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

2026/HP/EP/031

IN THE MATTER OF:	**AN ELECTION PETITION OF ELIAS DAKA**
AND	
IN THE MATTER OF:	**ARTICLE 73 [1] OF THE CONSTITUTION OF THE REPUBLIC OF ZAMBIA**
IN THE MATTER OF:	**MSANZALA CONSTITUENCY ELECTION HELD ON THE 13TH AUGUST 2026.**
IN THE MATTER OF:	**RULE 9 OF THE HIGH COURT [ELECTION PETITION] RULES SI 31 OF 2026.**

BETWEEN:

ELIAS DAKA	**PETITIONER**
AND	
AMON MUMBA	**1ST RESPONDENT**
ELECTORAL COMMISSION OF ZAMBIA	**2ND RESPONDENT**

2ND RESPONDENT'S ANSWER TO PETITION

TAKE NOTICE that the 2nd Respondent, the Electoral Commission of Zambia, hereby answers the Petition as follows:

1. The 2nd Respondent admits that it is the constitutional body established under Article 229 of the Constitution and that it is mandated, inter alia, to implement the electoral process and conduct elections and referenda.

2. The 2nd Respondent admits that a parliamentary election was held in Msanzala Constituency on 13 August 2026 and that the election was conducted under the constitutional and statutory framework governing parliamentary elections.

3. The 2nd Respondent admits that, following the counting and collation process, the Returning Officer declared the results of the parliamentary election. The 2nd

Respondent will rely on the official electoral record as the best evidence of the results and the process by which they were obtained.

4. As to the allegations of mathematical discrepancies at Muzenje, Kathangwira, Nyamphande 02, Nyamphande 04 and Matonga 01 Polling Stations, the 2nd Respondent does not admit the alleged discrepancies, their characterisation as irregularities, or their effect on the declared result. The Petitioner is put to strict proof of the actual figures, the applicable electoral records, the alleged error and, importantly, how any such error affected the result.

5. As to the allegation concerning figures written in words and numerals on a GEN 20 form at Matonga 01 Polling Station, the 2nd Respondent denies that any alleged inconsistency, without proof of the figure actually used in the aggregation of the result and proof that the alleged inconsistency affected the result, constitutes a basis for nullifying the election.

6. As to the allegation concerning the GEN 20 form at Malenga Polling Station, the 2nd Respondent denies that the allegation, as pleaded, establishes any breach attributable to the Commission which affected the result. The Petitioner is put to strict proof of the form relied upon, the alleged defect, the legal provision said to have been breached and the effect on the election result.

7. As to the allegation that a signed GEN 20 form lacked certain names or particulars, the 2nd Respondent denies that such omission, even if proved, automatically invalidates the election. The statutory test under section 97(2)(b), read with section 97(4), requires proof of non-compliance relating to the conduct of the election and proof that the non-compliance affected the result, subject to the substantial-compliance protection in section 97(4).

8. As to the allegation of unlawful movement of ballot papers and breach of chain of custody, the 2nd Respondent denies the allegation. The Petitioner has not, in the Petition as served, identified the persons alleged to have moved the ballot papers, the ballot papers allegedly moved, the time and manner of the alleged movement, or any alteration, substitution, loss or tampering with ballots resulting therefrom.

9. The 2nd Respondent further denies the allegation that its officers at RAY Polling Station or any other polling station failed to count ballot papers and instead apportioned votes in favour of the 1st Respondent. The allegation of collusion, bribery, promised employment and payment of K4,000.00 to officers and polling agents is denied and the Petitioner is put to strict proof.

10. The allegations of bribery, corruption, distribution of chitenge material, payment of K2,700.00 to polling agents and alleged promises of K4,000.00 are allegations principally directed at the 1st Respondent and/or persons allegedly associated with him. The 2nd Respondent does not admit any such conduct and puts the Petitioner to strict proof of the alleged acts, the identity and status of the alleged perpetrators, their connection to the election and the statutory consequences sought.

11. The 2nd Respondent denies that the Petition establishes that the majority of voters in Msanzala Constituency were or may have been prevented from electing the candidate of their choice. No sufficient particulars are pleaded showing the number of voters allegedly affected, the polling stations concerned, the votes allegedly lost or transferred, or the manner in which the alleged acts altered the result.

12. Further and in the alternative, insofar as the Petition relies upon section 97(2)(b) of the Electoral Process Act, the 2nd Respondent shall contend that the Petitioner must prove cogently both non-compliance with the provisions of the Act relating to the conduct of elections and that such non-compliance affected the result. The Petition does not establish either limb.

13. The 2nd Respondent shall further rely on section 97(4) of the Electoral Process Act and contend that an election shall not be declared void by reason of an act or omission by an election officer where the election was substantially conducted in accordance with the Act and the act or omission did not affect the result.

14. The 2nd Respondent shall rely upon the constitutional mandate of the Commission under Article 229, the principles governing electoral systems and processes under Article 45, the Electoral Process Act, the High Court (Election Petition) Rules, 2026, and the authorities set out in the accompanying Skeleton Arguments and List of Authorities.

15. Save as expressly admitted herein, the First Respondent denies each and every allegation contained in the Petition as though the same were specifically set out and traversed seriatim.

16. The 2nd Respondent therefore prays that the Petition, insofar as it is directed against the 2nd Respondent and insofar as it seeks to invalidate the election on alleged non-compliance by the Commission, be dismissed with costs.

WHEREFORE, the 2nd Respondent prays that this Honourable Court:

(a) Dismisses the Petition against the 2nd Respondent;

(b) Declines to grant the Petitioner's prayer that the election and declaration of the First Respondent as the duly elected Member of Parliament for Msanzala Constituency be declared null and void;

(c) Declines to grant an order setting aside the election of the 1st Respondent as Member of Parliament of Msanzala Constituency and that fresh elections for the Member of Parliament be held within 90 days;

(d) Grants such further or other relief as this Honourable Court may be deemed appropriate.

Dated this _____ day of _____2026

Per: _____

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Amon Mumba,
Msanzala,
Petauke.

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AND

AMON MUMBA — **1ST RESPONDENT**

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

2ND RESPONDENTS LIST OF AUTHORITIES AND COPIES

LIST OF AUTHORITIES

Legislation:

i. The Electoral Process Act No. 35 of 2016 (as amended).

ii. The High Court (Election Petition) Rules, Statutory Instrument No. 31 of 2026, Rule 9.

CASES LAW:

i. Anderson Kambela Mazoka and Others v Levy Patrick Mwanawasa and Electoral Commission of Zambia (2005) ZR 138 (SC).

ii. Sibongile Mwamba v Kelvin Sampa and Another CCZ Appeal No. 2 of 2017.

Dated this _____ day of _____2026

Per: _____

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THE ELECTORAL PROCESS ACT, 2016

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Single copies of this Act may be obtained from the Government Printer, P.O. Box 30136, 10101 Lusaka, Price K144.00 each.

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GOVERNMENT OF ZAMBIA

ACT

No. 35 of 2016

Date of Assent: 6th June, 2016

An Act to provide for a comprehensive process for a general election; provide for the conduct of elections by the Electoral Commission of Zambia and empower the Commission to make regulations in matters relating to elections; provide for the registration of voters and the keeping of voters registers; prescribe the procedures for nominations for elections; provide for the role of presiding officers, election officers and conflict management officers; prescribe the procedure for voting during an election; provide for the accreditation and roles of observers and monitors; criminalise corrupt practices and other illegal practices related to elections and provide for penalties in connection with an election; provide for election petitions and the hearing and determination of applications relating to a general election; provide for voter education; prescribe the electoral code of conduct; repeal and replace the Electoral Act, 2006; and provide for matters connected with, or incidental to, the foregoing.

