IN THE HIGH COURT FOR ZAMBIA **2026/HP/EP/008**
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction)

IN THE MATTER OF: **SECTIONS 81, 83, 96, 97, 98, 99, AND 100 (PART VIII) OF THE ELECTORAL PROCESS ACT, 2016, & REGULATIONS 2, 4, 5, 14 & 15 OF THE ELECTORAL CODE OF CONDUCT**

AND

IN THE MATTER OF: **A PARLIAMENTARY ELECTION FOR CHITAMBO CONSTITUENCY HELD ON THE 13TH DAY OF AUGUST, 2026**

IN THE MATTER OF: **AN ELECTION PETITION BY REMEMBER MUTALE**

AND

BETWEEN:

REMEMBER MUTALE **PETITIONER**

AND

NELSON C. KABANDA **1ST RESPONDENT**

ELECTORAL COMMISSION OF ZAMBIA **2ND RESPONDENT**



2ND RESPONDENT'S ANSWER

The 2nd Respondent's Answer herein showeth that:

1. The 2nd Respondent is a statutory body established by Article 229 of the Constitution of Zambia (Amendment) Act No. 2 of 2016, mandated among other duties, to conduct Presidential, National Assembly, Local Government Elections and Voter Registration.
2. On 13th August, 2026, the country held General Elections in all the Constituencies including Chitambo Constituency in Serenje District.
3. The 2nd Respondent confirms that the Petitioner, Remember Mutale and the 1st Respondent, Nelson Kabanda, were the only two candidates in the Parliamentary Election for Chitambo Constituency.
4. As alleged by the Petitioner in paragraphs 1, 2, 3, 4 and 5, the Returning officer declared the Petitioner as the duly elected Member of Parliament having scored the majority of

the valid votes cast in the election. The Petitioner obtained 7,819 votes followed by the 1st Respondent at 7,662.

5. Contrary to the Petitioner's allegations in paragraph 7, the Petitioner was validly elected as the Member of Parliament. The allegations contained in paragraph 7 bordering on character assassination and theft allegations are denied as they are within the Petitioner's peculiar knowledge and the Petitioner shall be put to strict proof thereof.
6. The allegations in paragraph 7 (xi) of the Petition are denied. The Petitioner's agents were not intimidated or chased from the polling stations as alleged. On the contrary, counting, opening and closing of ballot boxes were witnessed by several accredited agents, monitors and observers who were present and the election results were verified and tallied. The agents, monitors and observers who were present were given copies of Gen20 and announcement of results forms.
7. The allegations in paragraph 8 and 9 are denied as the same are within the Petitioner's peculiar knowledge.
8. The Petitioner is not entitled to any of the relief sought or at all as the 1st Respondent was validly declared Member of Parliament during an election in which the majority of voters in the Constituency voted for a candidate whom they preferred.
9. Save where expressly admitted, the 2nd Respondent denies every allegation in the Petition as if the same was set out seriatim and traversed.

Dated at Lusaka the.....day of.....2026.

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REPUBLIC OF ZAMBIA
HIGH COURT OF ZAMBIA
14 SEP 2026
PRINCIPAL REGISTRY 3
P.O. BOX 50067, LUSAKA.

IN THE HIGH COURT FOR ZAMBIA **2026/HP/EP/008**

AT THE PRINCIPAL REGISTRY

HOLDEN AT LUSAKA

IN THE MATTER OF: SECTIONS 81, 83, 89, 96, 97, 98, 99 & 100, [PART VIII] OF THE ELECTORAL PROCESS ACT, 2016 [As Amended by Act No. 12 of 2026] & REGULATIONS 2, 4, 5, 14 & 15 OF THE ELECTORAL CODE OF CONDUCT

AND

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AND

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BETWEEN

REMEMBER MUTALE **PETITIONER**

AND

NELSON C. KABANDA **1ST RESPONDENT**

ELECTORAL COMMISSION OF ZAMBIA **2ND RESPONDENT**

1ST RESPONDENT'S SKELETON ARGUMENTS IN OPPOSITION TO PETITIONER'S AFFIDAVIT IN SUPPORT OF COMBINED SUMMONS FOR AN ORDER TO SET ASIDE THE 1ST RESPONDENT'S PROCESS FOR IRREGULARITY AND FOR LEAVE TO PRODUCE ORGINAL DEFACED OR DESTROYED POSTERS

LIST OF AUTHORITITIES

CASES

i. Isaac Mwaza and Another vs Chitalu Chilufya and 104 Others – 2026/HP/EP/002

ii. Kayombo Saviye vs Victor Lumayi and Electoral Commission of Zambia- 2026/HP/EP001

iii. Akashambatwa Mbikusita Lewanika and Others vs Chiluba SCZ Judgment No. 14 of 1998

iv. Abuid Kawangu v Elijah Muchima CCZ Selected Judgment No. 2 of 2014.

v. Mazoka and two others v Mwanawasa and two others (SCZ EP 1 of 2002; SCZ EP 2 of 2002) [2018]

LEGISLATION

i. Constitution of Zambia (Amendment) Act 2016
ii. High Court (Election Petition) Rules, 2026

1. INTRODUCTION

1.1. **IF IT MAY PLEASE THIS HONOURABLE COURT**, the following are 1st Respondent's list of authorities and skeleton arguments in opposition to Petitioner's combined summons for an order to set aside the 1st Respondent Process for irregularity and for leave to produce original defaced or destroyed posters.

1.2. For the facts herein, we rely on the 1st Respondent's Affidavit in Opposition depose by one NELSON CHOLA KABANDA in support thereof.

2. ALLEGATIONS ON THE 1ST RESPONDENT'S ANSWER CONTAINING BARE DENIALS

2.1. My Lady, we submit that the 1st Respondent's Answer from paragraph 1 to 7 contains defences against the Petitioners' allegations and as such there are no bare denials as alleged by the Petitioner. It should also be noted that the Respondent has pleaded that "the Petitioner will be put

to strict proof of his allegations." In paragraph 3 of the Answer as against the allegations in paragraphs 7 to 11 of the Petition.

2.2. We also submit that it should be noted that it is settled law that the standard of proof in an election petition is generally higher and that the Petitioner has the burden of adducing evidence confirming the allegations in paragraphs 7 to 11 of the Petition.

2.3. We rely on the case of **Akashambatwa Mbikusita Lewanika and Others vs Chiluba SCZ Judgment No. 14 of 1998** where the Supreme Court held that;

> **"Parliamentary election petitions were required to be proved to a standard high than on a mere balance of probability and therefore in this, where the Petition had been brought under constitutional provisions and would impact upon governance of the nation and deployment of constitutional power, no less a standard of proof was required. Furthermore, the issues raised were required to be established to a fairly high degree of convincing clarity."**

2.4. Further in the case of in the case of **Abuid Kawangu v Elijah Muchima CCZ Selected Judgment No. 2 of 2014** the Constitutional Court held that:

> **"the standard of proof applicable in election petitions is that of a fairly high degree of convincing clarity. Therefore, it is higher and distinct from that applicable in ordinary civil matters but lower than the standard required in criminal matters."**

2.5. Also in the case of **Mazoka and two others v Mwanawasa and two others (SCZ EP 1 of 2002; SCZ EP 2 of 2002) [2018]** wherein it is held that:

> **"Where a plaintiff makes any allegation, it is generally for him to prove those allegations. A plaintiff who has failed to prove his case cannot be entitled to judgment, whatever may be said of the opponent's case."**

2.6. We submit that the 1st Respondent's Answer contains adequate denials and traverse the allegations raised in the Petition, framing the disputed issues for determination at a full trial hearing.

2.7. We submit that the Petitioner cannot evade the fundamental legal duty to prove his Petition by attempting to set aside the Respondent's answer on grounds that it contains bare denials.

