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

2026/HP/EP/033

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

SHADRICK MWANSA — **1ST RESPONDENT**

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

REPUBLIC OF ZAMBIA
HIGH COURT OF ZAMBIA
16 SEP 2026
PRINCIPAL REGISTRY 8
P.O. BOX 50067, LUSAKA.

PETITIONER'S REPLY TO 2ND RESPONDENT'S ANSWER TO PETITION

The Petitioner, **LAZAROUS CHUNGU BWALYA**, replies to the 2nd Respondent's Answer to the Election Petition, filed on or about 10th September 2026, as follows:

1. Save as is hereinafter expressly admitted, the Petitioner joins issue with the 2nd Respondent on its Answer to the Election Petition and denies each and every allegation of fact contained therein as if the same were set out herein and specifically traversed seriatim.

2. As to paragraph 1 of the Answer, in which the 2nd Respondent states that paragraphs 1 and 2 of the Petition are within the Petitioner's peculiar knowledge, no reply is required.

3. Paragraph 2 of the Answer, admitting paragraph 3 of the Petition, is noted.

4. Paragraph 3 of the Answer is denied in its entirety. The Petitioner denies that the tally ascertained by the Returning Officer, Mr Oscar Kafunda, between 14:00 and 15:00 hours on 16th August 2026, or at any other time, showed the 1st Respondent as having polled 9,533 votes and the Petitioner 6,890 votes. The Petitioner repeats paragraphs 2 and 5 of the Petition and shall aver and prove at trial that the true, lawful and correctly tallied result of the poll, as declared by the Returning Officer on 16th August 2026 and recorded in the Declaration of the Results of the Poll (Form GEN 20b) and the Record of Proceedings at the Totalling of Votes (Form ECZ 19), was 9,533 votes for the Petitioner and 6,890 votes for the 1st Respondent—the exact reverse of what the 2nd Respondent now avers.

5. Paragraph 4 of the Answer is denied. The Petitioner denies that the votes lawfully cast and counted showed the 1st Respondent as having polled the highest number of votes, for the reasons stated in paragraph 4 above, and shall at trial lead evidence demonstrating that the tally was at all material times in his favour. The Petitioner further denies that any mayhem, or anything of similar nature or magnitude, occurred because he was not declared the winner. On the contrary, the Petitioner shall aver that the disturbance which occurred during the declaration process was a legitimate objection to the Returning Officer's attempt to announce and declare a transposed result in favour of the 1st Respondent. The Petitioner shall further aver that the objection, made by emotionally charged stakeholders, was properly and lawfully raised, under the circumstances, to protect the integrity of the count and ensure that the Returning Officer discharged his legal function only on the basis of the legitimate tally conducted and concluded in the presence of stakeholders and with their full participation. That tally showed the Petitioner, not the 1st Respondent, as the lawful winner, with the 1st Respondent being the runner-up.

6. In response to paragraph 5 of the Answer, the Petitioner shall object to any attempt by the 2nd Respondent to use his Petition as a collateral challenge to his election. The Petitioner shall aver that the Respondents had the opportunity to challenge that election through the procedure prescribed by the law based on any ground including alleged violence, duress, undue influence or any similar allegation. In any event, the Petitioner denies all such allegations and shall remain ready to fully defend his election if any competent challenge is brought before a court of competent jurisdiction.

7. However, notwithstanding the above and for purposes of being prudent, the Petitioner shall respond to paragraph 5 of the Answer by denying the same in its entirety, and in particular:

a. It is denied that any "serious violence and mayhem", whether of the kind alleged or of any duration, occurred at the totalling centre. The Petitioner shall aver at trial that even the video evidence exhibited by the 2nd Respondent does not show such violence or mayhem. Rather, it shows only an emotional and zealous reaction to the Returning Officer's apparent attempt to manipulate the election by declaring the 1st Respondent the winner of the parliamentary poll, when he was in fact the runner-up. More so that this followed the same Returning Officer's earlier announcement of erroneous and manipulated presidential results, which similarly favoured the runner-up over the actual winner in the constituency. The Petitioner shall lead evidence, to show that this formed part of a continuing pattern culminating in the now challenged second declaration of 1st Respondent dated 18th August 2026.

