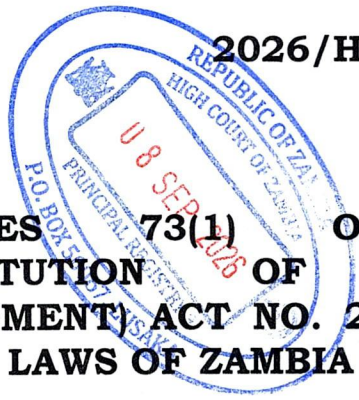
IN HIGH COURT FOR ZAMBIA **2026/HP/EP/031**
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(Election Jurisdiction)



IN THE MATTER OF: **ARTICLES 73(1) OF THE CONSTITUTION OF ZAMBIA (AMENDMENT) ACT NO. 2 OF 2016 OF THE LAWS OF ZAMBIA**

AND

IN THE MATTER OF: **SECTIONS 72,92,96.97.98.99 AND 100(1)(a) OF THE ELECTORAL PROCESS ACT NO. 35 OF 2016 OF THE LAWS OF ZAMBIA**

AND

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

AND

IN THE MATTER OF: **AN ELECTION PETITION RELATING TO MSANZALA CONSTITUENCY PARLIAMENTARY ELECTIONS HELD ON THURSDAY,13th AUGUST 2026**

BETWEEN:

ELIAS DAKA (MALE) **PETITIONER**

AND

AMON MUMBA (MALE) **1st RESPONDENT**

ELECTORAL COMMISSION OF ZAMBIA **2nd RESPONDENT**

SKELETON ARGUMENTS

Pursuant to Rule 10(2)(b) of the High Court (Election Petition) Rules, 2026 Statutory Instrument 31 of 2026

May it please this Honourable Court, these are the 1st Respondent's list of authorities and skeleton arguments in support.

MATERIALS REFFERED TO

CASE LAW

1. **MASUMBA V KAMONDO (2017) 3 Z.R. 130**
2. **LUO V MWAMBA AND ANOTHER SELECTED JUDGMENT NO. 51 OF 2018**
3. **MUTAPWE V SHOMENO, APPEAL NO. 19 OF 2017**

LEGISLATION

1. The Electoral Process Act No.35 of 2016, section 97(2)

MAY IT PLEASE THIS HONOURABLE COURT, we, on behalf of the 1st Respondent, respectfully tender these Skeleton Arguments in support of the Answer to Petition and Affidavit filed herein. For ease of reference, all underlining appearing in these Arguments has been employed solely to emphasise words or phrases considered to be of particular significance.

[PREFACE]

IF IT MAY PLEASE THIS HONOURABLE COURT at the heart of the matter is the validity of the election and declaration of the 1st Respondent as duly elected Member of Parliament for Msanzala Constituency. The 1st Respondent shall demonstrate, by reference to the facts and the applicable law, that the Petitioner's case is

without sufficient foundation and that the reliefs sought ought not to be granted.

The Petitioner intends to challenge the Will and Consent of the People to be served, led and governed by the 1st Respondent. The Petitioner wants to force himself on the People of Msanzala Constituency when he lost to the 1st Respondent by over 5, 000 votes. The Petitioner came out third with 1, 416 votes.

The Petitioner has not produced evidence to support his allegations. He has not satisfied the legal threshold required to set aside a Parliamentary election.

[1.] ARGUMENTS TO NEGATE THE PRAYER THAT THE ELECTION OF THE 1st RESPONDENT SHOULD BE NULLIFIED

1.1. **MY LORD/MY LADY,** in terms of our electoral law, the threshold for nullifying an election of a Member of Parliament where corrupt practice, illegal practice or other misconduct as alleged in an election petition, is governed by the provisions in section 97(2) of the Electoral Process Act[1], which is couched in the following manner:

[1] The Electoral Process Act No.35 of 2016, section 97(2)