3. **FILING OF LIST OF AUTHORITIES AND COPIES ON 8TH SEPTEMBER 2026**

ARGUMENTS

3.1. The 1st Respondent contends my Lady that, an Answer and all the accompanying documents were duly filed in full compliance with the law and within the prescribed time frame provided for in Rule 10(1) of the High Court (Election Petition) Rules, 2026 which provides as follows;

> **"1. A respondent may, within five days of receipt of an election petition referred to under rule 9, file an answer in Form II set out in the First Schedule on payment of a fee set out in the Second Schedule."**

3.2. We further submit my Lady that the 1st Respondent filed into Court a List of Authorities and Skeleton Arguments and provided an extract of the authorities to be relied upon at trial.

3.3. The Petitioner has referred this Honourable Court to the case of **Isaac Mwaza and Another vs Chitalu Chilufya and 104 Others – 2026/HP/EP/002** which is quite distinguishable from the present case in that the Petitioner did not file his Petition together with the accompanying List of Authorities and Skeleton Arguments.

3.4. In further distinguishing the Isaac Mwanza case, we submit that the 1st Respondent complied with all requirements and filed the prescribed documents as provided in Rule 10(2) of the High Court (Election Petition) Rules, 2026.

3.5. We submit further that the Court record will reveal that the 1st Respondent also produced an extract of the authorities to be relied upon at trial. We therefore submit that the Issac Mwanza case is not applicable to this case as the facts are completely distinct.

3.6. Further My Lady, the Petitioner has also relied on the case of **Kayombo Saviye vs Victor Lumayi and Electoral Commission of Zambia-2026/HP/EP001** which yet again is distinguishable from the present case in that the Petitioner did not file a bundle of authorities intended to be relied upon. In the present case as already demonstrated above, the 1st Respondent filed a bundle of the relevant authorities to be relied upon.

3.7. We therefore submit that, the Petitioner has not challenged the time frame within which all the necessary documents were complied with even though the 1st Respondent's List of Authorities were filed on 8th September 2026 which was still within the prescribed time frame.

3.8. Further, we submit that there is no prejudice that has been demonstrated that the Petitioner is likely to suffer.

3.9. We submit that the petitioner's application is clearly an attempt to have this matter determined on a technicality as opposed to being determined on the merits. We submit that this is a proper case for this Honourable Court to give regard to the provisions of Article 118(2)(e) of the Constitution of Zambia (Amendment) Act 2016 which provides that;

> **"2. In exercising judicial authority, the Courts shall be guided by the following principles,**
>
> **e). <u>Justice shall be administered without undue regard to procedural technicalities</u>."**
>
> *(Underlining ours for emphasis)*

4. **<u>PETITIONER'S APPLICATION FOR LEAVE TO PRODUCE ORIGINAL DEFACED OR DEFACED POSTERS</u>**

4.1. My Lady, the 1st Respondent strongly opposes the Petitioner's application for leave to produce original defaced or destroyed posters for the reasons that this an afterthought by the Petitioner upon perusing the 1st Respondent's Answer challenging the Petition.

4.2. We submit that it the Petitioner's intension to attempt to cure a defective petition without evidence in support of the said petition. Further My Lady, allowing Petitioner to produce the said damaged or defaced posters will highly prejudice the 1st Respondent as the 1st Respondent will be robbed of an opportunity to respond to the said alleged damaged or defaced posters. The 1st Respondent will be clearly denied of an opportunity to plead the defence in relation to the said issues.

4.3. We submit that the Petitioner had an opportunity to present all the relevant evidence intended in the Affidavit in support of Petition or produced in the Petitioner's Bundle of Documents.

4.4. We therefore urge this Honourable Court to dismiss the Petitioner's application as allowing it will greatly prejudice the 1st Respondent.

4.5. It is our humble prayer that this Honourable Court dismisses both application with costs as they are devoid of merit.

We are most obliged.

Dated at Lusaka this day 2026.

Settled by: .....

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IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA



2026/HP/EP/ 008

IN THE MATTER OF: SECTIONS 81, 83, 89, 96, 97, 98, 99, & 100, [PART VIII] OF THE ELECTORAL PROCESS ACT, 2016 [As Amended by ACT No. 12 OF 2026], & REGULATIONS 2, 4, 5,14,& 15 OF THE ELECTORAL CODE OF CONDUCT

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BETWEEN:

REMEMBER MUTALE — PETITIONER

AND

NELSON C. KABANDA — 1ST REPSONDENT

ELECTORAL COMMISSION OF ZAMBIA — 2ND RESPONDENT

PETITIONER's SKELETON ARGUMENTS

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ADVOCATES FOR THE PETITIONER

MAY IT PLEASE THE HONOURABLE COURT, these are the skeleton arguments in support of the Petition.

The Petition contains allegations touching on illegal and corrupt practices. Specifically these allegations relate to false statements, bribery, removal and defacing of campaign materials, and intimidation [undue influence].

In relation to false statements, the Petitioner will rely on Regulations 4[2][a] and 15[1][c] of the Electoral Code of Conduct which read as follows:

4[2][a]:-

> **[2] A member or supporter of a political party or a candidate shall not—**
> **[a] use language which incites hatred or violence in any form against any person…**

15[1][c]:-

> **[1] A person shall not—**
> **[a] cause violence or use any language or engage in any conduct which leads or is likely to lead to violence or intimidation during an election campaign or election;**

As regards, the allegations of bribery involving the distribution of salt, reliance is placed on Section 81[c] of the Electoral Process Act, which provides as follows:

> **[1] A person shall not, either directly or indirectly, by oneself or with any other person corruptly—**
>
> **[c] make any gift, loan, offer, promise, procurement or agreement to or for the benefit of any person in order to induce the person to procure or to endeavour to procure the return of any candidate at any election or the vote of any voter at any election;**

The Petitioner relies on Section 81[1][a] and [e], and Section 89[1][e] and [l] of the Electoral Process Act, as regards the allegation on the cash payments to voters. These provide as follows:-

> **[1] A person shall not, either directly or indirectly, by oneself or with any other person corruptly—**
> **[a] give, lend, procure, offer, promise or agree to give, lend, procure or offer, any money to a voter or to any other person on behalf of a voter or for the benefit of a voter in order to induce that voter to vote or refrain from voting or corruptly do any such act as aforesaid on account of such voter having voted or refrained from voting at any election;**
>
> **[1] A person shall not—**
>
> **...**
>
> **[e] on any polling day, at the entrance to or within a polling station, or in any public place or in any private place within four hundred metres from the entrance to such polling station**
> **[i] canvass for votes;**
> **[ii] solicit the vote of any person;**
> **[iii] induce any person not to vote; or**
> **[iv] induce any person not to vote for a particular candidate;**
>
> **...**
>
> **[l] have any communication with a voter while such voter is in the precincts of a polling station for the purpose of**

voting;

Further on the allegation of cash payment, the Petitioner also relies on Regulation 15[h][iii] of the Electoral Code of Conduct, reading as follows:

> **[1] A person shall not—**
>
> ...
>
> **[h] offer any inducement, reward or bribe to any person in consideration of such person—**
>
> ...
>
> **[iii] voting or not voting;**

On the allegation of removing or destroying the Petitioner's campaign materials, reliance is placed on Regulation 15[1]g] of the Electoral Code of Conduct, which proscribes such acts, when it reads:

> **[1] A person shall not—**
>
> ...
>
> **(g) deface, remove or destroy any political campaign materials of any person or political party or publications of the Commission;**

On the allegation of intimidation which falls under undue influence, the Petitioner will be fortified by Section 83[1][a] of the Electoral Process Act, and Regulation 5[1] of the Electoral Code of Conduct, providing the following:

Section 83[1][a]:-

> **[1] A person shall not directly or indirectly, by oneself or through any other person—**
>
> **[a] make use of or threaten to make use of any force,**

Violence or restraint upon any other person;

Regulation 5[1]:-

> **[1] An election agent or polling agent shall, subject to this Code, have the following duties during an election:**
> **[a] observe the opening and closing of a polling station assigned to them on polling day;**
> **[b] witness the voting process;**
> **[c] witness the count of ballot papers for candidates;**
> **[d] witness the announcement of results; and**
> **[e] witness the declaration of results, where applicable.**

At this stage, we submit that the 1st Respondent, his Agents and Supporters, breached Regulation 2 of the Code herein, which provides as follows:

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

In regards to the reliefs of scrutiny and recount, *the Petitioner submit that an interlocutory application for a recount will be made in due course*. The Petitioner accordingly relies on the case of SETH SHIBULO LOONGO v KENNEDY MPOLOBE SHEPANDE- 1983/HP/EP/25, wherein E. L. Sakala, J. [as he was then] held:

> **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 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.