b. It is denied that the Returning Officer was at any time, whether before, during or after the election, placed under duress by the Petitioner or his agents. The Petitioner shall instead aver that the totalling centre was, at all material times, adequately and robustly secured by uniformed, armed police and security personnel, as shown in the 2nd Respondent's own video evidence who, much to their credit, successfully contained the visible emotional outbursts alluded to in paragraph 5 within minutes of their occurrence thus leading to calm an the centre and to diplomatic engagement thereafter as the Petitioner shall evidence. The Petitioner shall further aver that the polling and party agents and accredited monitors present to observe the totalling and declaration process numbered no more than approximately ten (10) persons, making it implausible that such a small group could overbear the Returning Officer, who was under the protection of more than thirty-two (32) armed security personnel.

c. It is denied that a Returning Officer retains any power at law, following an election, to clarify, review, vary or otherwise revisit a declaration already made, whether by report, subsequent declaration or any other means. The Petitioner shall aver that, despite the 2nd Respondent's strained attempt to characterise it otherwise, the Returning Officer's action of 18th August 2026 was, in substance and legal effect, a second declaration upon which the 2nd Respondent relied in purporting that the 1st Respondent was duly elected in supersession of the Petitioner's declaration of 16th August 2026.

8. In reply to paragraph 6 of the Answer, the Petitioner notes that the 2nd Respondent admits that no fresh tally or recount was conducted, and that no Section 76 correction was ever made in relation to the Lupososhi parliamentary election. The Petitioner further notes the 2nd

Respondent's admission that it instead relied on purported post-election correspondence from the Returning Officer to determine the election. The Petitioner shall therefore aver that it was highly irregular and unlawful for the 2nd Respondent to rely on anything other than the results and declaration duly transmitted to it promptly on 16th August 2026, shortly after close of the election for Lupososhi constituency, for the purpose of determining who was lawfully elected, much less on correspondence received more than 5 days later after an election, from a Returning Officer who had become functus officio upon conclusion of the election.

9. In response to paragraph 7 of the Answer, the Petitioner repeats the preceding paragraph and reiterates that the purported report of the Returning Officer, whatever its contents, could not in law affect the election result already declared and duly transmitted to the 2nd Respondent on 16th August 2026. The Petitioner shall further aver that if the 2nd Respondent, or any other person, wished to challenge the declaration of the Petitioner as the duly elected Member of Parliament for Lupososhi Constituency on any ground, including those allegedly contained in the purported report, the law provides the proper procedure for doing so. The Petitioner shall therefore aver that the 2nd Respondent acted unlawfully.

10. Paragraph 8 of the Answer is denied. The Petitioner repeats the reliefs sought in the Petition and will contend at trial that he is entitled to them.

11. In response to paragraph 9 of the Answer, the Petitioner shall aver that, in so far as his election is concerned, the election was concluded upon his declaration on 16th August 2026 and was conducted substantially in accordance with the law. However, the Petitioner shall contend that the confusion which arose thereafter was unlawful, continues to be mismanaged by the 2nd Respondent and, at the very least, shameful on the part of the 2nd Respondent.

12. Paragraph 10 of the Answer is noted as a general traverse. Save as is expressly admitted herein, the Petitioner denies that the 2nd Respondent is entitled to have the matters raised in its Answer upheld and repeats and relies upon the Petition and the Affidavit filed in support thereof.

Dated the ..... day of 2026

.....

PETITIONER

This Reply is filed by **Messrs Joseph Chirwa and Company,** Advocates for the Petitioner herein, whose address for service is Plot No. 10426 Manda Hill Road, Behind Manda Hill Mall, Olympia Park, Lusaka.

TO:

Messrs VN Michelo & Partners

2nd Floor, Afcom House, Room 81

P.O Box 21103

KITWE

(Advocates for the 1st Respondent)

AND TO:

Messrs Chanza Sikazwe Advocates

Plot 1721/M/H Main Street, Ibex Hill

P.O. Box Postnet-Kabulonga Box 217

LUSAKA

(Advocates for the 2nd Respondent)

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REPUBLIC OF ZAMBIA HIGH COURT OF ZAMBIA 16 SEP 2026 PRINCIPAL REGISTRY 8 P.O. BOX 50067, LUSAKA.

COMBINED SKELETON ARGUMENTS AND LIST OF AUTHORITIES IN SUPPORT OF PETITIONER'S REPLY TO THE 1ST & 2ND RESPONDENT'S ANSWER

MAY IT PLEASE THE COURT.

