IN THE HIGH COURT FOR ZAMBIA **2026/HP/EP/028**
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(Constitutional Jurisdiction)

IN THE MATTER OF:	**ARTICLE 1(2), (3), AND 8(c), (d), (e), OF THE CONSTITUTION OF ZAMBIA, CHAPTER ONE OF THE LAWS OF ZAMBIA**
IN THE MATTER OF:	**ARTICLE 45(1)(a), (2)(a)(b)(c), 73(1) OF THE CONSTITUTION OF ZAMBIA, CHAPTER ONE OF THE LAWS OF ZAMBIA AS READ TOGETHER WITH SECTION 96, 97, 98 AND 99 OF THE ELECTORAL PROCESS ACT No. 35 OF 2016**
IN THE MATTER OF:	**SECTION 81 (1)(a), 83 (1) (a)(d), (2) AS READ TOGETHER WITH THE ELECTORAL CODE OF CONDUCT OF THE ELECTORAL PROCESS ACT No. 35 OF 2016**
IN THE MATTER OF:	**PART III OF THE HIGH COURT (ELECTION PETITION) RULES 2026**
IN THE MATTER OF:	**AN ELECTION PETITION RELATING TO CHIRUNDU CONSTITUENCY PARLIAMENTARY ELECTIONS HELD ON THE 13TH DAY OF AUGUST, 2026**

BETWEEN:

NEVERS MUCHINDU	**PETITIONER**
AND	
ELECTORAL COMMISSION OF ZAMBIA	**1ST RESPONDENT**
JAMES K. MWANJA	**2ND RESPONDENT**

SUMMONS FOR AN ORDER FOR RECOUNT OF VOTES PURSUANT TO RULE 17(1) OF THE HIGH COURT (ELECTION PETITION) RULES, 2026 (STATUTORY INSTRUMENT NO. 31 OF 2026)

LET THE PARTIES concerned attend before the **HON. MRS. JUSTICE K.E MWENDA ZIMBA** in Chambers on the _____day of _____2026 at _____hours on the hearing of an application by the Petitioner for Recount of the Votes relating to the Chirundu Constituency Parliamentary Election held on 13th August 2026, on the following grounds:

a. That the Petitioner has raised serious allegations of irregularities in the sorting, counting, verification and announcement of the results of the said election;

b. That an order for recount will assist this Honourable Court in ascertaining the true numerical position and in determining the issues raised in the Petition.

AND costs shall be in the cause.

Dated at Lusaka this _____ day of _____ 2026

Drawn by: .....

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LIST OF AUTHORITIES AND SKELETON ARGUMENTS IN SUPPORT OF SUMMONS FOR AN ORDER FOR SCRUTINY AND RECOUNT OF VOTES

STATUTE

1. The High Court (Election Petition) Rules, 2026 (Statutory Instrument No. 31 of 2026)
2. The Electoral Process Act No. 35 of 2016
3. The High Court Act Chapter 27 of The Laws of Zambaia

CASE LAW

1. **Seth Shibulo Loongo v Kennedy Mpolobe Shepande (1983/HP/EP/25) [1984] ZMHC 9 (24 May 1984).**
2. **Kapango Bwanga Jeffrey Wisamba v Mathews McKay Makayi 1979/HP/EP 12.**
3. **Lweendo v Imbuwa and Others (HP/EP 63 of 2016) [2016] ZMHC 210 (21 November 2016)**
4. **Ngimbu v Kucheka and Another Selected Judgment NO. 2 of 2018 ZMCC**

ARGUMENTS

1.1.1. **MAY IT PLEASE THIS HONORABLE COURT**; these are the Petitioner's Skeleton Arguments in support of the Summons for an Order for Interim Scrutiny and Recount of Votes in the matter herein.

1.1.2. **My Lady, Order 3 Rule 2** of the High Court Rules Chapter 27 of the Laws of Zambia provides that:

"Subject to any particular rules, the Court or a Judge may, in all causes and matters, make any interlocutory order which it or he considers necessary for doing justice, whether such order has been expressly asked by the person to the benefit of the order or not"

1.1.3. **My Lady, Rule 3** of the High Court (Election Petition) Rules, 2026 provides that:

"The jurisdiction vested in the Court to hear and determine a nomination petition or an election shall, as regards practice and procedure, be exercised in the manner provided by the Act, these Rules, the High Court Act or any other written law, or by such order of the Court made under the Act or any other written law"

1.1.4. My Lady, The application is made pursuant TO **RULE 17** OF THE HIGH COURT (ELECTION PETITION) RULES, 2026 (STATUTORY INSTRUMENT NO. 31 OF 2026), which provides as follows:

"(1) Subject to subrule (3), a party may make an interlocutory application to be heard and determined by the Court.

(2) The Court may give directions or orders in relation to any interlocutory matter.

(3) Despite subrule (1), an interlocutory application shall not be raised seven days before commencement of trial." (Underlined for Emphasis)

1.1.5. My Lady, It is submitted that by virtue of the foregoing provisions, this Honourable Court is clothed with jurisdiction to hear and determine the present application. The application is properly brought as an interlocutory application and seeks an order which will assist this Honourable Court in ascertaining the true position regarding the votes cast and counted in the election the subject of the Petition.