We are obliged.

Dated the day of 2026

These Arguments were filed by:

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ADVOCATES FOR THE PETITIONER

IN THE HIGH COURT FOR ZAMBIA **2026/HP/EP/008**
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction)

IN THE MATTER OF: **SECTIONS 81, 83, 96, 97, 98, 99, AND 100 (PART VIII) OF THE ELECTORAL PROCESS ACT, 2016, & REGULATIONS 2, 4, 5, 14 & 15 OF THE ELECTORAL CODE OF CONDUCT**

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AND

NELSON C. KABANDA **1ST RESPONDENT**

ELECTORAL COMMISSION OF ZAMBIA **2ND RESPONDENT**

REPUBLIC OF ZAMBIA
HIGH COURT OF ZAMBIA
14 SEP 2026
PRINCIPAL REGISTRY 4
P.O. BOX 50067, LUSAKA

2ND RESPONDENT'S LIST OF AUTHORITIES AND SKELETON ARGUMENTS

MAY IT PLEASE THIS HONOURABLE COURT: These are the 2nd Respondent's Arguments.

1. **LIST OF AUTHORITIES**

STATUTES

1. **The Constitution of Zambia(Amendment) Act No. 2 of 2016**
2. **Electoral Process Act No. 35 of 2016**

CASES

1. **Daniel Nyirenda V University of Zambia Council Appeal No. 56/2012**
2. **Akashambatwa Mbikusita Lewanika and Others V Frederick Jacob Titus Chiluba SCZ Judgment No. 14 of 1998**

2. SUMMARY OF FACTS

2.1. On 13th August, 2026, General Elections were held in which the 2nd Respondent declared the 1st Respondent as the duly elected Member of Parliament for Chitambo Constituency. Dissatisfied with the results of the elections, the Petitioner filed an Election Petition in the High Court challenging the election of the 1st Respondent. The Election Petition contains allegation of illegal and corrupt practices such as false statements, bribery, removal and defacing of campaign materials and intimidation.

2.2. The 2nd Respondent opposes the Petitioner's Election Petition as argued herein.

3. THE ELECTORAL COMMISSION OF ZAMBIA

3.1. My Lord/Lady, Article 229 of the Constitution of Zambia (Amendment) Act No. 2 of 2016 establishes the Electoral Commission of Zambia and confers upon it the authority to administer the electoral process in Zambia.

3.2. Additionally, the 2nd Respondent functions independently in discharging its mandate of administering elections; it is not subject to the direction or control of any person. Instructive of this is section 4 (1) of the Electoral Process Act No, 5 of 2016, which enacts as follows:

> ***"This Act shall be administered and enforced by the Commission and the Commission shall not be subject to the direction or control of any person or authority in exercise of its functions under the Constitution."***

3.3. My Lord/Lady, the 2nd Respondent conducted the elections in accordance with the applicable law and in a free and fair manner. Accordingly, the 1st Respondent was declared the duly elected Member of Parliament for Chitambo Constituency having polled 7,819 votes which were the majority of the valid votes cast.

4. BURDEN OF PROOF

4.1. My Lady/Lord, "he who alleges must prove"; this is principle of law espoused in a plethora of cases among which include the case of ***Daniel Nyirenda V University of Zambia Council Appeal No. 56/2012*** in which the Supreme Court stated:

> ***"...it is trite law that "he who alleges must prove". The rationale behind this is that, whenever an allegation is made, the onus is on the maker of the allegation to prove the allegation..."*** (Emphasis ours)

4.2. My Lady/ Lord, the burden of proof in election petitions rests on the petitioner and the standard of proof is higher than a mere balance of probabilities; the issues raised must be established at a fairly higher degree than that in an ordinary civil matter. Instructive of this is the case of ***Akashambatwa Mbikusita Lewanika and Others V Frederick Jacob Titus Chiluba SCZ Judgment No. 14 of 1998*** where the Supreme Court stated as follows:

> ***"Parliamentary election petitions have generally required to be proved to a standard higher than a mere balance of probability. The issues raised are required to be established to a fairly high degree of convincing clarity."*** *(Emphasis ours)*

4.3. 4.4. My Lady/Lord, in the *case in casu,* the Petitioner is duty-bound to prove, to a fairly high degree of convincing clarity, the allegations raised against the Respondents in the Petition.

4.5. However, the Petitioner's allegations are devoid of proof and should not be entertained by the Honourable Court. A perusal of the Affidavit Verifying Facts sworn by the Petitioner reveals that most of the depositions therein are statements not substantiated by proof. Additionally, the Bundle of Documents contains documents that hardly prove the Petitioner's case.

4.6 My Lady, the Petitioner argues among others, that there was no compliance with the guidelines or provision relating to the counting and tallying of votes. These arguments are not tenable. Firstly, there is no proof of this serious allegation. Secondly, the Petitioner has not proven that the same affected to a large extent the outcome of the election. Our argument is fortified by the guidance and holding of the Supreme Court in the case of **Akashambatwa Mbikusita Lewanika and others V Frederick Jacob Titus Chiluba** cited above:

> ***"...it was not established to our satisfaction that the proven irregularities were such that nationally, the majority of the voters were or have been prevented from electing the candidate whom they preferred or that the extent, frequency and nature of the irregularities was such that they must have affected to any significant extent the national result of the election. It is already not possible to hold that by reason of the irregularities, the result of the election nation wide was not substantially the true reflection of the free will and choice of the voters who went and cast their vote.***
>
> (Emphasis ours)

4.8. The Supreme Court added:

> ***" The flaws identified need to be addressed by the authorities. However, flaws by their very nature go to the general integrity of the system and do not necessarily suggest that the electoral system has been comprehensively massaged or predisposed to grant an unfair or any disadvantage to anyone in advance.***

4.9. My Lady/Lord, the Petitioner has failed to discharge the burden of proof to the required standard in election petitions. The incidences complained of are not only unsubstantiated but did not affect the outcome of the elections, neither did they grant any one-candidate advantage over other candidates. The 2nd

Respondent discharged its mandate in administering the electoral process in conformity with the Constitution of Zambia as amended, the Electoral Process Act and attendant regulations. We reiterate that the Petitioner has failed to discharge the burden of proof, it follows therefore that the Election Petition must fail.

5. CONCLUSION

5.1. My Lady/ Lord, the election of candidates must only be nullified in exceptional circumstances where the Petitioner has discharged the burden of proof by a higher degree of convincing clarity. The Petitioner herein went on a fishing expedition, unleashing serious allegations devoid of proof. The Election Petition lacks merit and we respectfully implore the Honourable Court to dismiss it with costs.

Dated at Lusaka the……day of……2026.