These are the Petitioner's Skeleton Arguments in support of his Reply to the 1st Respondent's Answer to the Election Petition, filed pursuant to Rule 10(7)(b) of the High Court (Election Petition) Rules, 2026. In accordance with Rule 10(8) of the said Rules, these arguments are confined to the issues raised in the 1st Respondent's Answer.

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(a) The Electoral Process Act No. 35 of 2016, as amended by the Electoral Process (Amendment) Act No. 12 of 2026.

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ii. Independent Electoral and Boundaries Commission v Maina Kiai & 5 Others, Civil Appeal No. 105 of 2017; [2017] eKLR (Court of Appeal of Kenya).

iii. Mohinder Singh Gill & Anr v Chief Election Commissioner, New Delhi & Ors, AIR 1978 SC 851 (Constitution Bench, Supreme Court of India).

iv. Morgan v Simpson [1975] QB 151 (Court of Appeal of England and Wales).

INTRODUCTION

1. MY LADY, as the record shall show, the Petitioner filed his petition on 31st August 2026 challenging the 2nd Respondents recognition of the 1st Respondents declaration and purported election as member of Parliament for Lupososhi Constituency. The bedrock of the petitioners case was that the Petitioner and not the 1st Respondent was declared duly elected by the returning officer on 16th August 2026 and further that instead, the 1st Respondent was further declared as duly elected only 2 days later on 18th August 2026. The Petitioner proffered a copy of his declaration exhibited as LCB1 and provided video evidence of the undertaking.
2. As the record shall show, on 10th September 2026, both the 1st and the 2nd Respondent, accordingly and by way of answer filed their opposition to the Petitioner's claims and instead averred that while the Petitioner was declared winner by the returning officer on 16th August 2026, the 1st Respondent was declared winner earlier on the same day. Further that the 1st Respondent was further and later, on 18th August 2026, by way of a 'clarification declaration' redeclared winner for reason that his initial declaration was deemed unclear and was amid confusion. Both Respondents proffered a copy of the said 1st Respondent's declaration respectively as SM1 and as OK1.
3. MY LADY, in terms of the legal arguments as to which declaration would prevail in a situation where there is more than one such declaration, we are of the understanding that both the 1st and the 2nd Respondents agree and are reconciled to the legal position that a first declaration caries the day and that such declaration can only be questioned through the judicial process provided for under the Constitution and the Electoral Process Act. We therefore consider that

this has significantly narrowed down the issues in contention to a single issue for this court to determine; *which of the two candidates, the Petitioner or the 1st Respondent was declared first so as to establish who between the two was duly elected.*

A. THE DECLARATION

1. MY LADY, Section 72 of the Electoral Process Act, as amended provides as follows:

'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.'

2. Further, Regulation 50 of the Electoral Process (General) Regulations, 2016 as amended states as follows:

> ***50. (1) The returning officer shall receive the votes counted at the polling stations in the constituency, district or ward, total the votes of the poll for each candidate from the ballot paper accounts of each polling station.***
>
> ***(2) In every constituency where a poll in respect of an election to the office of President, mayor or council chairperson has been taken, the returning officer for that constituency shall, without delay after the totalling of the votes has been completed, announce the results of each candidate in Form GEN 20b set out in the Schedule and inform the Commission of the number of valid votes cast in the election and the number of valid votes cast for each candidate and votes rejected.***
>
> ***(3) <u>When the totalling of the votes for National Assembly or local government elections has been completed and the result of the poll ascertained, the returning officer shall:</u>***

(a) complete in duplicate a declaration of the results of the poll in Form GEN 21 set out in the Schedule;

(b) declare to be elected as Member of Parliament, mayor, council chairperson or councillor, the candidate to whom the majority of votes were cast by reading aloud in public at the place where the totalling was conducted; and

