cannot be reconsidered even by an electoral commission's own most senior returning authority acting openly, still less can it be reconsidered by a mere administrative instruction directing a constituency returning officer to issue a second, contradictory declaration behind closed doors.

16. The same principle finds even more direct, and considerably older, expression in the jurisprudence of the Supreme Court of India, which Commonwealth courts have repeatedly drawn upon in developing the law on the finality of the electoral process. In *Mohinder Singh Gill & Anr. v. Chief Election Commissioner, New Delhi & Ors., AIR 1978 SC 851*, a Constitution Bench of the Supreme Court of India held, at p. 294, para D–E ,that:

> 'The compendious expression "election" commences from the initial notification and culminates in the declaration of the return of a candidate.'

17. And, at p. 322, para D, that the constitutional provision insulating the electoral process from litigative interference operates as a comprehensive bar reaching up to, but not beyond, that point of culmination by stating:

'Article 329(b) is a blanket ban on litigative challenge to electoral steps taken by the Election Commission for carrying forward the process of election to its culmination in the formal declaration of the result.'

18. The court futher held that once that culmination has occurred, that the sole avenue thereafter for challenging what has been declared is the dedicated petition procedure the legislature has provided — to the exclusion of every other route, however framed:

'The sole remedy for an aggrieved party, if he wants to challenge any election, is an election petition. And this exclusion of all other remedies includes constitutional remedies...because of the non-obstante clause.' p. 289, para E–F

19. Although Mohinder Singh Gill concerned the constitutional bar on judicial interference with an ongoing election under India's Constitution, its underlying principle — that a formal declaration is the fixed terminus of the administrative electoral process, alterable thereafter only through the dedicated petition procedure the legislature has provided, and by no other route, whether judicial or administrative — is precisely the principle for which the Petitioner contends here. Section 97(1) of the Act ('An election...shall not be questioned except by an election petition') is, in substance and structure, the same kind of privative provision as Article 329(b) of the Indian Constitution, and should be read, applying the same reasoning, as excluding not only alternative litigative routes but, a fortiori, any purported administrative route — such as an instruction from the 2nd Respondent to a returning officer to issue a fresh declaration — by which the same result might otherwise be achieved outside the judicial process altogether.

20. A materially similar position obtains under the presidential election law of Uganda, whose institutional structure closely mirrors Zambia's own: the Electoral Commission declares the result, but only the Supreme Court, on a petition presented within a fixed statutory window and upon proof of specified grounds, may annul that declaration — a scheme applied by the Supreme Court of Uganda in *Besigye v Museveni & Anor, Election Petition No. 1 of 2001*, in dismissing a challenge to a result the Electoral Commission had already declared. The Commission's own declaration, on that scheme, is never itself the last word; but nor is it disturbed by anything short of the petition the law provides for.

21. The same general principle that the validity and effect of an election, once conducted and its result declared, may be questioned only through the judicial process created for that purpose, and never administratively is also reflected in the long-established position of English electoral law, from which Zambia's own election petition framework, including the privative language of Section 97(1) of the Act ('An election ... shall not be questioned

except by an election petition'), is substantially derived. Under that position it is only an election court, and never the returning officer or the responsible electoral authority, that has jurisdiction to determine whether an election or its declared result should be disturbed.

22. By analogy, in *Morgan v Simpson [1975] QB 151 (CA)*, cited here as persuasive authority, the English Court of Appeal held that it is for the election court, applying the statutory tests, to determine whether an election is vitiated by non-compliance with electoral law, and not for any administrative authority to make that determination unilaterally.

23. This persuasive authority is entirely consistent with, and reinforces, the domestic scheme already summarised above: it is only the High Court or a tribunal, on the trial of a petition presented under Part IX of the Act, that may determine that a person other than a declared Member was duly elected (Sections 97(1), 99(b) and 108(1) of the Act), and a Member whose election is petitioned holds the seat pending that determination (Article 73(4) of the Constitution). The 2nd Respondent, as an electoral commission, occupies materially the same institutional position as the IEBC in Maina Kiai: it may exercise such narrow, time-bound administrative powers as the Act confers upon it, and no more, but it has no free-standing power — whether described as a 'correction', a 'confirmation', or any other label — to achieve, by administrative instruction to a returning officer, the redetermination of who was duly elected that only a court, applying the safeguards of Part IX, may lawfully make.

E. NO SECTION 76 CORRECTION HAS BEEN MADE OR SHOWN TO EXIST

24. It is the Petitioner's position, and the evidence presently available bears this out, that no correction under Section 76 of the Act has ever been made by the Commission in respect of the Lupososhi Constituency result — whether before, on, or after 18th August, 2026. The Petitioner's advocates wrote to the Commission's Chief Electoral Officer on 20th August, 2026, expressly requesting confirmation of the Petitioner's election as declared in the First Declaration. The Commission's own response, dated 21st August, 2026 (reference EC/101/7/5), confirms that, as at that date, the Commission was ignorant of the issue and that only resulting from our inquiry was it still "waiting for a report from the returning officer" and was thus "unable to provide a response" to the Petitioner's request. That response, on its face, does not purport to correct any mistake under Section 76, does not confirm either declaration, and does not disclose any basis — tabulation-related or otherwise — for the Second Declaration. No Section 76 correction has since been communicated to the Petitioner.

25. It is submitted that, in these circumstances, no Section 76 correction should be presumed or assumed in the Respondents' favour. The burden of establishing that a public body has validly exercised a statutory power lies on the party asserting it; a returning officer's or the Commission's silence, or an equivocal holding letter of the kind exhibited in the Petitioners Affidavit in support herein as "LCB7", cannot substitute for affirmative proof that the specific, time-bound, narrowly-defined power in Section 76 was in fact and in law exercised. If, contrary to the Commission's own correspondence, the 1st or 2nd Respondent now seeks to assert that some Section 76 correction was made, the Petitioner will put the Respondents to strict proof of it — including the date it was made, the officer who made it, the specific tabulation mistake said to have been corrected, and the material on which that correction was based — none of which appears anywhere in the correspondence between the Petitioner's advocates and the Commission.

F. IN ANY EVENT, SECTION 76 COULD NOT HAVE SUPPORTED THE SECOND DECLARATION

26. Without prejudice to the foregoing, and in case the Respondents nonetheless seek to establish that some Section 76 correction was made, the Petitioner submits that it could not, in any event, have lawfully supported the Second Declaration. On the ordinary and natural meaning of its words, Section 76 permits the Commission to correct a genuine clerical or arithmetic error in adding up figures already recorded and announced, and to do so only within seven days of the declaration of the result. It does not authorise the Commission to reopen the underlying count, to receive and act on fresh allegations of irregularity, to reverse the identity of a declared winner, or to endorse after the fact a returning officer's own prior and independent act of declaring a different candidate elected. A power to correct 'a mistake' (singular) 'committed by an electoral officer' (singular) 'in the tabulation of results' of a particular election is not, on any natural reading, a power to redetermine the outcome of an election, still less to ratify, after the fact and without any disclosed process, an act a returning officer has already taken independently of it.

27. This conclusion is reinforced by the scale of the Petitioner's win. The Declaration of Result and the Record of Proceedings at the Totalling of Votes for Lupososhi Constituency, covering all 65 of 65 polling stations, record that the Petitioner polled 9,533 votes against 6,890 polled by the 1st Respondent — a margin of 2,643 votes, out of 23,526 votes cast and 626 ballot papers rejected as invalid. A 'mistake ... in the tabulation of results' capable of correction under Section 76 is, on the section's own language, a clerical or arithmetic slip in adding up figures already recorded; it is not a plausible description of an error large

enough to overturn a margin of 2,643 votes, still less of the wholesale substitution of one declared winner for another. If any such extraordinary error were in fact to be asserted, its scale alone would take it outside the kind of mistake Section 76 contemplates, and would in any event require the fuller scrutiny of a re-vote under Section 75 or a determination by this Honourable Court on the trial of this Petition, and not a returning officer's unilateral and unexplained second declaration.