[7th June, 2016

ENACTED by the Parliament of Zambia. Enactment

PART I

PRELIMINARY PROVISIONS

1. This Act may be cited as the Electoral Process Act, 2016. Short title

2. In this Act, unless the context otherwise requires— Interpretation

"area" has the meaning assigned to it in section *two* of the Local Government Act; Cap. 281

"ballot box" means a box prescribed by the Commission for the purpose of an election;

"ballot paper" means the document prescribed by the Commission in respect of an election;

"ballot paper account" means a document prescribed by the Commission for purposes of recording the ballot papers issued to a returning officer and completed by a presiding officer at the close of a poll;

Cap. 1 "by-election" has the meaning assigned to it in the Constitution;

"campaign material" means party or candidate manifestos, advertisements, billboards, posters, tshirts, cloth or other material depicting colours regarding symbols, and other designs of a party or pictural images of a candidate;

"campaign period" means a period of three months before the holding of an election;

"candidate" means a person contesting a presidential, parliamentary or local government election;

"caricature" means the exaggerated imitation of a cartoon, effigy, picture, drawing or sketch of a person or literary style for comic or satirical effect;

Cap. 281 "casual vacancy" means a vacancy in the office of councillor as specified in the Local Government Act;

Act No. 25 of 2016 "Chief Electoral Officer" has the meaning assigned to it in the Electoral Commission of Zambia Act, 2016;

"Code" means the Electoral Code of Conduct set out in the Schedule;

Cap. 1 "Commission" means the Electoral Commission of Zambia established by the Constitution;

"conflict management officer" means an officer appointed as a conflict management officer in accordance with section *one hundred* and *thirteen;*

Cap. 1 "constituency" has the meaning assigned to it in the Constitution;

Cap. 1 "Constitutional Court" has the meaning assigned to it in the Constitution;

"corrupt practice" means any conduct which is declared to be a corrupt practice in accordance with section *eighty-one;*

"costs" includes charges and expenses;

Cap. 1 "council" has the meaning assigned to it in the Constitution;

"council chairperson" has the meaning assigned to it in the Constitution; Cap. 1

"councillor" has the meaning assigned to it in the Constitution; Cap. 1

"designated person" means a person or officer appointed by the Chief Justice for the purpose of receiving election petitions filed before a tribunal and attending to such other matters regarding petitions before a tribunal as are assigned to the Registrar under this Act;

"election" has the meaning assigned to it in the Constitution; Cap. 1

"election agent" means a person appointed as an agent of a candidate for the purpose of an election and who is specified in the candidate's nomination paper;

"election officer" means a person appointed by the Commission as—

(a) a registration officer;

(b) an assistant registration officer;

(c) a district electoral officer;

(d) a returning officer;

(e) a presiding officer;

(f) an assistant presiding officer; or

(g) a polling assistant;

and includes a person appointed to assist the Chief Electoral Officer in the performance of the functions of the Chief Electoral Officer as specified in this Act;

"election petition" means an election petition related to a presidential, parliamentary or local government election as specified in the Constitution; Cap. 1

"election timetable" means a timetable for an election published by the Commission in accordance with section *twenty-eight;*

"employee" has the meaning assigned to it in section *two* of the Local Government Act; Cap. 281

"general election" has the meaning assigned to it in the Constitution; Cap. 1

"illegal practice" means an offence which is declared under this Act to be an illegal practice;

"interim period" means the period commencing at the commencement of this Act and expiring on such date as the President may prescribe by statutory order;

"media" includes publicly or privately operated print and electronic media;

Cap. 1 "Member of Parliament" has the meaning assigned to it in the Constitution;

"monitor"means a person accredited as such by the Commission;

Cap. 126 "national registration card" means a national registration card issued under and in terms of the National Registration Act;

"national registration number"means the serial number inserted on a national registration card issued in accordance with

Cap. 126 the National Registration Act;

"nomination day" means the day appointed by the Commission as the day on which a candidate files that candidate's nomination paper with the Commission;

"nomination centre" means a place prescribed by the Commission as a nominating office;

"nomination paper" means a document prescribed by the Commission for the purpose of a candidate registering that candidate's intention to contest an election under this Act;

"observer" means a person accredited as such by the Commission;

"petitioner" in relation to an election petition, means a person who signs and presents an election petition under section *ninety-eight,* and includes a person substituted for a petitioner;

Cap. 1 "political party" has the meaning assigned to it in the Constitution;

"polling agent" means an agent appointed by a candidate in respect of a polling station;

"polling assistant" means a person appointed as polling assistant by the Commission;

"polling day" means—

Cap. 1 *(a)* in relation to a general election, the day specified in accordance with the Constitution for the taking of the poll in a general election; and

(b) in relation to a by-election, a day appointed by the Commission for the taking of the poll in a by-election;

"polling district" means a district established by the Commission as a polling district under section *twenty-one;*

"polling station" means a place established as a polling station by the Commission under section *twenty-four;*

"public officer" has the meaning assigned to it in the Constitution; Cap. 1

"presidential election" has the meaning assigned to it in the Constitution; Cap. 1

"presiding officer" means a person appointed as a presiding officer by the Commission under section *thirty-seven;*

"Register of Voters" means the Register of Voters prepared and certified by the Commission under section *fourteen;*

"registration officer" means a person appointed as a registration officer by the Commission;

"Registrar" means the Chief Registrar of the High Court, and includes the Deputy Registrar, District Registrar and Assistant Registrar;

"respondent" means a person against whom an election petition is filed in accordance with section *ninety-eight;*

"Returning Officer" has the meaning assigned to it in the Constitution; Cap. 1

"returning officer" has the meaning assigned to it in the Constitution; Cap. 1

"traditional leader" means a paramount chief, senior chief, chief or village headman;

"tribunal" means a local government elections tribunal established in accordance with Article 159 of the Constitution; Cap. 1

"voter" means a person who is registered as a voter and whose name appears in the Register of Voters;

"voter's card" means a voter's card prescribed and issued by the Commission; and

"ward" means any of the divisions into which a council area is divided under section *twenty-five.*

Principles of electoral system and process

3. Subject to the Constitution, the principles applied in the electoral system and process shall ensure the following:

(a) equal and universal suffrage;

(b) no discrimination based on gender or disability when providing electoral services;

(c) transparent and credible electoral process;

(d) no special privileges accorded to a political party or social group, except for persons with special needs;

(e) no impediments to lawful inclusion in the electoral register;

(f) impartial voter-education programmes;

(g) access to polling stations for representatives of political parties, accredited local or international election monitors, observers and the media;

(h) secrecy of the vote;

(i) design of the ballot paper that promotes easy use;

(j) transparent and secure ballot boxes;

(k) impartial assistance to voters at the polling station;

(l) transparent, accurate and reliable vote counting procedure;

(m) proper management of invalid ballot papers;

(n) precautionary measures for transporting of election materials;

(o) impartial protection of polling stations;

(p) established procedures for lodging and dealing with complaints;

(q) impartial handling of election complaints;

(r) impartial delimitation of electoral boundaries; and

(s) timely resolution of electoral disputes.

Administration, enforcement and prosecution

Cap. 1

4. (1) 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 the exercise of its functions under the Constitution and this Act.

(2) The Commission shall, in order to ensure compliance with the provisions of this Act, appoint such number of officers as it may consider necessary for purposes of this Act.

(3) An officer appointed pursuant to subsection (2) shall be provided with a letter of appointment which shall be *prima facie* evidence of that person's appointment.

(4) An officer shall, on demand by a person affected by the exercise of the powers of that officer under this Act, produce for inspection the letter referred to in subsection (3).

(5) The Anti-Corruption Commission shall investigate and prosecute any corrupt practice committed under this Act in accordance with the Anti-Corruption Act, 2012.

Act No. 3 of 2012

(6) The Zambia Police Service shall enforce law and order at polling stations and undertake any criminal proceedings, subject to subsection (2), in respect of an offence committed by any person in contravention of this Act.