3. Black's Law dictionary defines 'declare' as: ***"A formal statement, proclamation, announcement, esp. one embodied in an instrument"***
4. My Lady, it is without a doubt that a declaration being a culmination of the event known as an election and whose embodiment, in the case of a Parliamentary Election, is required to be contained in an instrument prescribed by law as form Gen20b, is the only evidence of an such election being duly declared subject only to challenge through the judicial mechanism established by way of election petition. The above position appears entirely agreed to by the 1st and 2nd Respondent and thus needs no debate.
5. My Lady, by his own answer, 1st Respondent's in his Paragraph 4 asserts that he was "first declared" duly elected on 16th August 2026 yet his own Exhibit "SM1" evidence to the contrary indicating that his declaration was in fact made and dated 18th August 2026, not 16th August 2026.
6. My Lady, similarly, the 2nd Respondent alleges that it declared the 1st Respondent duly elected on 16th August 2026 but its own Exhibit OK1 evidences the factual position that the 2nd Respondent declared the 1st Respondent as elected only on 18th August 2026, two (02) days later from the declaration of the Petitioner and to the close of that election.
7. It therefore follows, on the 1st and 2nd Respondent's own pleaded case, that the single document on which their entire rebuttal rests is one that they both admit as being null, void and illegal. A litigant cannot found a defence on an instrument he concedes to be of no legal effect. This is not a matter requiring resolution of disputed fact; it is apparent on the face of

both the Respondent's respective Answers and their own exhibits and is submitted to be dispositive of their case without more.

8. My Lady, it is clear as day that the assertion by the 1st and the 2nd Respondents that there was purportedly an earlier declaration of the 1st Respondent before that of the Petitioner on 16th August 2026 is at best speculative as it lacks any evidential backing. The 1st and 2nd Respondents own evidence clearly demonstrates the sequence of events in the Petitioners favour. Despite the 2nd Respondents claim in paragraph 7 of its Affidavit that some declaration of the 1st Respondent was made 'amid an uproar' its own video evidence and that of the 1st Respondent shows no such thing except to support the Petitioners account of events that the attempt made to declare the 1st Respondent was stopped and objected to and therefore did not take place.
9. My Lady, we strongly contend and hereby submit that based on the foregoing, this honourable Court makes a finding of undisputed fact that the Petitioner and not the 1st Respondent was declared first as winner for the Lupososhi Parliamentary Election, the Petitioner's declaration having and been made on 16th August 2026 as compared to that of the 1st Respondents which was made on 18th August 2026. We further submit that on this basis, this honourable Court proceeds to determine the matter and grant the reliefs as prayed in the petition; to *inter alia* declare the Petitioner as duly elected member of parliament for Lupososhi constituency and order that he takes up his rightful place at Parliament in substitution of the 1st Respondent.
10. In the unlikely event that this honourable court dispels our above submission capable of concluding this matter, we shall, in the alternative, proceed to argue as below:

B. THE UNLAWFUL ADMINISTRATIVE EFFORT TO CHANGE A DECLARED RESULT

4. My Lady, having had already established that no declaration was ever made in favour of 1st Respondent nor in favour of anyone else other than Petitioner on 16th August 2026, we must examine the 2nd Respondents assertions namely that: a purported report of the District Election Officer and/or the Returning Officer could authenticate or confirm an election; and

that a returning officer could validly exercise the powers of the 2nd Respondent as contained in Section 76 of the Electoral Process Act.

5. My Lady, it is our contention that all elections under Lupososhi constituency had concluded on 16th August 2026. The declaration of the Petitioner as duly elected member of parliament being the last event. Following this, the duly announced, duly declared and duly witnessed results were promptly transmitted to the 2nd Respondent as required under 74 of the Electoral Process Act and as supported by Regulation 50(3)(c) of the General Regulations of that Act. This, as alluded to, in the Petitioners Reply and Affidavit hereto, was evident by the announcement and the addition of the presidential election results for Lupososhi constituency to the tally of the national presidential vote as announced by the 2nd Respondent from the national totalling centre via national television on 17th August 2026.
6. My Lady, we therefore strongly contend that was irregular and unlawful for the 2nd Respondent, having already had the results of the poll from Lupososhi rely on a report from a defunct returning to ascertain the result of the election, albeit only for the Parliamentary election had had never needed any such report in relation to the presidential election despite being similarly circumstanced.
7. My Lady, we contend that the irregularity even becomes more apparent when the 2nd Respondent purports (at page 4, para 2 and 3 of its skeleton arguments) that the returning officer, by making the second declaration of 18th August 2026 (the only recorded declaration, of the 1st Respondent and upon which he relies) was performing the corrective function of the 2nd Respondent as envisaged under Section 76 of the Electoral Process Act. While also in another breath alleging that the said 18th event was a clarificatory declaration as alluded at paragraph 14 of the Affidavit sworn by the Returning Officer.
8. To start with, we disagree in totality that the Returning Officer had any lawful power to correct his own declared result firstly for reason that he, upon declaring the Petitioner duly elected, became functus officio thus could not do anything of consequence to the result. Secondly because the law does not imbue him with any power to review his own declarations, and thirdly