G. EVEN A LAWFUL SECTION 76 CORRECTION COULD NOT OPERATE AS AN OVERRIDE OF THE FIRST DECLARATION

28. It is submitted, further and in the alternative, that even if the Respondents were able to establish — contrary to the Petitioner's primary submission above — that a correction genuinely falling within the narrow scope of Section 76 had been made in respect of Lupososhi Constituency, within time and confined to a true tabulation slip, that would still not have been capable of lawfully producing the Second Declaration or any other act reversing the identity of the declared winner. A Section 76 correction, properly exercised, corrects an error in the figures; it does not, and cannot, of itself convert into an act determining that a different candidate was duly elected in place of the Petitioner. Those are two distinct acts, and the second does not follow automatically, or as a matter of administrative course, from the first.

29. To reverse a declaration and install a different candidate as the duly elected Member is, on the scheme of the Act considered as a whole and as reinforced by the persuasive authority set out above, an exercise of the very function Part IX of the Act reserves exclusively to the High Court or a tribunal: the determination, after a trial conducted with notice to the parties, an opportunity to be heard, and adherence to the burdens and standards of proof Part IX prescribes, of whether the person originally declared was in truth duly elected, and if not, who was (Sections 97(2), 99(b) and 108(1) of the Act). Section 76 contains no procedure remotely equivalent to this — no notice to the affected Member, no hearing, no evidentiary process, and no adjudication of contested fact — because it was never intended to be a vehicle for redetermining who won an election; it was intended only to permit the correction of an obvious tabulation slip, leaving the identity of the declared winner unaffected in the ordinary run of cases.

30. It follows that even a genuine and timely Section 76 correction could not, without more, operate as an override of the First Declaration so as to seat the 1st Respondent in place of the Petitioner. For the 2nd Respondent to achieve that outcome lawfully, it would itself have had to invoke, or cause to be invoked, the judicial process contemplated by Part IX

of the Act — whether by supporting, or declining to oppose, an election petition brought by an aggrieved candidate, or otherwise submitting the question of who was duly elected to the High Court for determination — and not simply instruct the returning officer, by internal administrative direction, to issue a fresh declaration naming a different winner. An instruction of that kind is not, and cannot be treated as, the exercise of judicial power; it is a purely administrative act, taken without the safeguards Part IX requires, and it is incapable of producing the legal consequence — the unseating of a duly declared Member — that only a court may lawfully bring about. This is precisely the vice identified in Maina Kiai (cited above): treating a commission's own internal administrative process as a substitute for the judicial, or at least judicially-supervised, determination that the constitutional and statutory scheme requires before a declared result may be disturbed.

31. On this further and independent ground, therefore, even if the Respondents were able to point to some Section 76 correction — which, as submitted above, they have not — that correction could not, without a determination of the High Court under Part IX of the Act, have had the effect of displacing the Petitioner's declared status or validating the Second Declaration in favour of the 1st Respondent.

H. TWO DOCUMENTS, THE SAME RECYCLED FIGURES: FURTHER EVIDENCE THAT NO GENUINE RE-TALLY OCCURRED

32. The improbability of any genuine Section 76 correction, or any other lawful re-tally, having occurred is reinforced by the manner in which the change in the declared winner came about. Before the Second Declaration was made, a document purporting to be a Declaration of the Results of the Poll for Lupososhi Constituency, bearing the same date as the First Declaration and reproducing every figure in the First Declaration unchanged — the same total votes cast, the same rejected ballots, and the same votes for every candidate other than the Petitioner and the 1st Respondent — save that the 9,533 and 6,890 votes recorded against the Petitioner and the 1st Respondent were simply transposed between them, was published by the 1st Respondent's own party as "a true declaration." The Second Declaration itself then reproduced the very same transposition of the very same two figures, while substituting, among its witnesses, a person associated with the 1st Respondent's own party for the Petitioner's polling agent and the Human Rights Commission's representative who had witnessed the First Declaration.

33. It is submitted that this pattern is itself telling. A genuine re-tally of the ballots cast at 65 polling stations, or a genuine correction of a tabulation error, would ordinarily be expected to produce figures arrived at independently by that fresh process — not the identical pair

of figures already recorded in the First Declaration, merely reattached to the other candidate's name. The recurrence of exactly 9,533 and 6,890 votes, twice, with only the labels reversed, is consistent with the Petitioner's case that no fresh count, re-vote or lawful correction ever took place, and inconsistent with any suggestion that the Second Declaration rested on some independent factual basis the Petitioner has not yet seen. The substitution of witnesses aligned with the 1st Respondent's own party for the Petitioner's polling agent and an independent human rights observer further undermines any suggestion that the Second Declaration was arrived at through a fair or transparent process comparable to that which produced the First Declaration.

I. SECTION 72 CONFERS A SINGLE, EXHAUSTIBLE DECLARATORY FUNCTION

34. Sections 68 to 72 of the Act contemplate a single sequence culminating in one declaration for a given constituency's election, triggered by the returning officer's receipt of the Section 71 materials. The only two gateways in the Act permitting a fresh electoral event after an initial count — a re-vote under Section 75, and a correction under Section 76 — are both narrow and, on the facts, inapplicable: there was no loss, destruction or unlawful removal of ballot papers calling for a re-vote, and, for the reasons given above, no lawful Section 76 correction occurred. Nor does Section 37A(2)(e) of the Act, which speaks of 'any other election related duties as determined by the Commission and under this Act', supply a third gateway: that residual duty is expressly conjunctive with, and bounded by, authority found elsewhere 'under this Act', and no such authority exists for a second declaration.

35. It follows that the returning officer's declaratory function under Section 72, once validly exercised in respect of Lupososhi Constituency, was spent, and the purported Second Declaration is accordingly of no legal effect.

J. THE ABSURDITY OF A RETURNING OFFICER EXERCISING HIS DECLARATORY POWER IN PERPETUITY, AFTER DECLARATION, CLOSE OF THE ELECTION AND CLOSURE OF THE TOTALLING CENTRE

36. It is submitted, further and in support of the construction of Section 72 advanced immediately above, that the Respondents' position — that the returning officer's declaratory function remained available to be exercised a second time, on 18th August, 2026, notwithstanding that it had already been validly exercised on 16th August, 2026 — cannot be sustained once its necessary logical consequences are traced through. This Honourable Court is respectfully reminded of the golden rule of construction already invoked above (Mutale v Munaile SCZ Judgment No. 14 of 2007, applying Attorney-

General and Another v Lewanika and Others (1993–1994) Z.R. 164): that whenever a contended-for construction of a statute gives rise to an absurd or unworkable result, the Court should prefer the construction that avoids that result, so as to give effect to what Parliament must be taken to have intended.

37. Nothing in the words of Section 72 supplies any limit — temporal or otherwise — on how many times, or how long after an original declaration, the returning officer's declaratory function might be exercised again, if the Respondents' construction is accepted. This stands in stark and telling contrast to Section 76, in which Parliament took evident care to bound the Commission's own, quite different, correction power to a strict seven days. If Section 72 permitted a second declaration two days after the first, without any fresh Section 71 process, nothing in its language would prevent a third declaration, a fourth, or a hundredth; and nothing would prevent a further declaration eighteen months, eighteen years, or at any time after the first, since the words relied upon to justify the Second Declaration are, on the Respondents' reading, no less available at any later date than they were on 18th August 2026. A power said to arise from words containing no limiting principle is, in law and in practical effect, a power without limit — that is to say, a power capable of being exercised in perpetuity, at the returning officer's or the Commission's own choosing, for as long as the Petitioner (or any Member) holds the seat, and beyond.