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IN THE HIGH COURT FOR ZAMBIA **2026/HP/EP/008**
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IN THE MATTER OF:	**SECTIONS 81, 83, 96, 97, 98, 99, AND 100 (PART VIII) OF THE ELECTORAL PROCESS ACT, 2016, & REGULATIONS 2, 4, 5, 14 & 15 OF THE ELECTORAL CODE OF CONDUCT**
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REMEMBER MUTALE	**PETITIONER**
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NELSON C. KABANDA	**1ST RESPONDENT**
ELECTORAL COMMISSION OF ZAMBIA	**2ND RESPONDENT**

2ND RESPONDENT'S LIST OF AUTHORITIES AND SKELETON ARGUMENTS

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IN THE HIGH COURT FOR ZAMBIA
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HOLDEN AT LUSAKA

2026/HP/EP/008

REPUBLIC OF ZAMBIA
HIGH COURT OF ZAMBIA
15 SEP 2026
PRINCIPAL REGISTRY 3
P.O. BOX 50067, LUSAKA

IN THE MATTER OF: SECTIONS 81, 83, 89, 96, 97, 98, 99, & 100, [PART VIII] OF THE ELECTORAL PROCESS ACT, 2016 [As Amended by ACT No. 12 OF 2026], & REGULATIONS 2, 4, 5, 14,& 15 OF THE ELECTORAL CODE OF CONDUCT

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BETWEEN:

REMEMBER MUTALE — PETITIONER

AND

NELSON C. KABANDA — 1ST REPSONDENT

ELECTORAL COMMISSION OF ZAMBIA — 2ND RESPONDENT

LIST OF AUTHORITIES AND SKELETON ARGUMENTS IN OPPOSITION TO SUMMONS TO DISMISS THE ELECTION PETITION FOR IMPROPER SERVICE

LIST OF AUTHORITIES

1. *Legislation*
   (i) *High Court [Election Petition] Rules, 2026*

2. *Case Law*

(ii) Director of Public Prosecutions v Brown SCZ Judgment No. 10 of 1974
(iii) Great Wall Financial Services Limited v Patrick Ilunga -CAZ/08/272/2024 i
(iv) Minos Panel Beaters Ltd v B. cCapasuka (1986) Z.R. 1

MAY IT PLEASE HER LADYSHIP these are the Petitioner's skeleton arguments in Opposition to the 2nd Respondent's Application to Dismiss the Election Petition for Improper Service.

We rely on the Affidavit in Opposition for the facts.

We accordingly submit that the Application is not only defective, irregular and incompetent, but that it is an abuse of Court process.

It is an abuse of Court process in view of the fact that on 11th September 2026 the Court, pursuant to Order 2 Rule 2 of the High Court Rules Cap 27, and Rule 17 of the High Court [Election Petition] Rules, 2026, enlarged the period in which to effect service on the 2nd Respondent.

The Record will further show that Counsel that appeared for the 2nd Respondent informed the Court that the 2nd Respondent had no objection to the Petitioner's subject application.

Accordingly, the issue of service on the 2nd Respondent is thus *res judicata*, and the Court is *functus officio* on the same.

Further, unlike Rule 10 [3] of the High Court [Election Petition] Rules, 2026 which imposes a sanction to the effect that a Respondent who does not file an Answer shall not participate in the proceedings, Rule 14 thereof which provides for the service of the Election Petition does not impose any sanction for failure to serve the same.

We submit that had the drafters intended to impose sanctions for failure to serve, the sanction would have expressly been stated, as is the case in Rule 10[3], above.

In support of our argument on the intention of the Legislature/drafters, we rely on the case of DIRECTOR OF PUBLIC PROSECUTIONS v BROWN SCZ Judgment No. 10 of 1974, delivered by Baron, DCJ where it was held that:

> "Of course, s.3 of the Interpretation Act, Cap 2, defines offence as any crime, felony, misdemeanor, contravention, or other breach of, or failure to comply with, any written law, for which a penalty is provided. But the reference to the provision of a penalty takes the matter no further in the present case because s. 30 of the Act provides general penalty for offences, and only if s. 30 can be held to refer exclusively to the offences set out in s. 29 could an argument based on the failure to prescribe a penalty be sustained. We are satisfied that s. 30 cannot be limited in its application to the offences set out in s. 29; had this been the intention of the legislature it would have been very easy to refer in s. 30 to an offence under this Act." [our emphasis]

In the case of MINOS PANEL BEATERS LTD v B. CHAPASUKA (1986) Z.R. 1, it was held that:

> "The critical point here is that there is in fact an initial definite period and the springing interest which arises at the beginning of the next period results in the tenant remaining in occupation, as envisaged by section 3 (2) (g) (ii) which can reasonably be interpreted in this vein if it is to be given any effect at all. *In any case, if the legislature intended to exclude such periodic tenancies, it would have plainly said so.* In which event, there would have been no need to make any reference

> to "a periodical tenancy" under the definition of "notice to quit" in section 2." [our emphasis]

We submit further that under Rule 17, the Court is empowered to make interlocutory directions or orders.

Further under Rule 15 [3][b] of the High Court [Election Petition] Rules, empowers the Court at Scheduling Conference to *"determine any outstanding issues."*

We submit that leave to serve out of time is an interlocutory order, or direction.

The Court will note that service of process within a statutory timeframe is *not unique* to Election Petitions. For example, under the Court of Appeal Rules, 2026 the notice of appeal and memorandum of appeal are required to be served on a respondent within 14 days. However, failure to effect service within 14 days does not automatically render the appeal dismissible because an appellant is at liberty to apply to serve the stated process out of time.

We rely on the case of GREAT WALL FINANCIAL SERVICES LIMITED v PATRICK ILUNGA -CAZ/08/272/2024 in which the single Judge of the Court of Appeal ruled in paragraph 2.9, at page R9, as follows:

> **"*Having run out of time within which to serve, the appellant ought to have made an application for leave to serve out of time*. Having failed to do so renders the appeal defective."** [our emphasis]

We reiterate that the Petitioner in fact applied for leave and the Court granted the same, on 11th September 2026.

We accordingly pray that the 2nd Respondent's application be dismissed.

Dated the day of 2026

These Arguments were filed by:

Messrs. Kaunda Kaunda & Mwila Legal Practitioners
No. 10, Kawama Road
Woodlands
Mobile: +260 974 705 064
Email: legal@kaundakaunda.com
LUSAKA

ADVOCATES FOR THE PETITIONER

2026/HP/EP/008

IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA

IN THE MATTER OF: SECTIONS 81, 83, 89, 96, 97, 98, 99, & 100, [PART VIII] OF THE ELECTORAL PROCESS ACT, 2016 [As Amended by ACT No. 12 OF 2026], & REGULATIONS 2, 4, 5, 14,& 15 OF THE ELECTORAL CODE OF CONDUCT

AND

IN THE MATTER OF: A PARLIAMENTARY ELECTION FOR CHITAMBO CONSTITUENCY HELD ON 13TH AUGUST 2026

AND

IN THE MATTER OF: AN ELECTION PETITION BY REMEMBER MUTALE

BETWEEN:

REMEMBER MUTALE — PETITIONER

AND

NELSON C. KABANDA — 1ST REPSONDENT

ELECTORAL COMMISSION OF ZAMBIA — 2ND RESPONDENT

LIST OF AUTHORITIES AND SKELETON ARGUMENTS IN OPPOSITION TO SUMMONS TO DISMISS THE ELECTION PETITION FOR IMPROPER SERVICE

Messrs. Kaunda Kaunda & Mwila Legal Practitioners
No. 10, Kawama Road
Woodlands
Mobile: +260 974 705 064
Email: legal@kaundakaunda.com
LUSAKA

ADVOCATES FOR THE PETITIONER

IN THE HIGH COURT FOR ZAMBIA **2026/HP/EP/008**
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction)

IN THE MATTER OF: **SECTIONS 81, 83, 96, 97, 98, 99, AND 100 (PART VIII) OF THE ELECTORAL PROCESS ACT, 2016, & REGULATIONS 2, 4, 5, 14 & 15 OF THE ELECTORAL CODE OF CONDUCT**

AND

IN THE MATTER OF: **A PARLIAMENTARY ELECTION FOR CHITAMBO CONSTITUENCY HELD ON THE 13TH DAY OF AUGUST, 2026**

IN THE MATTER OF: **AN ELECTION PETITION BY REMEMBER MUTALE**

AND

BETWEEN:



REMEMBER MUTALE **PETITIONER**

AND

NELSON C. KABANDA **1ST RESPONDENT**

ELECTORAL COMMISSION OF ZAMBIA **2ND RESPONDENT**

2ND RESPONDENT'S AFFIDAVIT IN OPPOSITION TO THE ELECTION PETITION

I, **CHARLES BUPE** of Serenje in the Central Province of the Republic of Zambia do hereby make oaths and state as follows:

1. That my name is as stated above.
2. That I am a Zambian National.
3. That I reside at Plot 2, Hospital Compound, Serenje
4. That I was duly appointed and served as Returning Officer for Chitambo Constituency during the General Elections held on 13th August, 2026 and depose to matters herein in that capacity from facts and information obtained during my course of duty.
5. That I have read the Affidavit Verifying Facts sworn by one Remember Mutale and hereby respond as below.