1.1.6. Further, while a recount is not ordinarily a substantive relief sought in an election petition, it is an interlocutory process which may be ordered by the Court where the circumstances of the case justify such an order. This is particularly so where, as in the present case, the Petitioner has demonstrated in the Petition that objections were raised against the manner in which the votes were counted by the Presiding Officers.

1.1.7. My Lady, we respectfully draw the attention of this Honourable Court to the decision in **SETH SHIBULO LOONGO V KENNEDY MPOLOBE SHEPANDE (1983/HP/EP/25) [1984] ZMHC 9** (24 MAY 1984), wherein the Court ordered a recount of the votes.

1.2. The Court stated:

"**The petitioner's prayer is for a scrutiny. Suffice is to mention that scrutiny is not recounting, and a request for recounting is not by petition but by interlocutory summons supported by an affidavit (see Halsburys Laws of England, Volume 15, 4th Edition paragraph 940). On the evidence as a whole I am satisfied that a case for a recount has been made out.` I am further satisfied that I can at this stage make an interlocutory order for a recount without making a determination in accordance with the prayer to the petition. The outcome of**

the recount will in my view greatly assist the Court in determining the issue raised in the petition. In the circumstances I order that there shall be a recount. For this purpose the order of the Court is that there be a recount of the votes in favour of the petitioner and the respondent only. The recount to be conducted by the Registrar of the High Court with the assistance of the counting assistants to be named by the Director of Elections in the presence of counsel for both the petitioner and the respondent as well as their clients if they do so desire. The recount to be done within fourteen days from the date hereof and the Registrar thereafter to submit a report of the result of the recount to the court. The court will thereafter set a date for judgment which date will be communicated to the parties. Recount of votes cast, ordered" (Underlined for Emphasis)

1.2.1. The Court proceeded to give directions regarding the manner in which the recount was to be conducted and ordered that the results thereof be reported to the Court for purposes of assisting it in determining the issues raised in the Petition.

1.2.2. The foregoing authority is instructive in the present matter. It establishes that a recount may properly be ordered at an interlocutory stage, before the determination of the substantive issues raised in the Petition, where the circumstances demonstrate that such a recount would assist the Court in determining the issues before it.

1.2.3. Further, in **KAPANGO BWANGA JEFFREY WISAMBA -V- MATHEWS MCKAY MAKAYI, 1979/HP/EP/12**, the Court considered the nature and purpose of a recount and held, inter alia, as follows:

"(i) A returning officer must give the proceedings his continued supervision.

(ii) A returning officer has no power to conduct a recount and once he has read out the Declaration of the Result of the Poll form declaring a candidate duly elected, he is functus officio in the matter of recount.

(iii) Before the returning officer declares a candidate duly elected he must inform the candidates the result of the poll and give them reasonable opportunity to request for a recount to be conducted.

(iv) Under s. 19 of the Electoral Act a petitioner may apply to the High Court for a "scrutiny" to be carried out, this enables the court to inquire into the validity of the

votes cast, and determine the number of valid votes cast for each candidate in respect of which the application for a scrutiny is made.

(v) Although the Act does not provide for a recount, there is a common law right in the matter and this is done by way of interlocutory summons supported by affidavit before the trial of the petition.

(vi) A recount, does not provide a relief but is merely an interlocutory proceedings which clarifies the situation and enables the court at the hearing of the petition to come to a decision in granting relief under s. 28 of the Act" (Underlined for Emphasis)

1.2.4. To this point, we also refer to the case of **LWEENDO V IMBUWA AND OTHERS (HP/EP 63 OF 2016) [2016] ZMHC 210 (21 NOVEMBER 2016)** wherein the Court held as follows:

"The Petitioner did not make any application relating to the interim reliefs sought in paragraph 19 (al (il and (ii)of the Petition. The said reliefs cannot either be considered or granted at this stage. I accordingly dismiss them.....

Thus, as ably argued by counsel for the 2nd Respondent, the other remedies which the Petitioner seeks such as an order of recount and verification of results, among others, are untenable at this stage. They ought to have been made at an interlocutory stage. I shall therefore only consider the remedies set out in Section 99 of the Electoral Process Act"

1.2.5. My Lady, this position was restated by the **Constitutional Court** in the case of **Ngimbu v Kucheka and Another Selected Judgment NO. 2 of 2018 ZMCC**, the Constitutional Court stated thus:

"The Applicable procedure for a vote recount is settled. Only where a petitioner files a formal interlocutory application can the Court order a vote re – count."

1.2.6. My Lady, we respectfully submit, that the principle in the above cases remain relevant to the present application. A recount is not, in itself, a substantive relief sought by the Petitioner. Rather, it is an interlocutory mechanism intended to clarify the numerical position and assist the Court in effectively determining the substantive questions raised in the Petition.