38. That this cannot have been Parliament's intention is confirmed by the surrounding scheme of the Act. Sections 65, 66 and 71 establish that the materials on which any tally and declaration are based are sealed and delivered to the returning officer once, for a single count; the Act nowhere contemplates that same returning officer receiving a second, fresh batch of those materials so as to found a second exercise of the Section 72 function. More tellingly still, Section 115(1) and (2) of the Act vest ownership of all voting and election material in the Commission and, subject only to a contrary order of the Constitutional Court, the High Court or a tribunal, permit the Commission to dispose of that material as soon as six months after the date on which the final result of the election was declared. Parliament's own disposal provision therefore presupposes that a declared result is fixed, and the window for any process capable of reopening it bounded, within a defined period measured from declaration — not that the result, and the returning officer's declaratory function itself, might remain open to revision indefinitely. A construction of Section 72 that permits a fresh declaration to be made at any time, including after the very materials by which it could be verified might lawfully have been destroyed under Section 115(2), cannot be the construction Parliament intended.

39. The absurdity is not merely theoretical; it is illustrated by the facts of this very case. A totalling centre is, by its nature, a temporary institution, convened for, and only for, the duration of the receipt, tallying and declaration of a constituency's results, with party agents, monitors and observers present only while it remains open and sitting, so that the process can be witnessed and verified as it happens. Once a totalling centre has completed that work, declared the result, and closed — as the Lupososhi totalling centre did on 16th August, 2026, on the production of the First Declaration — there remains no institutional mechanism on the ground by which any further, transparent, agent-witnessed declaration could be arrived at. A purported second declaration made after that point, without the totalling centre reconvening, without a fresh delivery of Section 71 materials, and without the attendance of the polling and counting agents — including the Petitioner's own polling agent — who witnessed and validated the original count, is not, and cannot be, the product of any process resembling the one Section 72 contemplates. It can only be an act conjured administratively, away from the totalling centre and disconnected from the institutional and evidentiary safeguards that give a Section 72 declaration its legitimacy in the first place — precisely what the Second Declaration, on the Petitioner's case, appears to be.

40. Carried to its logical conclusion, the Respondents' construction would mean that a returning officer (or the Commission, by instruction to a returning officer) could purport to redeclare the Lupososhi result again next month, next year, during the remainder of the Petitioner's term, or even after the dissolution of the National Assembly for a subsequent general election, since nothing in the words relied upon to justify the Second Declaration is any less available at one of those later moments than it was on 18th August, 2026. An interpretation of an election statute that cannot, in principle, be confined to any point in time at all is not a legitimate reading of a power Parliament created for the orderly, one-time culmination of a specific electoral event; it is a licence for perpetual electoral instability, incompatible with the certainty and finality that both the domestic scheme of the Act (Sections 97(1), 99, 100(3) and 108, and Article 73(4) of the Constitution) and the persuasive authority considered above (Maina Kiai) exist to secure. The only construction that avoids this absurdity, and gives Section 72 a stable and workable meaning consistent with the rest of the Act, is the one for which the Petitioner contends: that the returning officer's declaratory function under Section 72, once validly exercised in respect of a constituency's election, is exhausted, and remains exhausted for all time thereafter, subject only to the narrow and expressly time-bound exceptions in Sections 75 and 76, and to

variation, where warranted, exclusively through an election petition determined by the High Court or a tribunal under Part IX of the Act.

41. The absurdity is aggravated, rather than diminished, once its practical security consequences for the returning officer himself are considered. If the declaratory function under Section 72 is not spent upon a valid first declaration but remains permanently available to be invoked afresh at any time thereafter, a defeated candidate has every incentive to procure a further 'declaration' in his own favour by whatever means are available to him, since on that construction the Act places no obstacle in principle — only in practicality — between him and a changed result. Such a construction leaves the returning officer himself exposed, indefinitely, to the risk of intimidation, undue influence, abduction or worse at the hands of a defeated candidate or his agents, precisely because the officer alone would hold, at every moment for the rest of his life, the power to conjure a different and more favourable result merely by purporting to declare one. Nothing on the face of Section 72, so construed, would prevent a returning officer from being unlawfully seized and held, including at gunpoint, and compelled under duress to 'redeclare' a different candidate the winner; and once made, that coerced redeclaration would, on the Respondents' own construction, be as good as the first — reversible only by the same unlawful means being applied to the officer a second, a third, or a further time, in a cycle with no natural end. It is inconceivable that Parliament, in the same Act that criminalises bribery and undue influence in connection with an election (Sections 81 to 89 of the Act), intended to leave open a reading of Section 72 that makes the returning officer a standing target for exactly that kind of coercion, indefinitely, long after the polls have closed and the totalling centre has dispersed and can no longer bear witness to what he is made to sign. The protection of the returning officer's own person and independence, no less than the protection of the electorate's choice, requires that his declaratory function under Section 72 be treated as exhausted upon its first valid exercise, incapable of being reopened whether willingly, mistakenly, or under compulsion — a further, and compelling, reason to reject the construction for which the Respondents contend.

K. SECTION 97(2)(b): THE ALTERNATIVE GROUND

42. In the alternative, and without prejudice to the primary case that the Second Declaration is a nullity, the Petitioner avers that Section 72 is a provision of the Act 'relating to the conduct of elections' within the meaning of Section 97(2)(b), being the provision that gives legal effect to the count and creates 'duly elected' status; that the election was not conducted in accordance with the single-exercise principle laid down in that section; and

that this non-compliance affected the result of the election, in that it was the very mechanism by which the declared winner purportedly changed from the Petitioner to the 1st Respondent. Causation, on this ground, is not realistically capable of dispute, since the impugned act is not merely alleged to have influenced the result — it is definitionally the means by which the result changed.

43. Section 97(4) of the Act, which protects an election from avoidance for an election officer's breach of duty that 'did not affect the result', does not assist the Respondents: even treating the Second Declaration as such a breach, its second limb cannot be satisfied here, because the breach alleged is itself the change in the declared result.

L. APPLICATION TO THE FACTS AND CONCLUSION

44. In casu, the Petitioner brings this Petition to invalidate the purported second declaration of the 1st Respondent as Member of Parliament for Lupososhi Constituency, made on 18th August, 2026. The Petitioner's own advocates promptly sought confirmation of the First Declaration from the Commission by letter dated 20th August, 2026; the Commission's response of 21st August, 2026 confirms only that it was awaiting a report from the returning officer and could not yet respond — it neither confirmed the Petitioner's election nor disclosed any lawful basis for the Second Declaration, and no further response is known to have been given since. For the reasons set out above, the Second Declaration was made, and remains, without any lawful basis under Section 76 or otherwise; no such basis should be presumed against the Petitioner in the Commission's silence; and, in any event, the returning officer's Second Declaration was not, and could not be, a valid second exercise of the single, exhaustible declaratory function conferred by Section 72 of the Act. The Petitioner's original declaration therefore remains, in law, the valid and subsisting result of the election for Lupososhi Constituency; alternatively, the Second Declaration falls to be avoided under Section 97(2)(b) of the Act, and the Petitioner falls to be declared duly elected under Section 99(b) and Section 108(1) of the Act.

With respect to the foregoing, the Petitioner's Petition herein is properly before this Honourable Court for determination and the petitioner prays that this court accordingly orders and declares that he was indeed duly declared and elected as Member of parliament for Lupososhi Constituency on 16th August 2026.