Delegation of powers and duties by Commission

5. (1) The Commission may—

(a) delegate any of its powers under this Act to a member, employee or officer of the Commission excluding the power to prescribe anything under this Act or make an appointment under this Act or any other written law; and

(b) instruct a member, employee or officer of the Commission to perform any of its duties under this Act or any other written law.

(2) A delegation or instruction made under subsection (1)—

(a) shall be subject to any limitations and conditions that the Commission may impose; and

(b) does not prevent the Commission from exercising or performing the assigned power or duty.

(3) The Commission may, by statutory order, confer powers or impose duties on an officer or authority of the Government or council for the purpose of discharging its functions under this Act.

Delegation of powers and duties by Chief Electoral Officer

6. (1) The Chief Electoral Officer may—

(a) delegate any of the powers of the Chief Electoral Officer under this Act or any other law to an employee or officer of the Commission; or

(b) instruct an employee or officer of the Commission to perform any of the duties of the Chief Electoral Officer under this Act or any other written law.

(2) Subsection (2) of section *five* with the necessary modification, shall apply to a delegation or instruction of the Chief Electoral Officer under subsection (1).

PART II

REGISTRATION OF VOTERS AND REGISTERS

Continuous voter registration

7. The Commission shall conduct a continuous registration of voters.

Qualification for registration as voter

8. (1) A person qualifies for registration as a voter if that person—

(a) is a citizen of Zambia;

(b) has attained the age of eighteen years; and

(c) is in possession of a national registration card.

(2) The Commission shall register a person as a voter as prescribed.

(3) A person who has been registered in the Register of Voters shall be issued with a voter's card.

(4) A person shall not register as a voter in more than one constituency.

Disqualification from registration as voter

9. (1) The Commission shall not register a person as a voter if that person

(a) is not a citizen of Zambia;

(b) is not in possession of a national registration card;

(c) suffers from a mental disability which makes the person unable to exercise their right to vote;

Cap. 88

(d) is detained under the Criminal Procedure Code during the pleasure of the President;

(e) is disqualified from voting under section *forty-seven*;

(f) is under a sentence of death imposed by a competent court, or a sentence of imprisonment imposed by a court or substituted by a competent authority for some other sentence imposed by that court; or

(g) does not qualify to be registered as a voter as may be prescribed;

(2) In this section, the reference to a sentence of imprisonment shall not be construed as including a sentence of imprisonment the execution of which is suspended or a sentence of imprisonment imposed in default of payment of a fine.

De-registration of voter

10. A registration officer shall de-register a voter if the registration officer is satisfied that the voter—

(a) does not qualify to be registered as a voter;

(b) no longer meets the qualifications for registration as specified in section *eight*;

(c) has been fraudulently registered; or

(d) obtained the registration through submission of false information or making of a misleading statement.

Notification by registration officer

11. (1) A registration officer shall notify a person—

(a) whose registration as a voter has been refused;

(b) whose application to have a change of name or ordinary place of residence recorded has been refused;

(c) who has been disqualified from registration as a voter under section *ten*; or

(d) whose registration details have been changed.

(2) A notification given under subsection (1) shall give reasons for the refusal or action taken.

Suspension of registration of voters

12. (1) The Commission may suspend the registration of voters whenever an election is due for the purposes of the conduct of the election.

(2) The Commission shall, where it prescribes the polling day for a byelection, immediately suspend the registration of voters in the district in which the byelection is to take place until the byelection is concluded.

Provisional Register of Voters

13. (1) The Commission shall establish a Provisional Register of Voters as prescribed.

(2) The Provisional Register of Voters shall include the details of persons entitled to vote in an election or referendum under this Act or the Referendum Act.

Cap. 14

Register of Voters

14. (1) The Commission shall compile and maintain the Register of Voters as prescribed.

(2) The Register of Voters shall include the details of persons entitled to vote in an election or referendum under this Act or the Referendum Act.

Cap. 14

(3) The Register of Voters shall not preclude any person from voting in a referendum in accordance with the Constitution.

Cap. 1

Application to change registration details

15. A voter whose name or ordinary place of residence has changed may apply, in the prescribed manner, to have that change recorded in the Register of Voters, except that a person shall not apply when a change of name is due to change in marital status.

Amendments to Register of Voters

16. (1) A registration officer shall—

(a) change the registration details of a voter if the registration officer is satisfied that the details of a voter as reflected in the Register of Voters are incorrect or have changed;

(b) add the name and other particulars of a voter resulting from a new registration, as prescribed; or

(c) delete the name of a voter who is deceased.

(2) A registration officer shall record, in the Register of Voters, a change in a polling district for which a person is registered as a voter if that person's place of ordinary residence after a change in the boundaries of the polling district falls in another polling district.

Objections concerning details in Provisional Register of Voters

17. (1) A person whose name appears in the Provisional Register of Voters may object to an error or omission regarding the person's details, in the prescribed manner, within ninety days' of the publication of the Provisional Register of Voters.

(2) A person may object to an error or omission to the exclusion or regarding the registration details of another person.

(3) A person who objects to another person's registration details shall serve notice of the objection on that person.

(4) The Commission shall consider an objection to the Provisional Register of Voters within fourteen days from the date the objection was made and shall notify the person who made the objection and the registration officer.

(5) A registration officer shall give effect to a decision of the Commission, made under this section, within three days of the decision.

Publication of Register of Voters

18. (1) A copy of the Register of Voters, as it exists at any time, shall be available for inspection during office hours at the Commission's head office.

(2) A person who requires a copy or extract of the Register of Voters may, upon payment of a prescribed fee, obtain the copy or extract which shall be certified by the Chief Electoral Officer.

(3) A document purporting to be a copy or extract of the Register of Voters, which is duly certified by the Chief Electoral Officer, shall be received in evidence in any legal proceedings as to the matters stated in the Register of Voters.

Inspection of Register of Voters before election

19. (1) The Register of Voters or the segments of the Register of Voters that shall be used for an election shall be the register certified for the purposes of that election.

(2) The Chief Electoral Officer shall certify the Register of Voters, or segments of the Register of Voters, and publish the Register of Voters or the segments of the Register of Voters and make the Register of Voters or the segments of the Register of Voters available for inspection at the following venues:

(a) at the Commission's head office;

(b) at the polling station in each polling district; and

(c) at the office of each council.

Cut-off dates for registration of voters and Register of Voters

20. (1) The Commission may prescribe cut-off dates with respect to the registration of voters and the compilation of the Register of Voters, including the date by which—

(a) a person may apply to be registered as a voter or change the person's registration details;

(b) a registration officer shall give notice of the venue and dates on which the Provisional Register of Voters may be inspected;

(c) the Commission shall consider an objection made under section *seventeen* and notify the objector and the registration officer and a person other than the objector whose name or registration details are involved; and

(d) a registration officer shall complete the compilation of the Register of Voters and publish it.

PART III

POLLING DISTRICTS AND BOUNDARIES

Establishment of polling districts

21. (1) The Commission shall—

(a) establish polling districts for the whole of the territory of the Republic;

(b) determine the boundaries of each polling district in accordance with the criteria provided in section *twenty-two*; and

(c) keep a map of each district.

(2) The polling districts for an election shall be those polling districts which, on the date on which an election is called, are within the area in which the election is called.

Criteria for determining polling district boundaries

22. The Commission shall determine the boundaries of a polling district by taking into account any factor within the proposed polling districts that could affect the free, fair and orderly conduct of elections, including—

(a) the availability of a suitable venue for a polling station;

(b) the number and distribution of eligible voters;

(c) the accessibility of a polling station to voters given—

(i) the radius of the proposed polling district;

(ii) the availability of transport;

(iii) telecommunications facilities; and

(iv) any geographical or physical feature that may impede access to the polling station;

(d) district and provincial boundaries; and

(e) cultural diversity.

Inspection and copies of maps of polling district

23. (1) As soon as practicable after the polling districts have been established, the Chief Electoral Officer shall give notice that copies of the map of each polling district are available for inspection.