1. The 2nd Respondent is a statutory body established by Article 229 of the Constitution of Zambia (Amendment) Act No. 2 of 2016, mandated among other duties, to conduct Presidential, National Assembly, Local Government Elections and Voter Registration.
2. That on 13th August, 2026, the country held General Elections in all the Constituencies including Chitambo Constituency in Serenje District.
3. That as deposed in paragraph 5 of the Petition, I confirm that the Petitioner, Remember Mutale and the 1st Respondent, Nelson Kabanda, were the only two candidates in the Parliamentary Election for Chitambo Constituency.
4. As alleged by the Petitioner in paragraphs 6, 7 and 8, as the Returning Officer, I declared the Petitioner as the duly elected Member of Parliament having scored the majority of the valid votes cast in the election. The Petitioner obtained 7,819 votes followed by the 1st Respondent at 7,662.
5. Contrary to the Petitioner's allegations in paragraph 10, the Petitioner was validly elected as the Member of Parliament.
6. The allegations in paragraph 11 to 22 of the Petition are denied. The Petitioner's agents were not intimidated or chased from the polling stations as alleged. On the contrary, counting, opening and closing of ballot boxes were witnessed by several accredited agents, monitors and observers who were present and the election results were verified and tallied. The agents, monitors and observers who were present were given copies of Gen20 and announcement of results forms.
7. The allegations in paragraphs 23 to 28 are denied as the same are within the Petitioner's knowledge. The 1st Respondent was duly elected Member of Parliament in an election which was free, fair and conducted in compliance with the electoral laws.
8. The Petitioner is not entitled to any of the reliefs sought or at all, as the 1st Respondent was validly declared Member of Parliament during an election in which the majority of voters in the Constituency voted for a candidate whom they preferred.

9. I depose to the above information and facts knowing and believing the same to be true and correct to the best of my knowledge and belief.

SWORN by the said **CHARLES**)
BUPE)
At Lusaka this …. day of……..2026)

DEPONENT

PATRICIA M. SIMEZA
ADVOCATE
COMMISSIONER FOR OATHS
LUSAKA

BEFORE ME:……
COMMISSIONER FOR OATHS

IN THE HIGH COURT FOR ZAMBIA **2026/HP/EP/008**
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction)

IN THE MATTER OF:	**SECTIONS 81, 83, 96, 97, 98, 99, AND 100 (PART VIII) OF THE ELECTORAL PROCESS ACT, 2016, & REGULATIONS 2, 4, 5, 14 & 15 OF THE ELECTORAL CODE OF CONDUCT**
AND	
IN THE MATTER OF:	**A PARLIAMENTARY ELECTION FOR CHITAMBO CONSTITUENCY HELD ON THE 13TH DAY OF AUGUST, 2026**
IN THE MATTER OF:	**AN ELECTION PETITION BY REMEMBER MUTALE**
AND	
BETWEEN:	
REMEMBER MUTALE	**PETITIONER**
AND	
NELSON C. KABANDA	**1ST RESPONDENT**
ELECTORAL COMMISSION OF ZAMBIA	**2ND RESPONDENT**

2ND RESPONDENT'S AFFIDAVIT IN OPPOSITION TO THE ELECTION PETITION

Messrs EMK and Associates
Plot 9, Omelo Mumba Road
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P.O Box 30644
LUSAKA
info@emk.co.zm
ADVOCATES FOR THE 2nd RESPONDENT

IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA

2026/HP/EP/008

IN THE MATTER OF: SECTIONS 81, 83, 89, 96, 97, 98, 99, & 100, [PART VIII] OF THE ELECTORAL PROCESS ACT, 2016 [As Amended by ACT No. 12 OF 2026], & REGULATIONS 2, 4, 5, 14,& 15 OF THE ELECTORAL CODE OF CONDUCT

AND

IN THE MATTER OF: A PARLIAMENTARY ELECTION FOR CHITAMBO CONSTITUENCY HELD ON 13TH AUGUST 2026

AND

IN THE MATTER OF: AN ELECTION PETITION BY REMEMBER MUTALE

BETWEEN:

REMEMBER MUTALE — PETITIONER

AND

NELSON C. KABANDA — 1ST REPSONDENT

ELECTORAL COMMISSION OF ZAMBIA — 2ND RESPONDENT

AFFIDAVIT IN OPPOSITION TO SUMMONS TO DISMISS THE ELECTION PETITION FOR IMPROPER SERVICE

I, KENNEDY KAUNDA, of No. 8, Kawama Road Woodlands in the Lusaka District of the Republic of Zambia DO HEREBY MAKE OATH and SAY as follows:

1. That my particulars are as set out above.
2. That I am a Zambian National.

3. That I am an Advocate in the firm of Kaunda Kaunda & Mwila Legal Practitioners herein and therefore duly authorized by the Petitioner to swear this Affidavit .
4. That the 2nd Respondent's Application is defective, irregular and incompetent.
5. That the Record will show that on 11th September 2026, the Court enlarged the time in which to personally serve the Petition on the 2nd Respondent, and after Counsel that appeared for the 2nd Respondent did not object to the Petitioner's application.
6. That to this effect the Court ordered the 2nd Respondent to file its Answer and accompanying documents within five [5] days of receipt of the Petition.
7. That I believe that the Court still retains the power to make interlocutory orders, which amongst others, include orders for abridgement and extension of time.
8. That I also believe that there is no prescribed sanction for failure to serve duly filed Election Petition process.
9. That I swear to this Affidavit believing the same to be true.

SWORN by the said]
KENNEDY KAUNDA]
at Lusaka]
this 16 day of Sept 2026]

_____
Deponent

BEFORE ME: _____
COMMISSIONER FOR OATHS

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

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

2026/HP/EP/008

IN THE MATTER OF: **SECTIONS 81, 83, 96, 97, 98, 99, AND 100 (PART VIII) OF THE ELECTORAL PROCESS ACT, 2016, & REGULATIONS 2, 4, 5, 14 & 15 OF THE ELECTORAL CODE OF CONDUCT**

AND

IN THE MATTER OF: **A PARLIAMENTARY ELECTION FOR CHITAMBO CONSTITUENCY HELD ON THE 13TH DAY OF AUGUST, 2026**

IN THE MATTER OF: **AN ELECTION PETITION BY REMEMBER MUTALE**

AND

BETWEEN:

REMEMBER MUTALE **PETITIONER**

REPUBLIC OF ZAMBIA
HIGH COURT OF ZAMBIA
14 SEP 2026
PRINCIPAL REGISTRY 4
P.O. BOX 50067, LUSAKA.