1.2.7. In the present case, the Petitioner has specifically raised concerns regarding the manner in which the counting of votes was conducted and has demonstrated that

objections were made during the counting process. The proposed interim scrutiny and recount would therefore serve the legitimate purpose of establishing whether the votes recorded in the relevant election results accurately reflect the votes actually cast and counted.

1.2.8. We accordingly submit that the present application is properly before this Honourable Court and falls within the Court's jurisdiction under Rule 17 of the High Court (Election Petition) Rules, 2026. The order sought is interlocutory in nature and, if granted, will assist rather than prejudice the Court in the ultimate determination of the Petition.

Further, the Petitioner did not remain silent until after the declaration. His agents raised objections during the sorting and counting processes, appealed to the Returning Officer before the final tally and declaration, and the Petitioner subsequently made a written complaint. The issue has therefore been consistently been raised in accordance with section **64, 69 and 70** of the Electoral Process Act. The ballot papers provide neutral primary evidence capable of resolving the parties' competing positions on the validity and infractions of the election for Chirundu Constituency without requiring the Court to speculate.

The Court can protect the integrity and efficiency of the exercise by directing that the recount be supervised by the Registrar, that the sealed ballot boxes be produced by the 1st Respondent, that all parties be entitled to attend through Counsel or duly authorised representatives, and that the Registrar file a report setting out the result of the recount.

1.2.10 **My Lady,** Such an order causes no unfair prejudice to either Respondent. If the existing figures are accurate, the recount will confirm them. If they are inaccurate, the recount will provide the Court with reliable evidence before it determines the Petition.

CONCLUSION

PRAYER

In the circumstances, we respectfully pray that this Honourable Court be pleased to grant the order for interim verification and recount of the votes as prayed for in the Summons.

We are Most obliged.

Dated the _____ day of_____2026

Drawn by: .....

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ELECTORAL COMMISSION OF ZAMBIA	**1ST RESPONDENT**
JAMES K. MWANJA	**2ND RESPONDENT**

AFFIDAVIT IN SUPPORT OF SUMMONS FOR AN ORDER FOR RECOUNT OF VOTES.

I, a Zambian national of House Number 232 Medium Cost, Chirundu in the Southern Province of the Republic of Zambia, **MAKE OATH AND SAY** as follows:

1. That my name, nationality and residential address are as stated above.
2. That I am the Petitioner herein and was a candidate in the Chirundu Constituency Parliamentary Election held on 13th August 2026, and I am therefore competent to depose to this Affidavit.

3. That I have filed an Election Petition challenging the declaration of the 2nd Respondent, James K. Mwanja, as the duly elected Member of Parliament for Chirundu Constituency.

4. That the 1st Respondent declared that the 2nd Respondent obtained 12,721 votes whilst I obtained 11, 698 votes, giving the 1st Respondent a declared majority of 1, 023 votes.

5. That during the sorting, counting and announcement of results, my polling agents raised objections to irregularities at various polling stations.

6. That I refer to and rely upon the objections and appeals already in the Affidavit Verifying Facts under paragraph 26 to 32.

7. That the Presiding Officers rejected the said objections and declined to order recounts, whereupon my agents appealed to the Returning Officer before the final tally, tabulation and declaration of results.

9. That I lodged a written complaint dated 14th August 2026 requesting that the objections be attended to and determined. Notwithstanding the appeals, the Returning Officer proceeded to announce and declare the final results. I refer to the said complaint already exhibited in the Affidavit Verifying facts as "NM 7".

10. That the disputed ballot papers were not recounted or otherwise subjected to a verification capable of resolving the objections raised by my agents.

12. That I am advised by my Advocates on record and verily believe the same to be true that when widespread objections and appeals are lodged with the 1st Respondent, the Hounorable Court will have jurisdiction to order a recount to ascertain the true position of the votes cast for a constituency.

13. That the GEN20 Forms obtained from my agents disclose material differences from the figures appearing in the Record of Proceedings for a number of polling stations.

14. That I am advised by my Advocates on record, and I verily believe the same to be true, that a recount is an interlocutory process available to this Honourable Court where there is evidence justifying the making of such an order.

25. That I am further advised by my Advocates on record, and I verily believe the same to be true, that a recount will not determine the Petition by itself but will provide objective evidence to assist this Honourable Court in determining the true number of votes cast for Chirundu Constituency and the issues raised in the Petition.

26. That in the premises, I verily believe that it is just and necessary that the ballot papers cast for Chirundu Constituency at all polling stations be recounted under the supervision of the Registrar of this Honourable Court and in the presence of the parties or their duly authorized representatives.
27. That unless this Honourable Court grants the Orders sought in the Interlocutory Summons filed herewith, the Petitioner will remain prejudiced.
28. That I verily believe the facts deposed herein are true and correct to the best of my knowledge, information and belief.

SWORN BY the said)
NEVERS MUCHINDU at Lusaka)
this 15 day of Sept 2026)

DEPONENT

BEFORE ME: _____

COMMISSIONER FOR OATHS

REPUBLIC OF ZAMBIA
HIGH COURT OF ZAMBIA
15 SEP 2026
COMMISSIONER FOR OATHS
P.O. BOX 50067, LUSAKA