(2) The notice referred to in subsection (1) shall be published in the *Gazette* and publicised in the media so as to ensure wide publicity of the maps.

(3) The notice shall state, and the Chief Electoral Officer shall ensure, that copies of—

(a) the maps are available for inspection at the Commission's head office; and

(b) the maps of the polling districts are available for inspection at the office of the person administering the district.

(4) A person may inspect a copy of a map provided for in subsection (1).

(5) The Chief Electoral Officer shall provide a certified copy of a map of a polling district to any person who pays the prescribed fee for that purpose.

Establishment of polling station

24. (1) The Commission shall establish a polling station for an election, in each polling district, as the Commission may prescribe.

(2) The Commission shall, when determining the location of a polling station, take into account any factor that could affect the free, fair and orderly conduct of elections, including—

(a) the number and distribution of eligible voters in the polling districts;

(b) the availability of suitable venues for polling stations;

(c) the distance to be travelled to reach the polling station;

(d) access routes to the polling station;

(e) the availability of transport to the polling station;

(f) traffic density at or near the polling station;

(g) telecommunications facilities at the polling station;

(h) general facilities at the polling station;

(i) the safety and convenience of voters;

(j) any geographical or physical feature that may impede access to or at the polling station; and

(k) the accessibility of the polling station.

(3) The Commission may, before determining the location of a polling station, consult on the proposed location of that polling station with the council for the area in which that polling station shall fall.

(4) The Chief Electoral Officer shall, not later than the date stated in the election timetable, publicise a list containing the addresses of the established polling stations available for inspection.

(5) Section *twenty-three* shall apply, with the necessary modifications, to the inspection and obtaining of copies of the established polling stations.

Division of area of councils into wards

25. (1) The Commission shall, after consultation with every council, by statutory order, divide the area of each council into wards, defining the boundaries of the wards by reference to polling districts, and assigning names to the wards and polling districts.

(2) The number of wards into which the area of a council is divided shall be equal to the number of elected councillors prescribed in respect of that council by the Minister under the Local Government Act. Cap. 281

(3) The Commission shall exercise its powers under this section so that each ward comprises one or more complete polling districts.

(4) Whenever the Minister alters the area of a council or the number of councillors of a council, the Commission shall, after consultation with such council, by statutory order, make such alterations to the boundaries of the wards of such council or to the division of the area of such council into wards as may be necessary to give effect to the provisions of this section.

(5) Whenever the Commission is satisfied that there has been a material alteration in the number of registered voters in the area of a council or of any of the wards into which such area is divided, the Commission may, after consultation with the council concerned, exercise in respect of the area of that council or any part of the council the powers conferred by this section.

Election in newly created Council

26. (1) The Commission may, by statutory order, whenever—

(a) a new council is established; or

(b) an alteration is made in the division of the area of an existing council into wards or in the definition of the boundaries of any ward;

direct that an ordinary election of councillors in every ward or in any particular ward of that council shall be held on such date as may be appointed by the statutory order.

(2) A statutory order made under this section shall specify the day or days on which, and the hours within which, returning officers may receive nominations of candidates for election in any ward to which such order relates.

Relocation of polling station in emergencies

27. (1) Despite section *twenty*, the Commission may relocate a polling station if it is necessary to do so for the conduct of a free and fair election.

(2) The Chief Electoral Officer shall publicise the relocation of a polling station among voters in the polling district concerned.

PART IV

NOMINATIONS FOR ELECTIONS

Election timetable

28. (1) Subject to the Constitution, the Commission shall, before the polling day—

(a) compile an election timetable for each election to provide for the following:

(i) the closing date of the registration of voters;

(ii) the dates for inspection of the Provisional Register of Voters;

(iii) the date and method for the submission of nominations;

(iv) the date and method for the acceptance of nominations;

(v) the opening and closing dates of the campaign period;

(vi) the date of the election and voting hours for the election;

(vii) any cut-off time for any act to be performed; and

(viii) any other relevant information; and

(b) publish the election timetable in the *Gazette*.

(2) The Commission may amend the election timetable by notice in the *Gazette* if—

(a) it considers it necessary for a free and fair election; or

(b) the polling day is postponed under section *fifty-six*.

(3) The campaign period shall commence and close on such date as the Commission may determine.

Electoral campaign

29. (1) A public officer and public entity shall give equal treatment to candidates.

(2) A candidate and political party has the right to have the content of the candidate's or political party's campaign message reported in public media in a fair and balanced manner.

(3) A candidate or political party may, during an electoral campaign, publish or distribute campaign materials of such a nature and in such a manner as may be prescribed by the Commission.

(4) For the purposes of this section "campaign messages" means an activity, statement or any other form of expression aimed at promoting particular political ideas, policies and strategies for purposes of obtaining votes for a candidate or political party contesting an election.

Nomination of Presidential and Vice-Presidential candidates

30. (1) A candidate for election as President or Vice-President shall deliver to the Returning Officer—

(a) the candidate's nomination paper;

(b) the prescribed election fee, except that a candidate for election as a Vice-President shall not pay the prescribed fee;

(c) the prescribed statutory declaration of the candidate's assets and liabilities; and

(d) an affidavit attesting that the person is qualified for election as President or Vice-President, as the case may be.

(2) A person who swears or affirms falsely under this section commits an offence and is liable, upon conviction, to imprisonment for a term of seven years without the option of a fine.

(3) A candidate delivering a nomination paper, referred to in subsection (1), to the Returning Officer shall be supported by one hundred supporters from each Province who are registered voters in that Province.

Nomination for election in constituency

31. (1) A person who applies to be a candidate for election in any, constituency shall lodge with the returning officer for that constituency that person's nomination paper and an affidavit in the prescribed manner and form.

(2) A nomination submitted under subsection (1) may be withdrawn at any time, before the expiry of the period appointed for lodging nomination papers in respect of the constituency concerned, if the candidate delivers to the returning officer a written notice to that effect.

Conduct of local government elections

32. Subject to the other provisions of this Act, the Commission shall conduct local government elections.

Nomination of candidates in district or ward

33. (1) Subject to subsection (2), a candidate for election in a district or ward of a council shall be nominated by means of a nomination paper in such form as may be prescribed and such nomination paper shall be subscribed, in the presence of the returning officer for that council, by a proposer and a seconder and not less than seven other persons, each of whom shall be a voter registered in a polling district in such ward.

(2) A person appearing before a returning officer for the purpose of subscribing a nomination paper under subsection (1) shall produce a voter's card and a national registration card to the returning officer for inspection as proof of identity.

(3) A person qualifies to be a mayor or council chairperson if that person—

(a) possesses the same qualifications as those specified for a Member of Parliament in Article 70 of the Constitution; Cap. 1

(b) is not a Member of Parliament; and

(c) has a certificate of clearance showing the payment of council taxes, where applicable.

Restriction on nomination papers

34. (1) In an election, a person shall lodge nomination papers in only one constituency, district or ward.

(2) Where, upon the expiry of the period for lodging nomination papers in any constituency, district or ward a person is found to have lodged, and not withdrawn, nomination papers in more than one constituency, district or ward then every one of those nominations shall be invalid.

Appointment of election agents and polling agents

35. (1) A candidate may appoint—

(a) two polling agents for each polling station; and

(b) two election agents for each venue where counting of the votes will take place.

(2) An election or polling agent—

(a) shall be a Zambian citizen or resident permit holder; and

(b) shall not be a candidate in an election.

(3) The appointment and revocation of appointment of a person as an election or polling agent shall be effected in the prescribed manner.

Powers and duties of election or polling agents

36. (1) An election or polling agent may observe the proceedings during—

(a) voting;

(b) the counting of votes; and

(c) the announcement and declaration of the result of an election.

(2) The absence of an election or polling agent from a gazetted or prescribed place where an electoral proceeding is being conducted shall not invalidate those proceedings.