AND

NELSON C. KABANDA **1ST RESPONDENT**

ELECTORAL COMMISSION OF ZAMBIA **2ND RESPONDENT**

AFFIDAVIT IN SUPPORT OF SUMMONS FOR AN ORDER TO DISMISS THE ELECTION PETITION FOR IMPROPER SERVICE

I, **CHARLES BUPE** of Serenje in the Central Province of the Republic of Zambia do hereby make oaths and state as follows:

1. That my name is as stated above.
2. That I am a Zambian National.
3. That I reside at Plot 2, Hospital Compound, Serenje.
4. That I was appointed as the Returning Officer by the 2nd Respondent in the General Election held on 13th August, 2026 and by reason thereof, I am competent to swear this Affidavit from facts personally known to me.
5. That on 28th August, 2026, the Petitioner filed an Election Petition challenging the election of Honourable Nelson C. Kabanda as the Member of Parliament for Chitambo Constituency.

6. That on 9th September, 2026, the Petitioner served the Election Petition on the 2nd Respondent. There is now produced and shown to me a true copy of the Letter of Service marked **"CB1".**

7. That I am advised by the 2nd Respondent's Advocates Messrs EMK and Associates and believe the same to be true that service of the Election Petition on the 2nd Respondent was irregular; it was not effected in conformity with the High Court (Election Petition) Rules S.I No. 31 of 2026.

8. That despite filing the Election Petition on 28th August, 2026, the Petitioner only served it on the 2nd Respondent on 9th September, 2026, in complete disregard of the applicable procedural rules which require the Petitioner to serve the Election Petition on the Respondent within 5 days.

9. That I depose to facts herein, believing the same to be true and correct to the best of my knowledge and belief.

SWORN by the said **CHARLES**)
BUPE)
At Lusaka this .... Day of.....2026)

DEPONENT

PATRICIA M. SIMEZA
ADVOCATE
COMMISSIONER FOR OATHS
LUSAKA

BEFORE ME:.....
COMMISSIONER FOR OATHS

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

2026/HP/EP/008

IN THE MATTER OF: **SECTIONS 81, 83, 96, 97, 98, 99, AND 100 (PART VIII) OF THE ELECTORAL PROCESS ACT, 2016, & REGULATIONS 2, 4, 5, 14 & 15 OF THE ELECTORAL CODE OF CONDUCT**

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IN THE MATTER OF: **A PARLIAMENTARY ELECTION FOR CHITAMBO CONSTITUENCY HELD ON THE 13TH DAY OF AUGUST, 2026**

IN THE MATTER OF: **AN ELECTION PETITION BY REMEMBER MUTALE**

AND

BETWEEN:

REMEMBER MUTALE **PETITIONER**

AND

NELSON C. KABANDA **1ST RESPONDENT**

ELECTORAL COMMISSION OF ZAMBIA **2ND RESPONDENT**

REPUBLIC OF ZAMBIA HIGH COURT OF ZAMBIA 14 SEP 2026 PRINCIPAL REGISTRY P.O. BOX 50067, LUSAKA.

CERTIFICATE OF EXHIBIT

This is the exhibit referred to in the Affidavit in Support sworn by **CHARLES BUPE** referred to as **"CB1"** herein.

Dated at Lusaka the ..... day of .....2026.

PATRICIA M. SIMEZA
ADVOCATE
COMMISSIONER FOR OATHS
LUSAKA

BEFORE ME: _____

COMMISSIONER FOR OATHS

REPUBLIC OF ZAMBIA
HIGH COURT OF ZAMBIA
14 SEP 2026
PRINCIPAL REGISTRY 3
P.O. BOX 50067, LUSAKA.

IN THE HIGH COURT FOR ZAMBIA **2026/HP/EP/008**

AT THE PRINCIPAL REGISTRY

HOLDEN AT LUSAKA
(Civil Jurisdiction)

IN THE MATTER OF: SECTIONS 81, 83, 89, 96, 97, 98, 99 & 100, [PART VIII] OF THE ELECTORAL PROCESS ACT, 2016 [As Amended by Act No. 12 of 2026] & REGULATIONS 2, 4, 5, 14 & 15 OF THE ELECTORAL CODE OF CONDUCT

AND

IN THE MATTER OF: A PARLIAMENTARY ELECTION FOR CHITAMBO CONSTITUENCY HELD ON 13TH AUGUST 2026

AND

IN THE MATTER OF: AN ELECTION PETITION BY REMEMBER MUTALE

BETWEEN:

REMEMBER MUTALE	**PETITIONER**
AND	
NELSON C. KABANDA	**1ST RESPONDENT**
ELECTORAL COMMISSION OF ZAMBIA	**2ND RESPONDENT**

1ST RESPONDENT'S AFFIDAVIT IN OPPOSITION TO PETITIONER'S AFFIDAVIT IN SUPPORT OF COMBINED SUMMONS FOR AN ORDER TO SET ASIDE THE 1ST RESPONDENT'S PROCESS FOR IRREGULARITY AND FOR LEAVE TO PRODUCE ORGINAL DEFACED OR DESTROYED POSTERS

I, **NELSON CHOLA KABANDA** of Off Ng'answa Road, Serenje in the district of Serenje in the Central Province of the Republic of Zambia, being duly sworn **HEREBY MAKE OATH** and **SAY** as follows:

1. That my particulars are as stated above.

2. That I am a Zambian National.

3. That I am the 1st Respondent herein and thus duly competent to swear to this my Affidavit from facts within my personal knowledge.

4. That I have read the Affidavit in Support of the combined summons for an order to set aside the 1st Respondent's process for irregularity and for leave to produce original defaced or destroyed posters filed by the Petitioner (herein referred to as the 'Petitioner's Affidavit') and now respond as hereunder.

5. That the contents of paragraphs 1 to 4 of the Petitioner's Affidavit are within the peculiar knowledge of the Petitioner.

6. That the contents of paragraph 5 of the Petitioner's Affidavit are admitted. That I further state that I have been advised by my Advocates and verily believe the same to be true and correct that the said Answer and accompanying documents were duly filed within the prescribed statutory period.

7. That the contents of paragraph 6 of the Petitioner's Affidavit is only admitted to the extent that I have produced relevant authorities I intend to rely on at trial. That further I have been advised by my Advocates that the said relevant copies of the cases contained in my filed List of Authorities and Skeleton Arguments have been produced in my extract of authorities herein.

8. That in response to paragraph 7 of the Petitioner's Affidavit, I have been advised by my advocates and verily believe the same to be true and correct that, my Answer to the Petition contains defences against the Petitioners allegations and as such there are no bare denials as alleged

by the Petitioner. The issues raised by the Petitioner are to be determined at trial.

9. That I oppose the contents of paragraph 8 as the Petitioner's attempt to produce the said defaced or destroyed posters is an afterthought upon perusal of my responses to the Petitioner's allegations against me.

10. That further to paragraph 9 above, I oppose to the production of the said defaced or destroyed posters for reasons that this is an afterthought by the Petitioner upon being served with my Answer challenging the Petition.

11. That paragraph 9 of the Petitioner's Affidavit is within the peculiar knowledge of the Petitioner and thus wish not to comment.

12. That I depose to the facts above verily believing the same to be true and correct to the best of my knowledge, belief and information.