"(2) The election of a candidate as Member of Parliament, mayor, council chairperson or councillor shall be void if, on the trial of an election petition, it is proved to the satisfaction of the High Court or a tribunal, as the case may be, that - (a) a corrupt practice, illegal practice or other misconduct has been committed in connection with the election - (i) by a candidate; or (ii) with the knowledge of and consent or approval of a candidate or of that candidate's election agent or polling agent; and the majority of voters in the constituency, district or ward were or may have been prevented from electing the candidate in that constituency, district or ward whom they preferred.[2]"

1.2. Further section 97(4) of the Electoral Process Act No.35 of 2016 provides that

(4) An election shall not be declared void by reason of any act or omission by an election officer in breach of that officer's official duty in connection with an election if it appears to the High Court or a tribunal that the election was so conducted as to be substantially in

[2] Ibid

accordance with the provisions of this Act, and that such act or omission did not affect the result of that election.

1.3. **My Lord/My Lady,** the Constitutional court had occasion of interpreting the above provision in the case of **Masumba v Kamondo**[3], stated that:

"The requirement in the current law for nullifying an election of a Member of Parliament is that a petitioner must not only prove that the respondent has committed a corrupt or illegal act or other misconduct or that the illegal act or misconduct complained of was committed by the respondent's election agent or polling agent or with the respondent's knowledge, consent or approval, but that he/she must also prove that as a consequence of the corrupt or illegal act or other misconduct committed, the majority of voters in the constituency were or may have been prevented from electing a candidate whom they preferred."

1.4. **Further, in the case of Luo v Mwamba and Another[4] the constitutional court went on to hold that:**

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[3] Masumba v Kamondo (2017) 3 Z.R. 130

[4] Luo v Mwamba and Another Selected Judgment No. 51 of 2018

"Section 97(2) of the (Electoral Process) Act is central to the judicial resolution of electoral disputes...In order to successfully have an election annulled, there is a threshold to surmount. The first requirement is for the petitioner to prove to the satisfaction of the Court, that the person whose election is challenged personally or through his duly appointed election or polling agent, committed a corrupt practice or illegal practice or other misconduct in connection with the election; or that such malpractice was committed with the knowledge and consent or approval of the candidate or his or her election or polling agent... In addition, the petitioner has the further task of adducing cogent evidence that the electoral malpractice or misconduct was so widespread that it swayed or may have swayed the majority of the electorate from electing the candidate of their choice.

1.5. MY LORD/MY LADY, applying the foregoing principles to the present matter, the Petitioner's allegations principally concern the conduct of the Returning Officer and other electoral officials in relation to the tallying, verification and

announcement of results. These allegations cannot be relied on or used to nullify the election of the 1st Respondent in accordance with section 97(4) of the Electoral Process Act No.35 of 2016.

1.6. Secondly, the Petitioners has alleged that the 1st Respondent engaged in corrupt practices and other misconduct which allegedly made the people of Msanzala not to elect a Member of Parliament of their choice. The Petitioner carries the burn of proving the allegations to almost beyond reasonable doubt as established by the Court in decided cases.

1.7. In the Affidavit verifying facts, no allegation is supported by evidence demonstrating that the 1st Respondent personally committed any corrupt practice, illegal practice or other misconduct, or that any such conduct was undertaken with his knowledge, consent or approval.

1.8. The 1st Respondent was a candidate in the election and not an election officer. He neither counted the votes, verified the GEN20 Forms, controlled the tallying centre nor declared himself the winner. The declaration was made by the Returning Officer upon completion of the electoral process.

1.9. The 1st Respondent received 7, 038 votes, whilst the Petitioner received 1, 416 votes, giving the 1st Respondent a majority of over 5, 000 votes. The Petitioner's case must therefore rise or fall upon evidence establishing the statutory conditions for nullification; allegations of irregularity, without the necessary connection to the 1st Respondent and without proof of their effect upon the electorate, cannot by themselves satisfy the threshold imposed by section 97(2).

1.10. It is further significant that section 97(4) recognises that an election is not to be lightly disturbed merely because an election officer may have committed an act or omission in the discharge of his official duties. The Court must consider whether the election was substantially conducted in accordance with the law and whether the alleged act or omission affected the result.