(3) An election or polling agent shall, while at a polling station or venue where the proceedings are taking place—

(a) wear the prescribed identification indicating—

(i) that the person is an election or polling agent; and

(ii) the candidate represented by that election or polling agent; and

(b) comply with any lawful order issued by—

(i) an election officer; or

(ii) a police officer acting on the instructions of an election officer.

PART V
Election Officers

Appointment of presiding officer

37. The Commission shall, after prescribing a date for an election, appoint a presiding officer for each polling station at which the election is conducted.

Powers and duties of presiding officer

38. (1) A presiding officer shall coordinate and supervise the voting at a polling station so as to ensure that the election at the polling station is free and fair.

(2) A presiding officer—

(a) shall exercise the powers and perform the duties assigned to a presiding officer by or under this Act;

(b) shall ensure orderly conduct at a polling station; and

(c) may order a police officer to assist in ensuring orderly conduct at that polling station and the police officer shall comply with the order.

(3) A presiding officer for a polling station or venue for the counting of votes shall coordinate and supervise the counting of votes and announcement of the result of the election at the polling station or venue.

(4) A presiding officer shall exclude from the area within the boundary of a polling station any person other than—

(a) a member, employee or officer of the Commission;

(b) an election or polling agent who is entitled under this Act to be present at a polling station;

(c) a candidate in that election;

(d) an accredited observer or monitor;

(e) a voter present for the purpose of casting a vote; and

(f) a person or category of persons authorised by the Commission to be present at the polling station.

(5) Despite subsection (4), a presiding officer may order a person referred to in paragraphs *(b)* to *(f)* of subsection (4), to leave the area within the boundary of the polling station if that person's conduct is not conducive to a free and fair election at that polling station and shall give that person the reasons for making the order.

(6) If a person refuses to comply with an order under subsection (5), a presiding officer may direct a police officer to forcibly remove that person, and the police officer shall comply with that order.

Appointment of polling assistant

39. The Commission shall appoint for each polling station as many polling assistants as it considers necessary to conduct an election.

Powers and duties of polling assistant

40. A polling assistant shall—

(a) assist the presiding officer in the exercise of the presiding officer's powers and the performance of the presiding officer's duties; and

(b) exercise the powers and perform the duties assigned to a polling assistant by or under this Act.

Appointment of additional persons as election officers

41. (1) The Commission may appoint as many additional persons as election officers as may be necessary to enable the Commission to exercise its powers and perform its duties effectively during an election.

(2) A person appointed by the Commission under this section shall exercise any power and perform any duty assigned to an election officer by or under this Act.

(3) An appeal shall not be brought against a decision by the Commission to appoint a person as an election officer or to dismiss an election officer.

(4) Despite subsection (3), a person may object to the appointment of an election officer under this section if the person appointed is disqualified under section 42 (3).

General provisions concerning appointment of election officer

42. (1) The Commission shall determine, in writing, the terms and conditions of appointment of an election officer.

(2) The assignment of a power or duty to an election officer shall not prevent the Chief Electoral Officer from exercising that power or performing that duty.

(3) A person shall not be appointed as an election officer or remain in that office if that person—

(a) is a candidate contesting an election;

(b) is an election or polling agent in an election;

(c) holds political office in a registered party or is affiliated to a political party; or

(d) was convicted of an offence or reported of any corrupt practice or illegal practice, under this Act, within a period of five years preceding an election.

(4) A person shall not be appointed as an election officer unless that person signs a prescribed undertaking which shall include an undertaking to be bound by—

(a) the Code; and

(b) a declaration of secrecy.

(5) An election officer shall exercise the powers and perform the duties assigned to that election officer subject to the direction, control and discipline of the Commission.

(6) An election officer shall not place in jeopardy that officer's independence or harm the credibility, impartiality, independence or integrity of the Commission by any membership, association, statement or conduct.

(7) An appointment as an election officer does not constitute an employment relationship.

(8) The Commission may dismiss an election officer for-

(a) misconduct, incompetence or incapacity;

(b) absence from duty without leave of the Chief Electoral Officer;

(c) a material contravention of this section;

(e) a material contravention of the declaration of secrecy; or

(f) any other consideration related to a free and fair election.

Immunity of election officer

43. An election officer shall not be liable for any loss suffered by a person as a result of an act performed or omitted in good faith in the exercise of a power or the performance of a duty under this Act.

PART VI
VOTING

Qualifications for voting

44. A voter is entitled to vote at an election held in a district, constituency or ward.

Identification of voter

45. A voter shall produce identification documents to a presiding officer as may be prescribed.

One vote and secrecy

46. (1) A voter shall not be entitled to vote more than once in the same election.

(2) A poll shall be taken by means of a secret ballot in accordance with the Constitution, this Act and as may be prescribed.

Dis-qualification from voting

47. A person shall not be entitled to vote at an election if, at the date of the election, that person is in lawful custody or the person's freedom of movement is restricted under any written law.

Special vote

48. (1) The Commission may allow a person to apply for a special vote if that person cannot vote at a polling station in the polling district in which the person is registered as a voter due to that person's—

(a) physical infirmity or disability;

(b) pregnancy;

(c) absence from that polling district while serving as an election officer in the election concerned; or

(d) while on duty as a member of the security services in connection with the election.

(2) The Commission shall prescribe the procedure and conditions under which a voter who is unable to vote in the polling district in which that voter is registered may apply for a special vote.

Election officers at polling stations

49. On polling day each polling station shall be staffed by the—

(a) presiding officer appointed for that polling station;

(b) polling assistants appointed for that polling station; and

(c) other officers appointed by the Commission.

Hours of voting

50. (1) The Commission shall prescribe the voting hours for an election.

(2) The Commission may, where it is necessary to do so, prescribe different voting hours for different polling stations.

(3) The Commission shall publish the prescribed voting hours in the media.

(4) A polling station shall—

(a) open for voting at the prescribed time; and

(b) subject to subsection (7)*(b)*, remain open for voting until the prescribed time or such later time as the Commission may determine under subsection (7)*(a)*.

(5) A person shall not be admitted to a polling station for the purpose of voting after the polling station has closed for voting.

(6) Voting at a polling station shall continue until every voter who had reported at a polling station to vote at the time prescribed for voting hours has voted.

(7) The Commission—

(a) may extend voting hours at a polling station after the voting day or prescribed time; and

(b) may temporarily close a polling station for part of a polling day if it is temporarily impossible to conduct an election at that voting station.

Ballot paper

51. Subject to the other provisions of this Act and section *fifty-two*, the Commission shall prescribe the form and design of a ballot paper and the manner in which ballot papers issued shall be accounted for.

Design of ballot paper

52. (1) Despite section *fifty-one*, a ballot paper shall be designed in a way that prevents fraudulent voting.

(2) A ballot paper shall include—

(a) a portrait of the candidate nominated for elections to the office of President, Member of Parliament, mayor, council chairperson and councillor; and

(b) the symbol of a political party registered with the Commission under which a candidate shall stand for elections and where the candidate is an independent candidate, the symbol the Commission shall allocate to the independent candidate.

(3) A ballot paper shall be colour coded so as to differentiate the ballot paper for use in a presidential, parliamentary or local government elections.

Ballot boxes

53. (1) The Commission shall use in an election transparent ballot boxes capable of being securely closed.

(2) The Commission shall prescribe the manner in which ballot boxes shall be—

(a) numbered and labelled; and

(b) closed, secured, opened, sealed and unscaled.

Voting compartments

54. (1) Subject to subsection (2), the Commission shall prescribe the design and material of voting compartments to be used in an election.

(2) A voting compartment shall, while screening a voter from observation by other persons when marking a ballot paper, be designed and placed in such a manner as to ensure that a clear view of the voters' back can be observed from the outside.

Conduct of general election Cap. 1

55. A general election shall be held in accordance with the Constitution, this Act and as may be prescribed.

Postponement of voting at polling station

56. (1) If it is not possible to conduct a free and fair election at a polling station on a prescribed polling day, the Commission may, at any time before voting at the polling station has commenced, postpone voting at that polling station.