but more importantly, being an electoral officer himself, the power contained under section 76 of the Act is not reposed in him at all. We shall contend that the returning officers' powers were fully spent 16th August 2026 thus rendering him legally impotent to do anything of consequence to the result, whether by way of report, subsequent declaration or otherwise.

9. My Lady, we thus submit that any purported correction taken by the returning officer on 18th August 2026 is unlawful and does not affect the declared result of 16th August 2026. We further submit that the law does not provide for or envisage any clarification declaration nor any report by a returning officer capable of reversing or superseding a declared result following the close of an election for any reason, or at all.

10. My Lady, in any case, it is the Petitioner's submission, based on the evidence presently available, that no correction under Section 76 of the Act has ever been made by the Commission in respect of any election in Lupososhi Constituency — whether before, on, or after 18th August 2026. In any case, no circumstances warranting any such correction even properly so done ever arose in this case, a position which was adequately argued in the Petitioners Skeleton Arguments in support of his petition filed on 31st August 2026.

11. The Petitioner strongly submits that, on the preponderance of the evidence, the purported clarification declaration is the only declaration of the 1st Respondent on record. Properly characterised, it is a second declaration of the election, upon which the Respondents unlawfully rely in respect of the Lupososhi Constituency parliamentary election, to the prejudice of both the Petitioner and the electorate of Lupososhi Constituency.

11. My Lady, nothing in sections 72 or 76 admits of a second or clarifying declaration; to read one in, would be to add words Parliament did not enact.

12. This construction is reinforced by persuasive Commonwealth authority on the finality of a declared result. In *Independent Electoral and Boundaries Commission v Maina Kiai & 5 Others*, the Court of Appeal of Kenya held 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."

13. My Lady, In *Mohinder Singh Gill & Anr v Chief Election Commissioner*, the Supreme Court of India held that:

"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" (AIR 1978 SC 851 at p. 289, para E–F).

14. The Supreme Court of Uganda in *Besigye v Museveni & Anor, Election Petition No. 1 of 2001*, held that:

> ***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.***

15. My Lady, in *Morgan v Simpson [1975] QB 151 (CA)*, 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.***

16. Section 97(1) of the Act is to like effect as above when it instructs that an election ***"shall not be questioned except by an election petition presented under this Part."***

17. My lady, we strongly contend that given that the only lawful declaration for Lupososhi Constituency is the Form GEN 20b of 16th August 2026, declaring the Petitioner duly elected; that any subsequent document — however described, and whatever motivated it — is not a fresh or alternative declaration known at law. The 1st or 2nd Respondent or both ought to have presented an election petition challenging the said declaration for the reasons which they attempt to now do; they cannot use their Answer to mount a collateral challenge to the Petitioner's declaration that Part IX of the Act required them to bring, if at all, by petition.

C. NO VIOLENCE, DURESS OR UNDUE INFLUENCE

18. My Lady, in terms of the allegations of violence, duress and undue influence, et cetera, it is our humble submission that such allegations could not, after the declaration of the petitioner

as duly elected, be used as an administrative reason by the 2nd Respondent to overturn, override or supersede such declaration following the close of election. We contend that the only avenue available to the 1st and 2nd Respondent for redress should they wish to overturn the Petitioner's duly elected status on those or any other ground, is through as election petition as provided under Section 97 of the Electoral Process Act.

19. My Lady, the 1st Respondent's alleges that the Returning Officer was moved to act in the Petitioner's favour by "undue influence, violence and threats" (Answer, paragraphs 4, 8, 9 and 10). Similarly, the Returning Officer himself, on behalf of the 2nd Respondent, alleges that he declared the Petitioner under duress Affidavit, paragraph 13; Answer, paragraph 5). We contend alleged violence, duress and/or undue influence inherently improbable given the continuous presence of uniformed, armed police and security personnel, at the totalling centre as shown the various video evidence exhibited by both the 1st and the 2nd Respondent. Especially given that the polling and party agents and monitors present at the totalling centre numbered no more than approximately ten (10) persons. A fact which can also be descended from the video evidence. We contend that, it is therefore not a credible account that so small and unarmed group could overbear the security detail present so as to exert violence upon an electoral officer of the Returning Officers standing.