SWORN by the said **NELSON**)
CHOLA KABANDA at Lusaka) .....
the .....) **Deponent**
day of.....2026)

BEFORE ME:.....
COMMISSIONER FOR OATHS

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

IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA

2026/HP/EP/008

IN THE MATTER OF: SECTIONS 81, 83, 89, 96, 97, 98, 99, & 100, [PART VIII] OF THE ELECTORAL PROCESS ACT, 2016 [As Amended by ACT No. 12 OF 2026], & REGULATIONS 2, 4, 5, 14,& 15 OF THE ELECTORAL CODE OF CONDUCT

AND

IN THE MATTER OF: A PARLIAMENTARY ELECTION FOR CHITAMBO CONSTITUENCY HELD ON 13TH AUGUST 2026

AND

IN THE MATTER OF: AN ELECTION PETITION BY REMEMBER MUTALE

BETWEEN:

REMEMBER MUTALE — PETITIONER

AND

NELSON C. KABANDA — 1ST REPSONDENT

ELECTORAL COMMISSION OF ZAMBIA — 2ND RESPONDENT

AFFIDAVIT IN SUPPORT OF SUMMONS FOR AN ORDER FOR SCRUTINY AND RE-COUNT OF THE BALLOTS CAST AT ALL THE POLLING STATIONS IN CHITAMBO CONSTITUENCY

I, REMEMBER MUTALE, of Nindo Farms, off Great North Road, Mukando in Chitambo District of the Republic of Zambia DO HEREBY MAKE OATH and SAY as follows:

1. That my particulars are as set out above.
2. That I am a Zambian National.

3. That I am the Petitioner herein and therefore competent to swear this Affidavit.
4. That in paragraph 7[xi], [xii], and [xiii] of my Petition, I have stated that my Polling agents and monitors suffered intimidation by, and were chased out of the Polling Stations by the 1st Respondent, his Election Agent[s] and Polling agents.
5. That consequently, my Polling Agents could not witness the counting, tallying and verification of the ballots cast on the 13th August 2013.
6. That I have also stated, as a consequence, that my Polling Agents were not given GEN20a Forms which aid in the tallying of ballots at the totaling centre, as they show the actual number of ballots cast for each candidate, and the rejected ones, at each Polling Station.
7. That in fact the 1st Respondent has confirmed the foregoing anomaly when he states in paragraph 14 of his Affidavit Verifying Answer to Election Petition dated 7th September 2026 that *"I can confirm that of the 53 Polling Stations in the Constituency, the 2nd Respondent only availed my polling agents **25** GEN 20a Forms..."*. That there is produced and shown to me marked "RM1" a copy of part of the stated 1st Respondent's Affidavit from page 1 to page 6.
8. That as such the actual number of ballots that were cast in my favour, and that of the 1st Respondent at each of the 53 Polling Stations is unknown.
9. That the actual number of rejected ballots at each of the 53 Polling Stations is also unknown.
10. That further I verily believe that I polled more ballots than the 1st Respondent.
11. That in view of the unavailability of or missing GE20a forms for each Polling Station herein, I believe that a scrutiny and recount would aid the Court in determining this Petition.
12. That I swear to this Affidavit believing the same to be true.

SWORN by the said]
REMEMBER MUTALE]
at Lusaka]
this 16 day of Sept 2026]

_____
Deponent

BEFORE ME:_____
COMMISSIONER FOR OATHS

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

IN THE HIGH COURT FOR ZAMBIA **2026/HP/EP/008**
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction)

IN THE MATTER OF: **SECTIONS 81, 83, 96, 97, 98, 99, AND 100 (PART VIII) OF THE ELECTORAL PROCESS ACT, 2016, & REGULATIONS 2, 4, 5, 14 & 15 OF THE ELECTORAL CODE OF CONDUCT**

AND

IN THE MATTER OF: **A PARLIAMENTARY ELECTION FOR CHITAMBO CONSTITUENCY HELD ON THE 13TH DAY OF AUGUST, 2026**

IN THE MATTER OF: **AN ELECTION PETITION BY REMEMBER MUTALE**

AND

BETWEEN:

REMEMBER MUTALE **PETITIONER**

AND

NELSON C. KABANDA **1ST RESPONDENT**

ELECTORAL COMMISSION OF ZAMBIA **2ND RESPONDENT**

REPUBLIC OF ZAMBIA
HIGH COURT OF ZAMBIA
14 SEP 2026
PRINCIPAL REGISTRY 4
P.O. BOX 50067, LUSAKA

2ND RESPONDENT'S SKELETON ARGUMENTS

MAY IT PLEASE THIS HONOURABLE COURT, these are the 2nd Respondent's Arguments in Support of the application for an order to dismiss the Election Petition for improper service.

1. **LIST OF AUTHORITIES**

STATUTES

i. The High Court(Election Petition)Rules S.I No. 31 of 2026

CASES

i. NFC Africa Mining Plc V Techro Zambia Limited (2009) ZR 236

2. **SUMMARY OF FACTS**

2.1. On 28th August, 2026, the Petitioner filed an Election Petition in the High Court challenging the election of the 1st Respondent as Member of Parliament for Chitambo Constituency, in Central Province of the Republic of Zambia.

2.2. On 9thSeptember, 2026, the Petitioner served the Election Petition on the 2nd Respondent. The 2nd Respondent argues that service is irregular as it was effected out of time, and in complete disregard on the High Court (Election Petition) Rules S.I No. 31 of 2026 which governs election petitions.

3. **JURISDICTION**

3.1. **My Lady,** this application is made pursuant to Rule 17 of the High Court (Election Petition) Rules S.I No. 31 of 2026. It enacts as follows:

> ***"(1) Subject to sub rule (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 sub rule (1), an interlocutory application shall not be raised seven days before commencement of trial.*** (Emphasis Ours)

3.2. **My Lady**, the Honourable Court is imbued with discretion to hear interlocutory applications in proceedings relating to election petitions. Therefore, this application is competently before the Honourable Court and we respectfully urge your Ladyship to consider it favourably.

4. **SERVICE OF PROCESS**

4.1. **My Lady**, service of the election petition must be effected within five days of filing. Instructive of this is Rule 14(1) (b) of the High Court (Election Petition) Rules S.I No. 31 of 2026, which provides as follows:

> ***"(1) A petition filed in accordance with***

(a)…

*(b)**rule 9 shall be served by a Petitioner on a respondent within five days of filing the petition.*** (Emphasis Ours)

4.2. **My Lady**, Rule 14 (3) further enacts:

"Subject to sub rule (5), service of a nomination petition or an election petition under sub rule (1) shall be personally served on a respondent or at the address shown in the nomination papers filed with the Commission. (Emphasis Ours)

4.3. **My Lady**, the Petitioner did not effect proper service as required by the applicable Rules cited above. As deposed in paragraph 8 of the Affidavit in Support, the Petitioner filed the Election Petition on 28th August, 2026, it follows therefore, that the same should have been served on the 2nd Respondent by 4th September, 2026. However, it was only served on the 2nd Respondent on 9th September, 2026, out of time.

4.4. **My Lady**, the rules of Court are designed to facilitate the proper administration of justice, therefore, they must be strictly followed. Instructive of this is the case of **NFC Africa Mining Plc V Techro Zambia Limited (2009) ZR 236** in which the Supreme Court guided:

" Rules of Court are intended to assist in the proper and orderly administration of justice and as such, they must be followed.

4.5. **My Lady,** the Petitioner was duty bound to serve the Election Petition on the 2nd Respondent within the prescribed timeframe. Additionally, Rule 14 on service of election petitions is couched in mandatory terms. We submit that the Petitioner does not have the option to extend the timeframe within which to serve the Election Petition. The service of the Election Petition was irregular; therefore, we invite the Honourable Court to dismiss the Election Petition.

5. **CONCLUSION**

5.1. **My Lady,** service of the Election Petition herein is irregular; it was effected without due regard of the applicable rules of Court which require service of the Election Petition to be effected within five days from the date of filing. Given the foregoing, we humbly request the Honourable Court to dismiss the Election Petition for irregularity.

We also pray for costs.

We are obliged.