Dated at _____ this _____ day of August 2026

This document was settled by: _____

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LUSAKA
ADVOCATES FOR THE PETITIONER

To: **THE 1st RESPONDENT**
Shadrick Mwansa
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THE 2nd RESPONDENT
The Electoral Commission of Zambia
Elections House, Haile Selassie Avenue,
P.O. Box 50274
LUSAKA

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

2026/HP/EP/033

REPUBLIC OF ZAMBIA
HIGH COURT OF ZAMBIA
31 AUG 2026
PRINCIPAL REGISTRY 1
P.O. BOX 50067, LUSAKA

IN THE MATTER OF: ARTICLE 76 (1) OF THE CONSTITUTION OF ZAMBIA (AMENDMENT) ACT NO. 2 OF 2016 OF THE LAWS OF ZAMBIA

IN THE MATTER OF: SECTIONS 72, 76, 97, 98, 99, 100 AND 108 OF THE ELECTORAL PROCESS ACT NO. 35 OF 2016 OF THE LAWS OF ZAMBIA, AS AMENDED BY THE ELECTORAL PROCESS (AMENDMENT) ACT NO. 12 OF 2026

IN THE MATTER OF: RULE 9 OF THE HIGH COURT (ELECTION PETITION) RULES, 2026 OF THE LAWS OF ZAMBIA

AND

IN THE MATTER OF: AN ELECTION PETITION RELATING TO THE LUPOSOSHI CONSTITUENCY PARLIAMENTARY ELECTION HELD ON THURSDAY, 13TH AUGUST, 2026, THE DECLARATION OF THE RESULT THEREOF MADE ON 16TH AUGUST, 2026, AND THE PURPORTED FURTHER DECLARATION OF THE RESULT THEREOF MADE ON 18TH AUGUST, 2026

BETWEEN:

LAZAROUS CHUNGU BWALYA — **PETITIONER**

AND

SHADRECK MWANSA — **1ST RESPONDENT**

ELECTORAL COMMISSION OF ZAMBIA — **2ND RESPONDENT**

PETITIONER'S LIST OF DOCUMENTS

Pursuant to Rule 9(3)(c) of the High Court (Election Petition) Rules, 2026

The following is a list of documents relating to the matters in question in this action which are or have been in the possession, custody or power of the above-named Petitioner.

1. The Petitioner has in his custody or power the documents relating to the matters in question in this action enumerated in the first part of the first schedule hereto.

2. The Petitioner object to producing the documents enumerated in the second part of the first schedule hereto on the grounds that the same are privileged and came into existence and were obtained after this litigation was commenced.

3. The Petitioner has had but has not now in their possession custody or power the documents relating to the matter enumerated in the second schedule.

4. The documents in the said schedule were last in the Petitioner's possession custody or power on the dates which appear on them when they were dispatched.

5. Neither the Petitioner nor his Advocates nor any other person on their behalf now or ever had in their possession custody or power any other documents of any description whatever relating to any matter in this action other than the documents enumerated in the first and second schedule.

FIRST SCHEDULE
FIRST PART

ITEM NO.	DESCRIPTION OF DOCUMENTS	DATE
1.	Declaration of Results	16th August, 2026
2.	Results of Poll	16th August, 2026
3.	Recording of Declaration of Results	16th August, 2026
4.	Second Declaration of Results	18th August, 2026
5.	Screenshot of Social Media Post	
6.	Videos of Proceedings at the totalling centre	Various
7.	Attendance List	
8.	Letter to Electoral Commission of Zambia	20th August, 2026
9.	Response from Electoral Commission of Zambia	21st August, 2026

SECOND PART

Correspondence passing between the Petitioner and their Advocates, draft pleadings and other documents solely prepared for this action.

SECOND SCHEDULE

The originals of the copy documents referred to in the second part of the first schedule.

Dated at Lusaka the_____ day of_____ 2026.

This document was settled by: _____

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LUSAKA
ADVOCATES FOR THE PETITIONER

To: **THE 1st RESPONDENT**
Shadrick Mwansa
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THE 2nd RESPONDENT
The Electoral Commission of Zambia
Elections House, Haile Selassie Avenue,
P.O. Box 50274
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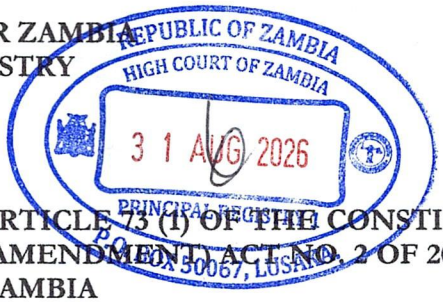
IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA

2026/HP/EP/033



(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 72, 76, 97, 98, 99, 100 AND 108 OF THE ELECTORAL PROCESS ACT NO. 35 OF 2016 OF THE LAWS OF ZAMBIA, AS AMENDED BY THE ELECTORAL PROCESS (AMENDMENT) ACT NO. 12 OF 2026

IN THE MATTER OF: PART III OF THE HIGH COURT (ELECTION PETITION) RULES, 2026 OF THE LAWS OF ZAMBIA

AND

IN THE MATTER OF: AN ELECTION PETITION RELATING TO THE LUPOSOSHI CONSTITUENCY PARLIAMENTARY ELECTION HELD ON THURSDAY, 13TH AUGUST, 2026, THE DECLARATION OF THE RESULT THEREOF MADE ON 16TH AUGUST, 2026, AND THE PURPORTED FURTHER DECLARATION OF THE RESULT THEREOF MADE ON 18TH AUGUST, 2026

BETWEEN:

LAZAROUS CHUNGU BWALYA — **PETITIONER**

AND

SHADRECK MWANSA — **1ST RESPONDENT**

ELECTORAL COMMISSION OF ZAMBIA — **2ND RESPONDENT**

SKELETON ARGUMENTS AND LIST OF AUTHORITIES IN SUPPORT OF ELECTION PETITION

IF IT MAY PLEASE THIS HONOURABLE COURT, these are the Petitioner's Skeleton Arguments filed in support of the Election Petition challenging the validity of the purported second declaration of the 1st Respondent as Member of Parliament for Lupososhi Constituency, made on 18th August, 2026, without any lawful basis, ever having been made or shown by the Electoral Commission of Zambia to justify it. The Petitioner shall rely on the following authorities:

LEGISLATION:

1. The Constitution of Zambia (Amendment) Act, Number 2 of 2016.

2. The Electoral Process Act, Number 35 of 2016 as amended by The Electoral Process (Amendment) Act, Number 12 of 2026.
4. The High Court (Election Petition) Rules, 2026.

CASES AND OTHER AUTHORITY:

1. Mutale v Munaile SCZ Judgment No. 14 of 2007.
2. Attorney-General and Another v Lewanika and Others (1993–1994) Z.R. 164.
3. Black's Law Dictionary (definitions of "Declaration" and "Declare").
4. Independent Electoral and Boundaries Commission v Maina Kiai & 5 Others, Civil Appeal No. 105 of 2017; [2017] eKLR (Court of Appeal of Kenya)
5. Morgan v Simpson [1975] QB 151 (Court of Appeal of England and Wales).
6. Mohinder Singh Gill & Anr. v. Chief Election Commissioner, New Delhi & Ors., AIR 1978 SC 851 (Constitution Bench, Supreme Court of India).
7. Besigye v Museveni & Anor, Election Petition No. 1 of 2001, Supreme Court of Uganda

A. INTRODUCTION

1. At this juncture, it is the Petitioner's submission that what needs to be determined is, first, whether the purported second declaration of the 1st Respondent as Member of Parliament for Lupososhi Constituency is valid, or is void, alternatively liable to be avoided under Part IX of the Electoral Process Act No. 35 of 2016 ("the Act"); and, second, whether the First Declaration naming the Petitioner remains the true and subsisting result of the election for Lupososhi Constituency.

B. THE LAW UPON WHICH THE PETITION IS PREMISED

2. Article 73(1) of the Constitution of Zambia (Amendment) Act, Number 2 of 2016, provides that:

> 'A person may file an election petition with the High Court to challenge the election of a Member of Parliament.'