(2) A postponement under subsection (1) shall be—

(a) effected in the prescribed manner;

(b) to a day that would fall within the period referred to in section *twenty-eight;* and

(c) publicised in the media so as to ensure wide publicity of the postponement of the polling day at the polling station.

Postponement of by-election

57. The Commission may postpone the polling day of a by-election if it is satisfied that—

(a) the postponement is necessary for ensuring a free and fair election; and

(b) the polling day for the election shall fall within the period required by the Constitution.

Cap. 1

Voting materials

58. (1) The Commission shall supply, before voting opens at a polling station, the voting materials necessary for the election at that station including—

(a) ballot papers;

(b) ballot boxes;

(c) voting compartments;

(d) a certified register of voters for the polling district concerned; and

(e) a document to be signed by the presiding officer detailing the voting materials entrusted to that presiding officer.

(2) A presiding officer shall be responsible for the safe-keeping of all the voting materials supplied to that presiding officer.

Initial procedures

59. A presiding officer shall, immediately before opening a polling station for voting—

(a) show all accredited observers, monitors, election and polling agents present, that each ballot box to be used at that polling station is empty; and

(b) in the presence of the accredited observers, monitors, election and polling agents, close, seal and secure the ballot boxes in the prescribed manner.

Voting procedure

60. (1) Subject to section *forty-eight*, a voter shall only vote at the polling station in the polling district for which that voter is registered.

(2) A voter is entitled to vote at a polling station—

(a) on production of that voter's national registration card and voter's card to the presiding officer or election officer at the polling station; and

(b) if that voter's details are in the certified segment of the Register of Voters for the polling district concerned.

(3) When a voter produces a national registration card to the presiding officer or election officer as required by subsection (2), the presiding officer or election officer shall examine the identity document and determine whether—

(a) the voter is the person described in that national registration card;

(b) the voter's details are in the certified segment of the Register of Voters for the polling district concerned; and

(c) the voter has not already voted in the election.

(4) For the purposes of subsection (3) (c), the presiding officer or election officer shall examine the voter's hands to ensure that the voter does not possess the mark indicating that the voter has already voted.

(5) If the presiding officer or election officer is satisfied in respect of all the matters referred to in subsection (3), the presiding officer shall—

(a) record that the voter is treated as having voted in the election;

(b) mark the hand of the voter in the prescribed manner;

(c) mark the back of a ballot paper for that election; and

(d) hand the ballot paper to the voter.

(6) A voter shall, once the voter has received a ballot paper marked under subsection (5)(c)—

(a) enter an empty voting compartment;

(b) mark the ballot paper in a way that indicates the candidate the voter wishes to vote for;

(c) fold the ballot paper to conceal the voter's vote;

(d) cast the ballot paper in the ballot box; and

(f) without delay leave the voting station.

Assistance to voters with disabilities

61. (1) A person may assist a voter to vote where—

(a) the voter requires assistance due to a physical disability;

(b) the voter has requested to be assisted by that person; and

(c) the presiding officer is satisfied that the person assisting the voter has attained the age of eighteen years.

(2) In the absence of a person referred to in subsection (1), the presiding officer or another election officer, at the request of a voter who is unable to read, shall assist that voter to vote.

(3) Subject to subsection (2), the presiding officer or election officer shall assist voters in the presence of—

(a) a person appointed by the presiding officer or an accredited observer or monitor, if available; or

(b) two election agents of different candidates, if available.

(4) A presiding officer shall record in a copy of the Register of Voters, by means of a mark placed next to the name of the voter concerned, that the presiding officer or another person has assisted the voter as provided under this section and give the reasons for doing so.

(5) A person assisting another person under subsection (2) shall maintain the secrecy of the vote cast by the person being assisted.

Issuance of new ballot paper

62. (1) If a voter accidentally marks a ballot paper in a way that does not indicate for whom the voter wishes to vote and the ballot has not yet been placed in the ballot box—

(a) the voter may return that ballot paper to the presiding officer or a polling assistant;

(b) the presiding officer or polling assistant shall deal with the ballot paper in accordance with subsection (2), and shall give the voter a new ballot paper in accordance with this section; and

(c) the voter may vote in accordance with section *sixty*.

(2) Upon receiving a ballot paper from a voter under subsection (1), the presiding officer or a polling assistant shall mark "cancelled" on the back of the ballot paper and file it separately to be dealt with in accordance with section *sixty-three*.

Spoilt ballot papers

63. Where a voter inadvertently deals with a ballot paper in such manner that it cannot be used as a valid ballot paper, the voter shall deliver that ballot paper to the presiding officer and, if the presiding officer is satisfied that the ballot paper has been spoilt inadvertently, the presiding officer shall issue another ballot paper to the voter, and shall cancel the spoilt ballot paper and the counterfoil to which it relates.

Objections concerning voting

64. (1) A person may, at any time before a voter is handed a ballot paper, object to that voter being entitled to vote or to vote at the polling station concerned.

(2) A person may object to a voter's vote where the voter

(a) has already voted;

(b) is not the owner of the voter's card;

(c) is not registered at the polling station;

(d) is not a citizen; or

(e) is disqualified from voting.

(3) An election agent or a voter may object to any conduct of an election officer or any other person present at a polling station.

(4) An objection under this section shall be made to the presiding officer in the prescribed manner.

(5) A presiding officer shall make a decision on the objection and notify the objector and any other parties involved in the objection of the presiding officer's decision in the prescribed manner.

(6) An appeal against the decision of a presiding officer may be made to a returning officer in the prescribed manner.

(7) A presiding officer or returning officer shall keep a written record of each objection and decision made under this section in the prescribed manner .

Sealing of full ballot boxes

65. (1) As soon as a ballot box is full, a presiding officer, in the presence of an accredited observer, monitor or polling agent, shall seal the ballot box and allow the agents to affix their seals to the ballot box.

(2) Immediately after the last vote has been cast, every remaining used ballot box shall be similarly dealt with.

(3) A sealed ballot box shall remain—

(a) sealed until opened for the counting of votes; and

(b) in the polling station until the commencement of the counting of the votes.

Completion of ballot paper account form and sealing of voting materials

66. (1) A presiding officer shall, at the close of a polling station, in the presence of an accredited observer, monitor or election agent

(a) complete a ballot paper account form reflecting the number of—

(i) ballot boxes entrusted to that presiding officer;

(ii) used ballot boxes;

(iii) unused ballot boxes;

(iv) ballot papers entrusted to that presiding officer;

(v) issued ballot papers;

(vi) unissued ballot papers; and

(vii) cancelled ballot papers;

(b) seal each unused ballot box entrusted to that presiding officer; and

(c) seal in separate ballot boxes

(i) the certified segment of the Register of Voters for that polling district;

(ii) the unused ballot papers entrusted to that presiding officer;

(iii) the spoilt ballot papers; and

(iv) the written record of any objections concerning voting.

Place and time of counting of votes

67. (1) Votes shall be counted at the polling station at which those votes were cast.

(2) A presiding officer shall ensure that the procedures set out in this Part relating to the counting of votes commences immediately after the polling station is closed for voting and continue the counting of votes until completion.

(3) The procedures provided for in this Part relating to the counting of votes may be suspended only with the approval of the Commission and, if they are suspended, the presiding officer shall ensure the safekeeping of all the voting materials entrusted to the presiding officer until the counting of votes has been completed.

Counting of votes and announcement of provisional results

68. (1) A presiding officer shall open the ballot boxes and

(a) cause the ballot papers to be sorted on the basis of the ballot papers for each election, if more than one election was held at a polling station on the same day;

(b) cause the ballot papers for each election to be sorted and compare them with the number of ballot papers issued in the prescribed manner;

(c) cause the votes cast in each election to be counted in the prescribed manner; and

(d) announce and publish the result of each count at that polling station in both figures and words in the prescribed manner.