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

Drawn by: **Messrs EMK and Associates**
Plot 9, Omelo Mumba Road
Rhodespark
P.O BOX 30644
LUSAKA
+260-211-250431
info@emk.co.zm
ADVOCATES FOR THE 2nd RESPONDENT

TO: Messers Kaunda Kaunda & Mwila Legal Practitioners
No. 10, Kawama Road
Woodlands
LUSAKA
ADVOCATES FOR THE PETITIONER

TO: Messrs Ellis & Co
Philip Ellis House,
No. 8 Tito Road,
P.O. Box 31902
Rhodespark,
LUSAKA
ADVOCATES FOR THE 1ST RESPONDENT

IN THE HIGH COURT FOR ZAMBIA 2026/HP/EP/ 008

AT THE PRINCIPAL REGISTRY

HOLDEN AT LUSAKA

IN THE MATTER OF: SECTIONS 81, 83, 89, 96, 97, 98, 99, & 100, [PART VIII] OF THE ELECTORAL PROCESS ACT, 2016 [As Amended by ACT No. 12 OF 2026], & REGULATIONS 2, 4, 5,14,& 15 OF THE ELECTORAL CODE OF CONDUCT

AND

IN THE MATTER OF: A PARLIAMENTARY ELECTION FOR CHITAMBO CONSTITUENCY HELD ON 13TH AUGUST 2026

AND

IN THE MATTER OF: AN ELECTION PETITION BY REMEMBER MUTALE

REPUBLIC OF ZAMBIA HIGH COURT OF ZAMBIA 28 AUG 2026 PRINCIPAL REGISTRY 1 P.O. BOX 50067, LUSAKA.

BETWEEN:

REMEMBER MUTALE PETITIONER

AND

NELSON C. KABANDA 1ST REPSONDENT

ELECTORAL COMMISSION OF ZAMBIA 2ND RESPONDENT

ELECTION PETITION

The Petition of REMEMBER MUTALE of Nindo Farms, off Great North Road, Mukando in Chitambo District, shows that:

1. Your Petitioner [REMEMBER MUTALE] was a Candidate in the Chitambo Constituency Parliamentary Election held on the 13th August 2026.
2. Your Petitioner states that in the Election herein, there were two [2] Candidates; being NELSON C. KABANDA, the Respondent representing the National

Reconciliation Party for Unity and Prosperity [NRPUP], and your Petitioner representing the United Party for National Development [UPND].

3. Your Petitioner states that the Election was conducted by the 2nd Respondent, Electoral Commission of Zambia [ECZ].
4. Your Petitioner states that as announced by the 2nd **Respondent's** Returning Officer, Charles Bupe, the following were the Results of the Poll:
   (i) Nelson C. Kabanda NRPUP 7,819
   (ii) Remember Mutale UPND 7,662
5. Your Petitioner states that, consequently, on the 15th August 2026, the Returning Officer for Chitambo Constituency declared the 1st Respondent as the duly elected Member of Parliament for the stated Constituency.
6. Your Petitioner states that Chitambo Constituency has ten [10] Wards.
7. Your Petitioner states that contrary to the results announced and the Declaration by the afore stated Returning Officer the 1st Respondent was not duly or validly elected for the reasons hereunder:-
   (i) At every rally or meeting held in each of the ten [10] Wards, the 1st Respondent, his Election Agents, and his supporters whilst in the 1st **Respondent's presence,** falsely stated and accused your Petitioner of having stolen Constituency Development Funds [CDF], meant for Co-operatives, Women Clubs and Youth Clubs, thereby inciting hatred against your Petitioner.
   (ii) At every rally or meeting held in each of the ten [10] Wards, the 1st Respondent, his Election Agents, and his supporters whilst in the 1st **Respondent's presence, falsely stated and accused your Petitioner of** having stolen Constituency Development Funds [CDF], meant for the operationalization of Health Facilities at Kobola in Lusenga Ward, at Mpempa in Nakatambo Ward, at Miseshi in Mpelembe Ward, at Kaoma in Chipundu Ward, at Lubembe in Muchinka Ward, at Chisansa in Lulimala Ward, and at Misumba in Mpelembe Ward.

(iii) The false statements, in [ii] above, by the 1st Respondent, his Election Agents, and his supporters whilst in the 1st **Respondent's presence,** were also made in relation to the non-operationalization of Maternity Wings at Mukanda in Muchinka Ward, and at Katonga in Katonga Ward.

(iv) At every rally or meeting held in each of the ten [10] Wards, the 1st Respondent, his Election Agents, and his supporters whilst in the 1st **Respondent's presence, falsely stated and accused your Petitioner of** having stolen funds meant for the completion of the Chalilo - Chipundu Road, and the Chitambo - Kasuko Road.

(v) At every rally or meeting held in each of the ten [10] Wards, the 1st Respondent, his Election Agents, and his supporters whilst in the 1st **Respondent's presence, falsely stated and accused your Petitioner of** having stolen Cash for Work funds meant for the beneficiaries that worked on the Cash for Work Projects.

(vi) At every rally or meeting held in each of the ten [10] Wards, the 1st Respondent, his Election Agents, and his supporters whilst in the 1st **Respondent's presence, falsely stated and accused your Petitioner and his** 'friends' of having stolen fertilizer meant for the poor under the Food Support Program.

(vii) The foregoing false allegations or statements incited hatred, in the voters, against your Petitioner and were contrary to Regulations 4[2][a] and 15[1][c] of the Electoral Code of Conduct.

(viii) The 1st Respondent together with his supporters, and his Election Agents distributed salt to voters at each rally they held in the ten [10] Wards, contrary to Section 81[1][c] of the Electoral Process Act, herein.

(ix) The 1st Respondent together with his supporters, and his Election Agents made cash payments to voters, in all the ten [10] Wards, as they went to vote on 13th August 2026, contrary to Section 81[1][a] and [e], Section 89[1],[e] and [l] of the Electoral Process Act, and Regulation 15[h][iii] of the Electoral Code of Conduct, herein.

(x) The 1st Respondent together with his supporters, and his Election Agents, **defaced, removed or destroyed your Petitioner's** and President Hakainde **Hichilema's** campaign materials in all the ten [10] Wards, contrary to Regulation 15[1][g] of the Electoral Code of Conduct. Some were apprehended and taken to Serenje Police Station.

(xi) Your Petitioners Polling Agents suffered intimidation by the 1st Respondent, his Election Agents and Polling Agents at most Polling Stations in Luombwa Ward, Mpelembe Ward, Nakatambo Ward, Katonga Ward, Muchinka Ward, Lusenga Ward, and Chipundu Ward. They were chased and locked out.

(xii) On account of the intimidation, stated in the preceding paragraph, **your Petitioner's Polling Agents could not fully witness**; the closing and opening of ballot boxes, the counting of ballots or votes, and could not tally, verify or authenticate the results given to, and declared by the Returning **Officer. Your Petitioner's Polling Agents could not obtain the GEN 20 Forms.** The intimidation in [xi] and [xii], above, breached Section 83[1][a] and [b] of the Electoral Process Act, and Regulation 5[1] of the Electoral Code of Conduct.

(xiii) On the basis of the intimidation, there was no compliance with the Electoral Process Act as regards the counting and tallying of votes cast.

8. Your Petitioner states that the foregoing conduct and omissions of the 1st Respondent, his Election and Polling Agents and his supporters whilst in his presence or with his approval, was in breach of Regulation 2 of the Electoral Code of Conduct which enjoins every person to promote conditions conducive to the conduct of free and fair elections.
9. Your Petitioner states that the foregoing breaches occurred in the period from Nominations herein to 15th August 2026, being the date of the Declaration of the Results of the Poll.

10. Your Petitioner states that the foregoing corrupt and illegal practices were widespread in the Constituency and prevented the majority of the voters from voting for the candidate of their choice, being your Petitioner.
11. Your Petitioner states that the 1st Respondent was therefore not duly elected as Member of Parliament for Chitambo Constituency.

WHEREOF your Petitioner PRAYS for:

(i) An order for scrutiny [and re-count] of the ballots cast at all the Polling Stations herein, on account of the afore stated intimidation of your Petitioner's Polling Agents.

(ii) A declaration that the election of Nelson C. Kabanda, the 1st Respondent, as Member of Parliament for Chitambo Constituency is null and void.

(iii) A declaration that your Petitioner, Remember Mutale, was or is the duly elected Member of Parliament for Chitambo Constituency on account of the results of or report on the scrutiny and re-count of the ballots cast herein.

(iv) Costs.

Signed:_____

REMEMBER MUTALE

Dated the day of 2026

This Petition was filed by:

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LUSAKA

ADVOCATES FOR THE PETITIONER