3. Article 73(4) of the Constitution further provides that a Member of Parliament whose election is petitioned holds the seat in the National Assembly pending the determination of the election petition, confirming that it is only a determination of this Honourable Court, and not an administrative act of the 2nd Respondent, that can lawfully displace a Member's declared status.
4. Taking into consideration the foregoing authority, the Electoral Process Act No. 35 of 2016 provides, under Section 72(1), as substituted by the Electoral Process (Amendment) Act No. 12 of 2026, that:

> '72. (1) A returning officer shall, on receipt of the items specified under section 71, tally the results received from a polling station in a constituency, district and ward and shall— (a) announce the results of the votes for the presidential, Member of

Parliament, mayoral, council chairperson or councillor elections; and (b) declare the results of the votes for the Member of Parliament, mayoral, council chairperson or councillor election.'

5. Section 76 of the Act, under the marginal note "Correction of mistakes", provides that:

'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.'

6. Section 97 of the Act provides, so far as is material, that:

'(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 ... shall be void if, on the trial of an election petition, it is proved to the satisfaction of the High Court or a tribunal ... 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.'

7. Section 98 of the Act further provides that an election petition may be presented by, among others, 'a person claiming to have been a candidate at the election to which the election petition relates' (Section 98(c)), and Section 99 provides that the reliefs which may be claimed are a declaration that the election was void, or a declaration that any candidate was duly elected.
8. Section 100(3) of the Act requires an election petition to be presented not later than fourteen days after the date on which the result of the election to which it relates is duly declared, and Section 108(1) requires the High Court or tribunal, at the conclusion of the trial, to determine whether the respondent, or any other, and which, person, was duly elected.

C. THE MEANING OF "DECLARE" AND "DECLARATION" UNDER THE ACT

9. Neither "declare" nor "declaration" is defined in the Act, notwithstanding that the whole of Part VI turns on the returning officer's act of declaring a result under Section 72(1)(b), and notwithstanding that it is the "declaration" of a result that Sections 76, 97, 100(3) and

108 all take as their reference point. Where a statute uses an ordinary legal term without defining it, that term must be given its ordinary and accepted legal meaning (Mutale v Munaile SCZ Judgment No. 14 of 2007, applying Attorney-General and Another v Lewanika and Others (1993–1994) Z.R. 164).

10. Black's Law Dictionary Eighth Edition defines 'declare' as:

> "A formal statement, proclamation, or announcement, esp. one embodied in an instrument."

11. On this ordinary and accepted legal meaning, a declaration is, by definition, a formal and conclusive act — a proclamation 'embodied in an instrument' which, once made, fixes and makes known the state of affairs it pronounces upon. It is not, on this meaning, an announcement capable of repetition, reversal or contradiction by a subsequent, inconsistent pronouncement of the same kind, made by the same office, touching the same subject-matter, save where the enactment creating the power to declare expressly permits reconsideration, variation or revocation. Section 72 of the Act contains no such express permission; nor, for the reasons given below, does Section 76.

12. Properly construed in light of the ordinary legal meaning of 'declare' and 'declaration', the power conferred on a returning officer by Section 72(1)(b) is therefore a power to make one formal, conclusive pronouncement of the result of an election, upon receipt of the materials specified under Section 71 of the Act — a power which is spent once validly exercised. The First Declaration accordingly exhausted the returning officer's power under Section 72 in respect of the Lupososhi Constituency election, and what purports to be the Second Declaration is not a further, valid exercise of that same power at all, but an act done without it, and is for that reason a nullity rather than merely a second 'declaration' competing with the first.

D. THE FINALITY OF A DECLARATION: A DECLARED RESULT MAY BE VARIED ONLY THROUGH THE JUDICIAL PROCESS

13. The proposition developed above — that a 'declaration' is, on its ordinary and accepted legal meaning, a formal and conclusive pronouncement not open to informal repetition, reversal or contradiction — is not a novel or parochial one. It reflects a principle of general application in Commonwealth electoral law: that once a returning officer or equivalent electoral officer has declared the result of an election, that declaration is final, and any variation of it — whether to correct an alleged error, to give effect to a fresh allegation of irregularity, or to install a different candidate as the winner — may lawfully be achieved

only through the judicial process created for that purpose, and not by any further administrative act of the electoral commission or its officers.

14. This principle finds direct and forceful expression in the decision of the Court of Appeal of Kenya in *Independent Electoral and Boundaries Commission v Maina Kiai & 5 Others, Civil Appeal No. 105 of 2017; [2017] eKLR*, cited here as persuasive authority. Although that case concerned the tallying and declaration of presidential election results, the reasoning of the Court is of general application to the finality of an electoral officer's declaration and is directly instructive. The Court of Appeal held that results declared at the constituency level are final and may not be altered, varied, confirmed or reversed by the electoral commission itself, holding in terms that:

> 'the results announced by the presiding officer at the polling station are final and no entity, not even the national returning officer, can alter those results.'

15. The Court rejected the submission that statutory and regulatory provisions permitting the commission to 'confirm' or verify declared results conferred any power to alter them, holding that to treat a declared result as merely provisional, subject to revision by the commission itself, would be 'impractical, slow and in breach of' the constitutional requirements that an electoral process be accurate, verifiable, accountable and transparent, and warning against vesting 'such sweeping and boundless powers' in any single authority. That reasoning applies with equal, if not greater, force here: if a declared result cannot be reconsidered even by an electoral commission's own most senior returning authority acting openly, still less can it be reconsidered by a mere administrative instruction directing a constituency returning officer to issue a second, contradictory declaration behind closed doors.

16. The same principle finds even more direct, and considerably older, expression in the jurisprudence of the Supreme Court of India, which Commonwealth courts have repeatedly drawn upon in developing the law on the finality of the electoral process. In *Mohinder Singh Gill & Anr. v. Chief Election Commissioner, New Delhi & Ors., AIR 1978 SC 851*, a Constitution Bench of the Supreme Court of India held, at p. 294, para D–E ,that:

> 'The compendious expression "election" commences from the initial notification and culminates in the declaration of the return of a candidate.'

17. And, at p. 322, para D, that the constitutional provision insulating the electoral process from litigative interference operates as a comprehensive bar reaching up to, but not beyond, that point of culmination by stating:

'Article 329(b) is a blanket ban on litigative challenge to electoral steps taken by the Election Commission for carrying forward the process of election to its culmination in the formal declaration of the result.'

18. The court futher held that once that culmination has occurred, that the sole avenue thereafter for challenging what has been declared is the dedicated petition procedure the legislature has provided — to the exclusion of every other route, however framed:

'The sole remedy for an aggrieved party, if he wants to challenge any election, is an election petition. And this exclusion of all other remedies includes constitutional remedies...because of the non-obstante clause.' p. 289, para E–F

19. Although Mohinder Singh Gill concerned the constitutional bar on judicial interference with an ongoing election under India's Constitution, its underlying principle — that a formal declaration is the fixed terminus of the administrative electoral process, alterable thereafter only through the dedicated petition procedure the legislature has provided, and by no other route, whether judicial or administrative — is precisely the principle for which the Petitioner contends here. Section 97(1) of the Act ('An election...shall not be questioned except by an election petition') is, in substance and structure, the same kind of privative provision as Article 329(b) of the Indian Constitution, and should be read, applying the same reasoning, as excluding not only alternative litigative routes but, a fortiori, any purported administrative route — such as an instruction from the 2nd Respondent to a returning officer to issue a fresh declaration — by which the same result might otherwise be achieved outside the judicial process altogether.

20. A materially similar position obtains under the presidential election law of Uganda, whose institutional structure closely mirrors Zambia's own: the Electoral Commission declares the result, but only the Supreme Court, on a petition presented within a fixed statutory window and upon proof of specified grounds, may annul that declaration — a scheme applied by the Supreme Court of Uganda in *Besigye v Museveni & Anor, Election Petition No. 1 of 2001*, in dismissing a challenge to a result the Electoral Commission had already declared. The Commission's own declaration, on that scheme, is never itself the last word; but nor is it disturbed by anything short of the petition the law provides for.