20. My Lady, what the video evidence shows in fact is a vocal and emotional protest — not violence — at the spectacle of the Returning Officer appearing to depart from an already correctly tallied result. My Lady, we shall contend that any reasonable person acting and participating in such a highly contested election and subjected to similar conditions would react in the same manner and fashion to thwart any such attempt by a returning officer.

D. THE ELECTION RESULTS ARE CORROBORATIVE

21. My Lady, the Declaration of the Results of the Poll (Form GEN 20a) and the Record of Proceedings at the Totalling of Votes (Form ECZ 19) for the Presidential election in Lupososhi Constituency are each dated 16th August 2026, signed by the same Returning

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> ***50. (1) The returning officer shall receive the votes counted at the polling stations in the constituency, district or ward, total the votes of the poll for each candidate from the ballot paper accounts of each polling station.***
>
> ***(2) In every constituency where a poll in respect of an election to the office of President, mayor or council chairperson has been taken, the returning officer for that constituency shall, without delay after the totalling of the votes has been completed, announce the results of each candidate in Form GEN 20b set out in the Schedule and inform the Commission of the number of valid votes cast in the election and the number of valid votes cast for each candidate and votes rejected.***
>
> ***(3) <u>When the totalling of the votes for National Assembly or local government elections has been completed and the result of the poll ascertained, the returning officer shall:</u>***

(a) complete in duplicate a declaration of the results of the poll in Form GEN 21 set out in the Schedule;

(b) declare to be elected as Member of Parliament, mayor, council chairperson or councillor, the candidate to whom the majority of votes were cast by reading aloud in public at the place where the totalling was conducted; and

3. Black's Law dictionary defines 'declare' as: ***"A formal statement, proclamation, announcement, esp. one embodied in an instrument"***
4. My Lady, it is without a doubt that a declaration being a culmination of the event known as an election and whose embodiment, in the case of a Parliamentary Election, is required to be contained in an instrument prescribed by law as form Gen20b, is the only evidence of an such election being duly declared subject only to challenge through the judicial mechanism established by way of election petition. The above position appears entirely agreed to by the 1st and 2nd Respondent and thus needs no debate.
5. My Lady, by his own answer, 1st Respondent's in his Paragraph 4 asserts that he was "first declared" duly elected on 16th August 2026 yet his own Exhibit "SM1" evidence to the contrary indicating that his declaration was in fact made and dated 18th August 2026, not 16th August 2026.
6. My Lady, similarly, the 2nd Respondent alleges that it declared the 1st Respondent duly elected on 16th August 2026 but its own Exhibit OK1 evidences the factual position that the 2nd Respondent declared the 1st Respondent as elected only on 18th August 2026, two (02) days later from the declaration of the Petitioner and to the close of that election.
7. It therefore follows, on the 1st and 2nd Respondent's own pleaded case, that the single document on which their entire rebuttal rests is one that they both admit as being null, void and illegal. A litigant cannot found a defence on an instrument he concedes to be of no legal effect. This is not a matter requiring resolution of disputed fact; it is apparent on the face of

both the Respondent's respective Answers and their own exhibits and is submitted to be dispositive of their case without more.

8. My Lady, it is clear as day that the assertion by the 1st and the 2nd Respondents that there was purportedly an earlier declaration of the 1st Respondent before that of the Petitioner on 16th August 2026 is at best speculative as it lacks any evidential backing. The 1st and 2nd Respondents own evidence clearly demonstrates the sequence of events in the Petitioners favour. Despite the 2nd Respondents claim in paragraph 7 of its Affidavit that some declaration of the 1st Respondent was made 'amid an uproar' its own video evidence and that of the 1st Respondent shows no such thing except to support the Petitioners account of events that the attempt made to declare the 1st Respondent was stopped and objected to and therefore did not take place.
9. My Lady, we strongly contend and hereby submit that based on the foregoing, this honourable Court makes a finding of undisputed fact that the Petitioner and not the 1st Respondent was declared first as winner for the Lupososhi Parliamentary Election, the Petitioner's declaration having and been made on 16th August 2026 as compared to that of the 1st Respondents which was made on 18th August 2026. We further submit that on this basis, this honourable Court proceeds to determine the matter and grant the reliefs as prayed in the petition; to *inter alia* declare the Petitioner as duly elected member of parliament for Lupososhi constituency and order that he takes up his rightful place at Parliament in substitution of the 1st Respondent.
10. In the unlikely event that this honourable court dispels our above submission capable of concluding this matter, we shall, in the alternative, proceed to argue as below:

B. THE UNLAWFUL ADMINISTRATIVE EFFORT TO CHANGE A DECLARED RESULT

4. My Lady, having had already established that no declaration was ever made in favour of 1st Respondent nor in favour of anyone else other than Petitioner on 16th August 2026, we must examine the 2nd Respondents assertions namely that: a purported report of the District Election Officer and/or the Returning Officer could authenticate or confirm an election; and

that a returning officer could validly exercise the powers of the 2nd Respondent as contained in Section 76 of the Electoral Process Act.

5. My Lady, it is our contention that all elections under Lupososhi constituency had concluded on 16th August 2026. The declaration of the Petitioner as duly elected member of parliament being the last event. Following this, the duly announced, duly declared and duly witnessed results were promptly transmitted to the 2nd Respondent as required under 74 of the Electoral Process Act and as supported by Regulation 50(3)(c) of the General Regulations of that Act. This, as alluded to, in the Petitioners Reply and Affidavit hereto, was evident by the announcement and the addition of the presidential election results for Lupososhi constituency to the tally of the national presidential vote as announced by the 2nd Respondent from the national totalling centre via national television on 17th August 2026.
6. My Lady, we therefore strongly contend that was irregular and unlawful for the 2nd Respondent, having already had the results of the poll from Lupososhi rely on a report from a defunct returning to ascertain the result of the election, albeit only for the Parliamentary election had had never needed any such report in relation to the presidential election despite being similarly circumstanced.
7. My Lady, we contend that the irregularity even becomes more apparent when the 2nd Respondent purports (at page 4, para 2 and 3 of its skeleton arguments) that the returning officer, by making the second declaration of 18th August 2026 (the only recorded declaration, of the 1st Respondent and upon which he relies) was performing the corrective function of the 2nd Respondent as envisaged under Section 76 of the Electoral Process Act. While also in another breath alleging that the said 18th event was a clarificatory declaration as alluded at paragraph 14 of the Affidavit sworn by the Returning Officer.
8. To start with, we disagree in totality that the Returning Officer had any lawful power to correct his own declared result firstly for reason that he, upon declaring the Petitioner duly elected, became functus officio thus could not do anything of consequence to the result. Secondly because the law does not imbue him with any power to review his own declarations, and thirdly

but more importantly, being an electoral officer himself, the power contained under section 76 of the Act is not reposed in him at all. We shall contend that the returning officers' powers were fully spent 16th August 2026 thus rendering him legally impotent to do anything of consequence to the result, whether by way of report, subsequent declaration or otherwise.

9. My Lady, we thus submit that any purported correction taken by the returning officer on 18th August 2026 is unlawful and does not affect the declared result of 16th August 2026. We further submit that the law does not provide for or envisage any clarification declaration nor any report by a returning officer capable of reversing or superseding a declared result following the close of an election for any reason, or at all.

10. My Lady, in any case, it is the Petitioner's submission, based on the evidence presently available, that no correction under Section 76 of the Act has ever been made by the Commission in respect of any election in Lupososhi Constituency — whether before, on, or after 18th August 2026. In any case, no circumstances warranting any such correction even properly so done ever arose in this case, a position which was adequately argued in the Petitioners Skeleton Arguments in support of his petition filed on 31st August 2026.

11. The Petitioner strongly submits that, on the preponderance of the evidence, the purported clarification declaration is the only declaration of the 1st Respondent on record. Properly characterised, it is a second declaration of the election, upon which the Respondents unlawfully rely in respect of the Lupososhi Constituency parliamentary election, to the prejudice of both the Petitioner and the electorate of Lupososhi Constituency.

11. My Lady, nothing in sections 72 or 76 admits of a second or clarifying declaration; to read one in, would be to add words Parliament did not enact.