(2) A presiding officer shall reject a ballot paper—

(a) that indicates the identity of the voter;

(b) on which a vote is cast for more than one candidate;

(c) that is unmarked;

(d) that is marked in such a way that it is not reasonably possible to determine the voter's choice;

(e) that does not bear the official mark required in terms of section *sixty* (5) (c); or

(f) that is not an official ballot paper.

(3) The presiding officer shall mark A for rejection on the back of each rejected ballot paper and file the rejected ballot paper separately.

Objections concerning sorting of ballot papers

69. (1) An election or polling agent may object to any alleged irregularity in the sorting of the ballot papers.

(2) An objection under subsection (1) shall be made to a presiding officer, in the prescribed form, at any stage before the presiding officer has commenced the count.

(3) Section *sixty-four*, with the necessary modifications, applies to an objection under this section.

Objections concerning counting of votes and announcement of provisional result

70. (1) An election or polling agent may object to an alleged inaccuracy in the counting of the votes or the announcement of a result under section *seventy-one*.

(2) An objection under subsection (1) shall be made to a presiding officer, in the prescribed form, at any stage before the presiding officer has announced the result.

(3) A presiding officer shall determine the objection and decide whether to order a recount.

(4) A presiding officer shall notify the objector and any other party involved in the objection, of the decision made under subsection (3).

(5) If a presiding officer orders a recount, the presiding officer shall announce the result afresh.

(6) An appeal against the decision of a presiding officer may be made to the returning officer in the prescribed form.

(7) A presiding officer shall keep a written record, in the prescribed form, of each objection under subsection (1) and each decision under this section.

Procedure concerning provisional results and voting materials

71. (1) After announcing the result at a polling station, a presiding officer shall complete a form, as may be prescribed, reflecting—

(a) the number of ballot papers supplied to the polling station;

(b) the result at the polling station;

(c) the number of rejected ballot papers;

(d) the number of spoilt ballot papers; and

(e) the number of unused ballot papers.

(2) When a presiding officer has complied with subsection (1), the presiding officer shall publicly announce the result of the count at the polling station to members of the public, the accredited observers, monitors, election and polling agents present at the polling station.

(3) When the presiding officer has complied with subsection (2), the presiding officer shall inform the returning officer of the result of that count at the polling station.

(4) When the presiding officer has complied with subsection (3), the presiding officer shall—

(a) seal in separate ballot boxes each of the items mentioned in subsection (l) and the written record of any objections; and

(b) deliver the form, completed in terms of subsection (l), and the sealed ballot boxes to the returning officer.

Announcement and declaration of results by returning officer

72. (1) Upon receipt of the items mentioned in section *seventy-one*, a returning officer shall tally the results of the votes received from the polling station in the constituency, district and ward and shall—

(a) announce the results of the votes for the presidential and mayoral or council chairperson elections; and

(b) declare the results for the National Assembly and Ward election.

(2) The returning officer shall submit the results referred to in subsection (1) (a) and (b) to the Commission.

Announcement and declaration of results in Presidential election

73. (1) The Returning Officer shall tally, announce and declare the result of a presidential election as soon as they are received.

(2) The Returning Officer shall announce and declare the result of a presidential election without having received the results of all polling stations if—

(a) to wait for the receipt of the result from every polling station would unduly and unreasonably delay the determination and declaration of the result of that election; and

(b) the outstanding results are not likely to materially influence the overall result of that election.

Electronic transmission of results

74. The Commission may use electronic means to transmit results from polling stations.

Revoting at polling station

75. (1) If ballot papers used in an election at a polling station are lost, destroyed or unlawfully removed before the votes cast at the polling station have been counted and announced, the Commission shall allow a revote at that polling station.

(2) A revote at a polling station shall be—

(a) conducted on a date that would fall within the period referred to in section *twenty-eight;*

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

2026/HP/EP/031

IN THE MATTER OF: **AN ELECTION PETITION OF ELIAS DAKA**

AND

IN THE MATTER OF: **ARTICLE 73 [1] OF THE CONSTITUTION OF THE REPUBLIC OF ZAMBIA**

IN THE MATTER OF: **MSANZALA CONSTITUENCY ELECTION HELD ON THE 13TH AUGUST 2026.**

IN THE MATTER OF: **RULE 9 OF THE HIGH COURT (ELECTION PETITION) RULES SI 31 OF 2026.**

BETWEEN:

ELIAS DAKA **PETITIONER**

AND

AMON MUMBA **1ST RESPONDENT**

ELECTORAL COMMISSION OF ZAMBIA **2ND RESPONDENT**

2ND RESPONDENTS LIST OF AUTHORITIES AND SKELETON ARGUMENTS IN OPPOSITION TO ELECTION PETITION

LIST OF AUTHORITIES

Legislation:

1. The Electoral Process Act No. 35 of 2016 (as amended).
2. The High Court (Election Petition) Rules, Statutory Instrument No. 31 of 2026, Rule 9.

CASES LAW:

1. Anderson Kambela Mazoka and Others v Levy Patrick Mwanawasa and Electoral Commission of Zambia (2005) ZR 138 (SC).
2. Sibongile Mwamba v Kelvin Sampa and Another CCZ Appeal No. 2 of 2017.

SKELETON ARGUMENTS

[1.0] **INTRODUCTION**

[1.1] **MY LORD/MY LADY**, these Skeleton Arguments are filed on behalf of the 2nd Respondent. They address the applicable principles of law governing the determination of an election petition and in particular, the statutory threshold for establishing grounds upon which an election may be declared void.

[1.2] The Petitioner, Elias Daka, contested the parliamentary election held in Msanzala Constituency on 13th August 2026, in which the 1st Respondent, Amon Mumba, was declared the duly elected Member of Parliament. The Petitioner challenges that result on several grounds, namely: (a) alleged mathematical discrepancies at five polling stations; (b) alleged irregularities on GEN 20 forms at Matonga 01 and Malenga Polling Stations; (c) the alleged absence of particulars on a signed GEN 20 form; (d) alleged unlawful movement of ballot papers and breach of chain of custody; and (e) alleged bribery, corruption and improper apportionment of votes, principally directed at the 1st Respondent and persons said to be associated with him, with certain aspects, in part, against the 2nd Respondent.

[1.3] **MY LORD/ MY LADY**, it is humbly submitted that, taken individually and cumulatively, the grounds pleaded do not meet the statutory threshold under the Electoral Process Act No. 35 of 2016, as amended, for the nullification of the election, and that the Petition, insofar as it is directed against the 2nd Respondent, ought to be dismissed with costs.

[2.0] THE CONSTITUTIONAL AND STATUTORY FRAMEWORK

2.1. **MY LORD/MY LADY,** section 97(2) of the Electoral Process Act sets out the statutory circumstances in which an election may be declared void. The statutory test applicable to allegations of non-compliance is set out in section 97(2) of the Electoral Process Act No 35 of 2016. Section 97 (2) provides that:

> ***"97 (2) The election of the candidate as a 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 by***
>
> i. ***a candidate; or***
>
> ii. ***with the knowledge and consent or approval of a candidate or of that candidate's election agent or polling agent; and the majority of voters in a constituency, district or ward were or may have been prevented from electing the candidate in that constituency, district or ward whom they preferred.***

b) subject to the provisions of subsection (4), there has been non-compliance with the provisions of the Act relating to the High court or Tribunal that the election was not conducted in accordance with the principles laid down in such provision and that such non-compliance affected the result of the election".

[2.2] **MY LORD/ MY LADY**, the above provision requires a petitioner to prove, cogently, both: (i) that there was non-compliance with the provisions of the Act relating to the conduct of the election; and (ii) that such non-compliance affected the result of the election. These are conjunctive requirements and proof of the first without the second is not sufficient to found nullification. The provision must be read as a whole and applied according to its terms. It is not enough for a petitioner to identify a departure from an electoral requirement in isolation; the statutory consequence of nullification arises only where the prescribed conditions have been established.