1.11. **MY LORD/MY LADY,** the 1st Respondent maintains that the election in Msanzala Constituency was conducted through a transparent, orderly and prescribed electoral process and that he was duly declared elected by the Returning Officer. The Petitioner has not demonstrated, on the facts pleaded, that any alleged irregularity was attributable to the 1st Respondent or that it prevented the majority of voters from electing the candidate of their choice.

1.12. MY LORD/MY LADY, in the premises, the 1st Respondent respectfully submits that the statutory threshold for nullifying his election has not been established and that the prayer seeking to set aside his election ought therefore to be dismissed. The election, having been conducted and concluded and the 1st Respondent having been duly declared elected, ought to remain undisturbed unless the Petitioner proves the grounds upon which the law permits such a solemn result to be overturned.

[2.] WHAT THEN IS THE STANDARD OF PROOF?

2.1. It is also settled that the applicable standard of proof in an election petition is higher than that required in an ordinary civil action but lower than the standard of beyond reasonable

doubt required in criminal matters. Furthermore, the evidence adduced in support of the allegations made must prove issues raised to a fairly high degree of convincing clarity. This position of the law was restated by the constitutional Court in the case of **Mutapwe v Shomeno**[5] where we held that:

"The petitioner in an election, just as in any other civil matter, bears the burden to prove the electoral offence complained of. However, the standard of proof in an election petition is higher than that required in an ordinary civil action. The evidence adduced in support of the allegations made in an election petition must prove the issues raised to a fairly high degree of convincing clarity."

2.2. MY LORD/MY LADY, it is settled that the standard of proof in an election petition is higher than that required in an ordinary civil action, but lower than the criminal standard of proof beyond reasonable doubt, and the evidence adduced must establish the allegations to a fairly high degree of convincing clarity; accordingly, as held by the Constitutional

[5] Mutapwe v Shomeno Appeal No. 19 of 2017

Court in **Mutapwe v Shomeno, Appeal No. 19 of 2017**, the burden rests upon the Petitioner to prove the electoral offence complained of, and mere allegation, suspicion or assertion cannot suffice to discharge that burden.

[3.] HAS THE PETITIONER MET THE HEREINBEFORE MENTIONED STANDARD OF PROOF?

3.1. **MY LORD/MY LADY**, the 1st Respondent respectfully submits that the Petitioner has not met the requisite standard of proof, as the allegations contained in the Petition remain largely assertions concerning the conduct of the Returning Officer and electoral officials, without cogent evidence demonstrating that the 1st Respondent personally committed, authorised, consented to or had knowledge of any corrupt practice, illegal practice or other misconduct; neither has the Petitioner demonstrated that any alleged irregularity was sufficiently material or widespread as to prevent the majority of voters in Bangweulu Constituency from electing the candidate of their choice, and in the absence of such proof, the threshold for disturbing the election duly declared by the Returning Officer has not been crossed.

[4.] CONCLUSION

3.2. **MY LORD/MY LADY**, in conclusion, the 1st Respondent respectfully submits that the Petitioner has not placed before this Honourable Court the cogent and convincing evidence required to unsettle an election duly conducted and declared.

3.3. The Petition rests upon allegations largely concerning the conduct of electoral officials, without sufficient evidence connecting the 1st Respondent to any unlawful act or demonstrating that any alleged irregularity affected the will of the majority of the electorate. The 1st Respondent therefore humbly prays that this Honourable Court uphold the declaration of **AMON MUMBA** as the duly elected Member of Parliament for Msanzala Constituency and dismiss the Petition, with costs

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

Messrs. Kang'ombe & Associates, Plot No. 1176, House No. 2, Nyati Close, Addis Ababa Road, Rhodes Park, P.O Box 39428, Email:kangom6@gmail.com, Lusaka Zambia

Advocates for the 1st Respondent

To:

Messrs. Friday Besa & Associates

Plot No. 1146/15. Lagos Road

P.O Box 37383

Lusaka, Zambia

The Electoral commission of Zambia

The Commission Chairperson

Elections House, Haile Selassie Avenue

Longacres

P.O Box 50274

Lusaka, Zambia