12. This construction is reinforced by persuasive Commonwealth authority on the finality of a declared result. In *Independent Electoral and Boundaries Commission v Maina Kiai & 5 Others*, the Court of Appeal of Kenya held 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."

13. My Lady, In *Mohinder Singh Gill & Anr v Chief Election Commissioner*, the Supreme Court of India held that:

"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" (AIR 1978 SC 851 at p. 289, para E–F).

14. The Supreme Court of Uganda in *Besigye v Museveni & Anor, Election Petition No. 1 of 2001*, held that:

> ***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.***

15. My Lady, in *Morgan v Simpson [1975] QB 151 (CA)*, 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.***

16. Section 97(1) of the Act is to like effect as above when it instructs that an election ***"shall not be questioned except by an election petition presented under this Part."***

17. My lady, we strongly contend that given that the only lawful declaration for Lupososhi Constituency is the Form GEN 20b of 16th August 2026, declaring the Petitioner duly elected; that any subsequent document — however described, and whatever motivated it — is not a fresh or alternative declaration known at law. The 1st or 2nd Respondent or both ought to have presented an election petition challenging the said declaration for the reasons which they attempt to now do; they cannot use their Answer to mount a collateral challenge to the Petitioner's declaration that Part IX of the Act required them to bring, if at all, by petition.

C. NO VIOLENCE, DURESS OR UNDUE INFLUENCE

18. My Lady, in terms of the allegations of violence, duress and undue influence, et cetera, it is our humble submission that such allegations could not, after the declaration of the petitioner

as duly elected, be used as an administrative reason by the 2nd Respondent to overturn, override or supersede such declaration following the close of election. We contend that the only avenue available to the 1st and 2nd Respondent for redress should they wish to overturn the Petitioner's duly elected status on those or any other ground, is through as election petition as provided under Section 97 of the Electoral Process Act.

19. My Lady, the 1st Respondent's alleges that the Returning Officer was moved to act in the Petitioner's favour by "undue influence, violence and threats" (Answer, paragraphs 4, 8, 9 and 10). Similarly, the Returning Officer himself, on behalf of the 2nd Respondent, alleges that he declared the Petitioner under duress Affidavit, paragraph 13; Answer, paragraph 5). We contend alleged violence, duress and/or undue influence inherently improbable given the continuous presence of uniformed, armed police and security personnel, at the totalling centre as shown the various video evidence exhibited by both the 1st and the 2nd Respondent. Especially given that the polling and party agents and monitors present at the totalling centre numbered no more than approximately ten (10) persons. A fact which can also be descended from the video evidence. We contend that, it is therefore not a credible account that so small and unarmed group could overbear the security detail present so as to exert violence upon an electoral officer of the Returning Officers standing.

20. My Lady, what the video evidence shows in fact is a vocal and emotional protest — not violence — at the spectacle of the Returning Officer appearing to depart from an already correctly tallied result. My Lady, we shall contend that any reasonable person acting and participating in such a highly contested election and subjected to similar conditions would react in the same manner and fashion to thwart any such attempt by a returning officer.

D. THE ELECTION RESULTS ARE CORROBORATIVE

21. My Lady, the Declaration of the Results of the Poll (Form GEN 20a) and the Record of Proceedings at the Totalling of Votes (Form ECZ 19) for the Presidential election in Lupososhi Constituency are each dated 16th August 2026, signed by the same Returning

Officer, Mr Oscar Kafunda, and witnessed by the same persons who witnessed the Petitioner's own Parliamentary declaration.

22. It is submitted that the result of the presidential election of that of the parliamentary election are themselves corroborative. The same officer, before the same independent witnesses, on the same day, at the same totalling centre, declared both results.

CONCLUSION AND PRAYER

23. For the reasons set out above and, the Petitioner submits that the 1st and 2nd Respondent's Answers disclose no defence capable of disturbing the declaration of 16th August 2026, and they are, on their own respective terms, self-defeating. The Petitioner prays that this Honourable Court dismisses the matters raised in the Answers and grants the reliefs sought in the Petition.

Dated the ..... day of 2026

Drawn by **Messrs Joseph Chirwa and Company,** Advocates for the Petitioner herein, whose address for service is Plot No. 10426 Manda Hill Road, Behind Manda Hill Mall, Olympia Park, Lusaka.

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