[2.3] Section 97(4) provides an important qualification in relation to acts or omissions of election officers. Where an election has, in substance, been conducted in accordance with the Act and the relevant act or omission has not affected the result, the election is not to be declared void by reason of that act or omission.

[2.4] **MY LORD/ MY LADY**, the effect of sections 97(2) and 97(4), read together, is that the Court must distinguish between an irregularity that is merely technical or inconsequential and a failure of compliance of such a character and consequence as to justify the exceptional remedy of nullifying an election.

[2.5] Rule 9 of the High Court (Election Petition) Rules, Statutory Instrument No. 31 of 2026, governs the procedure applicable to the hearing and determination of an election petition. The substantive threshold for nullification, however, remains prescribed by the Electoral Process Act.

[3.0] THE BURDEN AND STANDARD OF PROOF

[3.1] **MY LORD/ MY LADY**, the burden of proving the grounds upon which an election is challenged rests upon the Petitioner. The filing of an election petition does not shift that burden to the respondents.

[3.2] The Supreme Court in ***Anderson Kambela Mazoka and Others v Levy Mwanawasa and Others (2005) ZR 138 (SC)*** articulated the evidential threshold applicable to election proceedings in the following terms:

> ***"As regards the burden of proof, the evidence adduced must establish the issues raised to a fairly high degree of convincing clarity."***

[3.3] The above passage is reproduced and is relied upon my Lord/ my Lady, for the proposition that allegations which seek to impeach the validity of an election require evidence of sufficient cogency and clarity. The standard is therefore more demanding than the mere assertion of an allegation, suspicion or inference.

[4.0] THE CONJUNCTIVE TEST UNDER SECTION 97(2)

4.1. **MY LORD/ MY LADY,** the statutory test under section 97(2) requires more than proof of non-compliance with an electoral requirement. The relevant non-compliance must be shown to have the consequence contemplated by the statute.

4.2. In ***Sibongile Mwamba v Kelvin Sampa and Another [2017] ZMCC 87 Constitutional Court Appeal No. 2 of 2017***, the Constitutional Court stated:

> ***"For the court to nullify an election based on the fact that the election was not conducted substantially in conformity with the law, the non-compliance with the law should be such that it affected the outcome of the election."***

[4.3] **MY LORD/MY LADY**, it is my humble submission that the foregoing in principle shows that proof of non-compliance, without proof of its material effect on the outcome, does not by itself warrant nullification.

[4.4] **MY LORD/MY LADY,** the requirements are therefore conjunctive. A Petitioner must establish, first, the relevant non-compliance or other statutory ground and, second, the requisite consequence prescribed by the Electoral Process Act. Failure to establish either limb is fatal to a claim for nullification founded upon that provision.

[5.0] SUBSTANTIAL COMPLIANCE AND MATERIALITY

[5.1] **MY LORD/MY LADY**, we humbly submit that section 97(4) reinforces the distinction between material electoral non-compliance and an act or omission which does not affect the result. Statutory protection reflects the principle that an election should not

be set aside for an inconsequential or technical departure where, in substance, the election has been conducted in accordance with the law.

[5.2] The question of materiality is therefore central my Lord/my Lady. The Court must assess whether the alleged act or omission had a legally significant bearing upon the result rather than whether the electoral process was entirely free from every conceivable administrative, clerical or procedural imperfection.

[6.0] PROOF REQUIRED IN RELATION TO ELECTORAL RECORDS AND IRREGULARITIES

[6.1] **MY LORD/ MY LADY,** where a challenge is founded upon alleged errors, discrepancies, omissions or irregularities in electoral documents or the counting and aggregation process, the allegation must be established by reference to the relevant primary electoral record.

[6.2] It is not sufficient to identify an apparent discrepancy in isolation. The evidence must establish the nature of the alleged discrepancy, the correct position contended for, the way the electoral result was affected and the materiality of that effect to the statutory test for nullification my Lord/my Lady.

[6.3] **MY LORD/MY LADY,** we humbly submit that the same principle applies to alleged defects in forms or other election documentation. Documentary irregularity does not automatically translate into invalidity of the election. The Court must determine whether the defect constitutes non-compliance of the type contemplated by the Act and, where required, whether it affected the result.

[6.4] In this regard my Lord/my Lady, the Court should distinguish between evidence demonstrating that a document contains an error and evidence demonstrating that the error altered the electoral outcome. The latter is indispensable where the statutory test requires proof of effect upon the result.

[7.0] ALLEGATIONS OF CORRUPT OR ILLEGAL PRACTICE

[7.1]. **MY LORD/ MY LADY,** allegations of bribery, corruption, illegal practice or other misconduct are serious allegations which require proof commensurate with the consequences sought. The petitioner must establish the occurrence of the prohibited conduct and satisfy any additional statutory requirements relating to attribution, knowledge, consent, approval or electoral effect.

[7.2] The statutory language is material my Lord/ my Lady. The Court must determine not merely whether conduct occurred but whether the conduct falls within the statutory ground relied upon and whether the further conditions for nullification have been established.

[7.]. **MY LORD/MY LADY,** allegations of corrupt or illegal practice cannot therefore be sustained on bare assertion, speculation or evidence incapable of establishing the necessary connection between the alleged conduct and the statutory consequence.

[7.4. The seriousness of an allegation does not lower the evidential threshold. On the contrary, the more serious the allegation and the more substantial the relief sought, the greater the need for clear, credible and cogent evidence.

[8.0] EFFECT ON THE RESULT AND THE MAJORITY OF VOTERS

[8.1] **MY LORD/MY LADY**, a petition seeking nullification must ultimately satisfy the statutory requirement concerning the effect of the matters complained of. The Court must be able to identify, from the evidence, the connection between the alleged irregularity or misconduct and the electoral outcome.

[8.2] Where the statutory ground invokes most voters my Lord/my Lady, the Petitioner must establish the factual basis upon which the Court can conclude that the majority of voters were, or may have been, prevented from electing the candidate of their choice.

[8.3] **MY LORD/MY LADY**, this requirement is not satisfied by demonstrating that an irregularity occurred somewhere in the electoral process. There must be cogent evidence from which the requisite electoral consequence can properly be established.

[9.0] CUMULATIVE EFFECT

[9.1] **MY LORD/MY LADY,** where several irregularities are relied upon cumulatively, the Court may consider their combined effect. However, aggregation of allegations cannot dispense with the requirement that the constituent matters be proved by admissible and cogent evidence and that their cumulative effect satisfy the statutory threshold.

[10.0] CONCLUSION

[10.1] **MY LORD/MY LADY**, I humbly submit that the law governing election petitions establishes a clear and structured threshold for the exceptional remedy of nullification. The petitioner bears the burden of proving the relevant statutory ground by evidence of sufficient cogency and clarity.

[10.2] In cases founded upon alleged non-compliance my Lord/my Lady, proof of the non-compliance and proof of the requisite effect upon the result are distinct and conjunctive requirements. An irregularity which is immaterial to the outcome does not justify nullification.

[10.3] **MY LORD/MY LADY**, section 97(4) further requires the Court to have regard to substantial compliance and protects an election from being declared void by reason of an act or omission of an election officer where the election was, in substance, conducted in accordance with the Act and the act or omission did not affect the result.

[10.4] In the premise my Lord/my Lady, the 2nd Respondent respectfully submits that the applicable principles of law require any relief seeking nullification of an election to be founded upon clear, credible and cogent evidence satisfying every constituent element of the statutory ground relied upon.

[10.5] **MY LORD/ MY LADY,** the 2nd Respondent accordingly and respectfully prays that this Honourable Court, insofar as the Petition is directed against the 2nd Respondent should:

a) be dismissed with costs; and

b) that this Honourable Court should decline to grant the orders sought by the Petitioner nullifying the election and declaration of the 1st Respondent, or setting aside his election, or directing that fresh elections be held.

Dated this _____ day of _____2026

Per: _____

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