21. The same general principle that the validity and effect of an election, once conducted and its result declared, may be questioned only through the judicial process created for that purpose, and never administratively is also reflected in the long-established position of English electoral law, from which Zambia's own election petition framework, including the privative language of Section 97(1) of the Act ('An election ... shall not be questioned

except by an election petition'), is substantially derived. Under that position it is only an election court, and never the returning officer or the responsible electoral authority, that has jurisdiction to determine whether an election or its declared result should be disturbed.

22. By analogy, in *Morgan v Simpson [1975] QB 151 (CA)*, cited here as persuasive authority, the English Court of Appeal held that it is for the election court, applying the statutory tests, to determine whether an election is vitiated by non-compliance with electoral law, and not for any administrative authority to make that determination unilaterally.

23. This persuasive authority is entirely consistent with, and reinforces, the domestic scheme already summarised above: it is only the High Court or a tribunal, on the trial of a petition presented under Part IX of the Act, that may determine that a person other than a declared Member was duly elected (Sections 97(1), 99(b) and 108(1) of the Act), and a Member whose election is petitioned holds the seat pending that determination (Article 73(4) of the Constitution). The 2nd Respondent, as an electoral commission, occupies materially the same institutional position as the IEBC in Maina Kiai: it may exercise such narrow, time-bound administrative powers as the Act confers upon it, and no more, but it has no free-standing power — whether described as a 'correction', a 'confirmation', or any other label — to achieve, by administrative instruction to a returning officer, the redetermination of who was duly elected that only a court, applying the safeguards of Part IX, may lawfully make.

E. NO SECTION 76 CORRECTION HAS BEEN MADE OR SHOWN TO EXIST

24. It is the Petitioner's position, and the evidence presently available bears this out, that no correction under Section 76 of the Act has ever been made by the Commission in respect of the Lupososhi Constituency result — whether before, on, or after 18th August, 2026. The Petitioner's advocates wrote to the Commission's Chief Electoral Officer on 20th August, 2026, expressly requesting confirmation of the Petitioner's election as declared in the First Declaration. The Commission's own response, dated 21st August, 2026 (reference EC/101/7/5), confirms that, as at that date, the Commission was ignorant of the issue and that only resulting from our inquiry was it still "waiting for a report from the returning officer" and was thus "unable to provide a response" to the Petitioner's request. That response, on its face, does not purport to correct any mistake under Section 76, does not confirm either declaration, and does not disclose any basis — tabulation-related or otherwise — for the Second Declaration. No Section 76 correction has since been communicated to the Petitioner.

25. It is submitted that, in these circumstances, no Section 76 correction should be presumed or assumed in the Respondents' favour. The burden of establishing that a public body has validly exercised a statutory power lies on the party asserting it; a returning officer's or the Commission's silence, or an equivocal holding letter of the kind exhibited in the Petitioners Affidavit in support herein as "LCB7", cannot substitute for affirmative proof that the specific, time-bound, narrowly-defined power in Section 76 was in fact and in law exercised. If, contrary to the Commission's own correspondence, the 1st or 2nd Respondent now seeks to assert that some Section 76 correction was made, the Petitioner will put the Respondents to strict proof of it — including the date it was made, the officer who made it, the specific tabulation mistake said to have been corrected, and the material on which that correction was based — none of which appears anywhere in the correspondence between the Petitioner's advocates and the Commission.

F. IN ANY EVENT, SECTION 76 COULD NOT HAVE SUPPORTED THE SECOND DECLARATION

26. Without prejudice to the foregoing, and in case the Respondents nonetheless seek to establish that some Section 76 correction was made, the Petitioner submits that it could not, in any event, have lawfully supported the Second Declaration. On the ordinary and natural meaning of its words, Section 76 permits the Commission to correct a genuine clerical or arithmetic error in adding up figures already recorded and announced, and to do so only within seven days of the declaration of the result. It does not authorise the Commission to reopen the underlying count, to receive and act on fresh allegations of irregularity, to reverse the identity of a declared winner, or to endorse after the fact a returning officer's own prior and independent act of declaring a different candidate elected. A power to correct 'a mistake' (singular) 'committed by an electoral officer' (singular) 'in the tabulation of results' of a particular election is not, on any natural reading, a power to redetermine the outcome of an election, still less to ratify, after the fact and without any disclosed process, an act a returning officer has already taken independently of it.

27. This conclusion is reinforced by the scale of the Petitioner's win. The Declaration of Result and the Record of Proceedings at the Totalling of Votes for Lupososhi Constituency, covering all 65 of 65 polling stations, record that the Petitioner polled 9,533 votes against 6,890 polled by the 1st Respondent — a margin of 2,643 votes, out of 23,526 votes cast and 626 ballot papers rejected as invalid. A 'mistake ... in the tabulation of results' capable of correction under Section 76 is, on the section's own language, a clerical or arithmetic slip in adding up figures already recorded; it is not a plausible description of an error large

enough to overturn a margin of 2,643 votes, still less of the wholesale substitution of one declared winner for another. If any such extraordinary error were in fact to be asserted, its scale alone would take it outside the kind of mistake Section 76 contemplates, and would in any event require the fuller scrutiny of a re-vote under Section 75 or a determination by this Honourable Court on the trial of this Petition, and not a returning officer's unilateral and unexplained second declaration.

G. EVEN A LAWFUL SECTION 76 CORRECTION COULD NOT OPERATE AS AN OVERRIDE OF THE FIRST DECLARATION

28. It is submitted, further and in the alternative, that even if the Respondents were able to establish — contrary to the Petitioner's primary submission above — that a correction genuinely falling within the narrow scope of Section 76 had been made in respect of Lupososhi Constituency, within time and confined to a true tabulation slip, that would still not have been capable of lawfully producing the Second Declaration or any other act reversing the identity of the declared winner. A Section 76 correction, properly exercised, corrects an error in the figures; it does not, and cannot, of itself convert into an act determining that a different candidate was duly elected in place of the Petitioner. Those are two distinct acts, and the second does not follow automatically, or as a matter of administrative course, from the first.

29. To reverse a declaration and install a different candidate as the duly elected Member is, on the scheme of the Act considered as a whole and as reinforced by the persuasive authority set out above, an exercise of the very function Part IX of the Act reserves exclusively to the High Court or a tribunal: the determination, after a trial conducted with notice to the parties, an opportunity to be heard, and adherence to the burdens and standards of proof Part IX prescribes, of whether the person originally declared was in truth duly elected, and if not, who was (Sections 97(2), 99(b) and 108(1) of the Act). Section 76 contains no procedure remotely equivalent to this — no notice to the affected Member, no hearing, no evidentiary process, and no adjudication of contested fact — because it was never intended to be a vehicle for redetermining who won an election; it was intended only to permit the correction of an obvious tabulation slip, leaving the identity of the declared winner unaffected in the ordinary run of cases.

30. It follows that even a genuine and timely Section 76 correction could not, without more, operate as an override of the First Declaration so as to seat the 1st Respondent in place of the Petitioner. For the 2nd Respondent to achieve that outcome lawfully, it would itself have had to invoke, or cause to be invoked, the judicial process contemplated by Part IX

of the Act — whether by supporting, or declining to oppose, an election petition brought by an aggrieved candidate, or otherwise submitting the question of who was duly elected to the High Court for determination — and not simply instruct the returning officer, by internal administrative direction, to issue a fresh declaration naming a different winner. An instruction of that kind is not, and cannot be treated as, the exercise of judicial power; it is a purely administrative act, taken without the safeguards Part IX requires, and it is incapable of producing the legal consequence — the unseating of a duly declared Member — that only a court may lawfully bring about. This is precisely the vice identified in Maina Kiai (cited above): treating a commission's own internal administrative process as a substitute for the judicial, or at least judicially-supervised, determination that the constitutional and statutory scheme requires before a declared result may be disturbed.

31. On this further and independent ground, therefore, even if the Respondents were able to point to some Section 76 correction — which, as submitted above, they have not — that correction could not, without a determination of the High Court under Part IX of the Act, have had the effect of displacing the Petitioner's declared status or validating the Second Declaration in favour of the 1st Respondent.

H. TWO DOCUMENTS, THE SAME RECYCLED FIGURES: FURTHER EVIDENCE THAT NO GENUINE RE-TALLY OCCURRED

32. The improbability of any genuine Section 76 correction, or any other lawful re-tally, having occurred is reinforced by the manner in which the change in the declared winner came about. Before the Second Declaration was made, a document purporting to be a Declaration of the Results of the Poll for Lupososhi Constituency, bearing the same date as the First Declaration and reproducing every figure in the First Declaration unchanged — the same total votes cast, the same rejected ballots, and the same votes for every candidate other than the Petitioner and the 1st Respondent — save that the 9,533 and 6,890 votes recorded against the Petitioner and the 1st Respondent were simply transposed between them, was published by the 1st Respondent's own party as "a true declaration." The Second Declaration itself then reproduced the very same transposition of the very same two figures, while substituting, among its witnesses, a person associated with the 1st Respondent's own party for the Petitioner's polling agent and the Human Rights Commission's representative who had witnessed the First Declaration.

33. It is submitted that this pattern is itself telling. A genuine re-tally of the ballots cast at 65 polling stations, or a genuine correction of a tabulation error, would ordinarily be expected to produce figures arrived at independently by that fresh process — not the identical pair

of figures already recorded in the First Declaration, merely reattached to the other candidate's name. The recurrence of exactly 9,533 and 6,890 votes, twice, with only the labels reversed, is consistent with the Petitioner's case that no fresh count, re-vote or lawful correction ever took place, and inconsistent with any suggestion that the Second Declaration rested on some independent factual basis the Petitioner has not yet seen. The substitution of witnesses aligned with the 1st Respondent's own party for the Petitioner's polling agent and an independent human rights observer further undermines any suggestion that the Second Declaration was arrived at through a fair or transparent process comparable to that which produced the First Declaration.

I. SECTION 72 CONFERS A SINGLE, EXHAUSTIBLE DECLARATORY FUNCTION

34. Sections 68 to 72 of the Act contemplate a single sequence culminating in one declaration for a given constituency's election, triggered by the returning officer's receipt of the Section 71 materials. The only two gateways in the Act permitting a fresh electoral event after an initial count — a re-vote under Section 75, and a correction under Section 76 — are both narrow and, on the facts, inapplicable: there was no loss, destruction or unlawful removal of ballot papers calling for a re-vote, and, for the reasons given above, no lawful Section 76 correction occurred. Nor does Section 37A(2)(e) of the Act, which speaks of 'any other election related duties as determined by the Commission and under this Act', supply a third gateway: that residual duty is expressly conjunctive with, and bounded by, authority found elsewhere 'under this Act', and no such authority exists for a second declaration.

35. It follows that the returning officer's declaratory function under Section 72, once validly exercised in respect of Lupososhi Constituency, was spent, and the purported Second Declaration is accordingly of no legal effect.

J. THE ABSURDITY OF A RETURNING OFFICER EXERCISING HIS DECLARATORY POWER IN PERPETUITY, AFTER DECLARATION, CLOSE OF THE ELECTION AND CLOSURE OF THE TOTALLING CENTRE

36. It is submitted, further and in support of the construction of Section 72 advanced immediately above, that the Respondents' position — that the returning officer's declaratory function remained available to be exercised a second time, on 18th August, 2026, notwithstanding that it had already been validly exercised on 16th August, 2026 — cannot be sustained once its necessary logical consequences are traced through. This Honourable Court is respectfully reminded of the golden rule of construction already invoked above (Mutale v Munaile SCZ Judgment No. 14 of 2007, applying Attorney-

General and Another v Lewanika and Others (1993–1994) Z.R. 164): that whenever a contended-for construction of a statute gives rise to an absurd or unworkable result, the Court should prefer the construction that avoids that result, so as to give effect to what Parliament must be taken to have intended.

37. Nothing in the words of Section 72 supplies any limit — temporal or otherwise — on how many times, or how long after an original declaration, the returning officer's declaratory function might be exercised again, if the Respondents' construction is accepted. This stands in stark and telling contrast to Section 76, in which Parliament took evident care to bound the Commission's own, quite different, correction power to a strict seven days. If Section 72 permitted a second declaration two days after the first, without any fresh Section 71 process, nothing in its language would prevent a third declaration, a fourth, or a hundredth; and nothing would prevent a further declaration eighteen months, eighteen years, or at any time after the first, since the words relied upon to justify the Second Declaration are, on the Respondents' reading, no less available at any later date than they were on 18th August 2026. A power said to arise from words containing no limiting principle is, in law and in practical effect, a power without limit — that is to say, a power capable of being exercised in perpetuity, at the returning officer's or the Commission's own choosing, for as long as the Petitioner (or any Member) holds the seat, and beyond.

38. That this cannot have been Parliament's intention is confirmed by the surrounding scheme of the Act. Sections 65, 66 and 71 establish that the materials on which any tally and declaration are based are sealed and delivered to the returning officer once, for a single count; the Act nowhere contemplates that same returning officer receiving a second, fresh batch of those materials so as to found a second exercise of the Section 72 function. More tellingly still, Section 115(1) and (2) of the Act vest ownership of all voting and election material in the Commission and, subject only to a contrary order of the Constitutional Court, the High Court or a tribunal, permit the Commission to dispose of that material as soon as six months after the date on which the final result of the election was declared. Parliament's own disposal provision therefore presupposes that a declared result is fixed, and the window for any process capable of reopening it bounded, within a defined period measured from declaration — not that the result, and the returning officer's declaratory function itself, might remain open to revision indefinitely. A construction of Section 72 that permits a fresh declaration to be made at any time, including after the very materials by which it could be verified might lawfully have been destroyed under Section 115(2), cannot be the construction Parliament intended.

39. The absurdity is not merely theoretical; it is illustrated by the facts of this very case. A totalling centre is, by its nature, a temporary institution, convened for, and only for, the duration of the receipt, tallying and declaration of a constituency's results, with party agents, monitors and observers present only while it remains open and sitting, so that the process can be witnessed and verified as it happens. Once a totalling centre has completed that work, declared the result, and closed — as the Lupososhi totalling centre did on 16th August, 2026, on the production of the First Declaration — there remains no institutional mechanism on the ground by which any further, transparent, agent-witnessed declaration could be arrived at. A purported second declaration made after that point, without the totalling centre reconvening, without a fresh delivery of Section 71 materials, and without the attendance of the polling and counting agents — including the Petitioner's own polling agent — who witnessed and validated the original count, is not, and cannot be, the product of any process resembling the one Section 72 contemplates. It can only be an act conjured administratively, away from the totalling centre and disconnected from the institutional and evidentiary safeguards that give a Section 72 declaration its legitimacy in the first place — precisely what the Second Declaration, on the Petitioner's case, appears to be.

40. Carried to its logical conclusion, the Respondents' construction would mean that a returning officer (or the Commission, by instruction to a returning officer) could purport to redeclare the Lupososhi result again next month, next year, during the remainder of the Petitioner's term, or even after the dissolution of the National Assembly for a subsequent general election, since nothing in the words relied upon to justify the Second Declaration is any less available at one of those later moments than it was on 18th August, 2026. An interpretation of an election statute that cannot, in principle, be confined to any point in time at all is not a legitimate reading of a power Parliament created for the orderly, one-time culmination of a specific electoral event; it is a licence for perpetual electoral instability, incompatible with the certainty and finality that both the domestic scheme of the Act (Sections 97(1), 99, 100(3) and 108, and Article 73(4) of the Constitution) and the persuasive authority considered above (Maina Kiai) exist to secure. The only construction that avoids this absurdity, and gives Section 72 a stable and workable meaning consistent with the rest of the Act, is the one for which the Petitioner contends: that the returning officer's declaratory function under Section 72, once validly exercised in respect of a constituency's election, is exhausted, and remains exhausted for all time thereafter, subject only to the narrow and expressly time-bound exceptions in Sections 75 and 76, and to

variation, where warranted, exclusively through an election petition determined by the High Court or a tribunal under Part IX of the Act.

41. The absurdity is aggravated, rather than diminished, once its practical security consequences for the returning officer himself are considered. If the declaratory function under Section 72 is not spent upon a valid first declaration but remains permanently available to be invoked afresh at any time thereafter, a defeated candidate has every incentive to procure a further 'declaration' in his own favour by whatever means are available to him, since on that construction the Act places no obstacle in principle — only in practicality — between him and a changed result. Such a construction leaves the returning officer himself exposed, indefinitely, to the risk of intimidation, undue influence, abduction or worse at the hands of a defeated candidate or his agents, precisely because the officer alone would hold, at every moment for the rest of his life, the power to conjure a different and more favourable result merely by purporting to declare one. Nothing on the face of Section 72, so construed, would prevent a returning officer from being unlawfully seized and held, including at gunpoint, and compelled under duress to 'redeclare' a different candidate the winner; and once made, that coerced redeclaration would, on the Respondents' own construction, be as good as the first — reversible only by the same unlawful means being applied to the officer a second, a third, or a further time, in a cycle with no natural end. It is inconceivable that Parliament, in the same Act that criminalises bribery and undue influence in connection with an election (Sections 81 to 89 of the Act), intended to leave open a reading of Section 72 that makes the returning officer a standing target for exactly that kind of coercion, indefinitely, long after the polls have closed and the totalling centre has dispersed and can no longer bear witness to what he is made to sign. The protection of the returning officer's own person and independence, no less than the protection of the electorate's choice, requires that his declaratory function under Section 72 be treated as exhausted upon its first valid exercise, incapable of being reopened whether willingly, mistakenly, or under compulsion — a further, and compelling, reason to reject the construction for which the Respondents contend.

K. SECTION 97(2)(b): THE ALTERNATIVE GROUND

42. In the alternative, and without prejudice to the primary case that the Second Declaration is a nullity, the Petitioner avers that Section 72 is a provision of the Act 'relating to the conduct of elections' within the meaning of Section 97(2)(b), being the provision that gives legal effect to the count and creates 'duly elected' status; that the election was not conducted in accordance with the single-exercise principle laid down in that section; and

that this non-compliance affected the result of the election, in that it was the very mechanism by which the declared winner purportedly changed from the Petitioner to the 1st Respondent. Causation, on this ground, is not realistically capable of dispute, since the impugned act is not merely alleged to have influenced the result — it is definitionally the means by which the result changed.

43. Section 97(4) of the Act, which protects an election from avoidance for an election officer's breach of duty that 'did not affect the result', does not assist the Respondents: even treating the Second Declaration as such a breach, its second limb cannot be satisfied here, because the breach alleged is itself the change in the declared result.

L. APPLICATION TO THE FACTS AND CONCLUSION

44. In casu, the Petitioner brings this Petition to invalidate the purported second declaration of the 1st Respondent as Member of Parliament for Lupososhi Constituency, made on 18th August, 2026. The Petitioner's own advocates promptly sought confirmation of the First Declaration from the Commission by letter dated 20th August, 2026; the Commission's response of 21st August, 2026 confirms only that it was awaiting a report from the returning officer and could not yet respond — it neither confirmed the Petitioner's election nor disclosed any lawful basis for the Second Declaration, and no further response is known to have been given since. For the reasons set out above, the Second Declaration was made, and remains, without any lawful basis under Section 76 or otherwise; no such basis should be presumed against the Petitioner in the Commission's silence; and, in any event, the returning officer's Second Declaration was not, and could not be, a valid second exercise of the single, exhaustible declaratory function conferred by Section 72 of the Act. The Petitioner's original declaration therefore remains, in law, the valid and subsisting result of the election for Lupososhi Constituency; alternatively, the Second Declaration falls to be avoided under Section 97(2)(b) of the Act, and the Petitioner falls to be declared duly elected under Section 99(b) and Section 108(1) of the Act.

With respect to the foregoing, the Petitioner's Petition herein is properly before this Honourable Court for determination and the petitioner prays that this court accordingly orders and declares that he was indeed duly declared and elected as Member of parliament for Lupososhi Constituency on 16th August 2026.

Dated at _____ this _____ day of August 2026

This document was settled by: _____

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LUSAKA

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

2026/HP/EP/033

REPUBLIC OF ZAMBIA
HIGH COURT OF ZAMBIA
31 AUG 2026
PRINCIPAL REGISTRY 1
P.O. BOX 50067, LUSAKA

IN THE MATTER OF: ARTICLE 76 (1) OF THE CONSTITUTION OF ZAMBIA (AMENDMENT) ACT NO. 2 OF 2016 OF THE LAWS OF ZAMBIA

IN THE MATTER OF: SECTIONS 72, 76, 97, 98, 99, 100 AND 108 OF THE ELECTORAL PROCESS ACT NO. 35 OF 2016 OF THE LAWS OF ZAMBIA, AS AMENDED BY THE ELECTORAL PROCESS (AMENDMENT) ACT NO. 12 OF 2026

IN THE MATTER OF: RULE 9 OF THE HIGH COURT (ELECTION PETITION) RULES, 2026 OF THE LAWS OF ZAMBIA

AND

IN THE MATTER OF: AN ELECTION PETITION RELATING TO THE LUPOSOSHI CONSTITUENCY PARLIAMENTARY ELECTION HELD ON THURSDAY, 13TH AUGUST, 2026, THE DECLARATION OF THE RESULT THEREOF MADE ON 16TH AUGUST, 2026, AND THE PURPORTED FURTHER DECLARATION OF THE RESULT THEREOF MADE ON 18TH AUGUST, 2026

BETWEEN:

LAZAROUS CHUNGU BWALYA — **PETITIONER**

AND

SHADRECK MWANSA — **1ST RESPONDENT**

ELECTORAL COMMISSION OF ZAMBIA — **2ND RESPONDENT**

PETITIONER'S LIST OF DOCUMENTS

Pursuant to Rule 9(3)(c) of the High Court (Election Petition) Rules, 2026

The following is a list of documents relating to the matters in question in this action which are or have been in the possession, custody or power of the above-named Petitioner.

1. The Petitioner has in his custody or power the documents relating to the matters in question in this action enumerated in the first part of the first schedule hereto.

2. The Petitioner object to producing the documents enumerated in the second part of the first schedule hereto on the grounds that the same are privileged and came into existence and were obtained after this litigation was commenced.

3. The Petitioner has had but has not now in their possession custody or power the documents relating to the matter enumerated in the second schedule.

4. The documents in the said schedule were last in the Petitioner's possession custody or power on the dates which appear on them when they were dispatched.

5. Neither the Petitioner nor his Advocates nor any other person on their behalf now or ever had in their possession custody or power any other documents of any description whatever relating to any matter in this action other than the documents enumerated in the first and second schedule.

FIRST SCHEDULE
FIRST PART

ITEM NO.	DESCRIPTION OF DOCUMENTS	DATE
1.	Declaration of Results	16th August, 2026
2.	Results of Poll	16th August, 2026
3.	Recording of Declaration of Results	16th August, 2026
4.	Second Declaration of Results	18th August, 2026
5.	Screenshot of Social Media Post	
6.	Videos of Proceedings at the totalling centre	Various
7.	Attendance List	
8.	Letter to Electoral Commission of Zambia	20th August, 2026
9.	Response from Electoral Commission of Zambia	21st August, 2026

SECOND PART

Correspondence passing between the Petitioner and their Advocates, draft pleadings and other documents solely prepared for this action.

SECOND SCHEDULE

The originals of the copy documents referred to in the second part of the first schedule.

Dated at Lusaka the_____ day of_____ 2026.

This document was settled by: _____

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