IN THE HIGH COURT FOR ZAMBIA 2026/HP/EP/034

AT THE PRINCIPAL REGISTRY

HOLDEN AT LUSAKA

(Election Jurisdiction)

REPUBLIC OF ZAMBIA
HIGH COURT OF ZAMBIA
11 SEP 2026
PRINCIPAL REGISTRY 5
P.O. BOX

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

IN THE MATTER OF: SECTION 55,81,86,87,89,96,97,98,99,100,106,107 AND 108 OF THE ELECTORAL PROCESS ACT, NO. 35 OF 2016.

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 SENGA HILL CONSTITUENCY PARLIAMENTARY ELECTIONS HELD ON THURDAY, 13TH AUGUST, 2026.

BETWEEN:

SAFELI MULENGA (MALE) PETITIONER

AND

MUKWAVI C. SICHULA 1ST RESPONDENT

ELECTORAL COMMISSION OF ZAMBIA 2ND RESPONDENT

SKELETON ARGUMENTS AND LIST OF AUTHORITIES IN SUPPORT OF THE 1ST RESPONDENT'S NOTICE OF MOTION TO RAISE A PRELIMINARY ISSUE ON A POINT OF LAW

LIST OF STATUTES

1. THE HIGH COURT (ELECTION PETITION) RULES, S.I. NO. 31 OF 2026
2. THE HIGH COURT ACT, CHAPTER 27 OF THE LAWS OF ZAMBIA.

LIST OF AUTHORITIES

1. **ISAAC MWANZA AND OTHERS V CHITALU CHILUFYA AND OTHERS - 2026/HP/EP/002**

2. **JNC HOLDINGS LIMITED AND OTHERS V DEVELOPMENT BANK OF ZAMBIA, SCZ APPEAL NO. 7 OF 2012.**

3. **SAVIOUR CHIBIYA V. CRYSTAL GARDENS LODGE AND RESTAURANT LIMITED- APPEAL NO. 97 OF 2013.**

[1] PREFACE

IF IT MAY PLEASE THIS HONOURABLE COURT, these are the 1st Respondent's Skeleton Arguments and List of Authorities in Support of Notice to Raise a Preliminary Objection

[2] INTRODUCTION

[3] MY LORD/LADY, the Petitioner issued out of the Principal Registry of the High Court, a copy of a Petition on the 31st day of August, 2026. A perusal of the said process revealed that the copies that accompany the List of Authorities was not filed in accordance with the High Court (Election Petition) Rules, S.I. No. 31 of 2026 hence this Application.

[4] THE LAW AND LEGAL ARGUMENTS

[5] MY LORD/LADIES, this Application is predicated on the provisions of **Rule 17(1) of the High Court (Election Petition) Rules, S.I. No. 31 of 2026** (hereinafter called "HCEPR") which enacts:

> ***"Subject to sub rule (3), a party may make an interlocutory application to be heard and determined by the Court."***

[6] MY LORD/LADY, the import of the foregoing is that any interlocutory application relating to an election petition under the said rule may be raise under the foregoing rule. Therefore, this Application is properly before this Honourable Court.

[7] MY LORD/LADY, as highlighted in the Affidavit in Support, specifically under paragraphs 5 and 6, the Petitioner did not proffer the copies of the authorities relied upon as guided by the rules. More specifically, **Rule 9 (3) (c) of the HCEPR** enacts:

"(3) an election petition referred to under subrule (1) shall be accompanied by –

(c) list of authorities and copies of those authorities" **(Emphasis Ours).**

[8] **MY LORDS/LADIES**, the foregoing rule employs the word "shall" which makes it mandatory for the Petition not only to contain the list of authorities but also **COPIES OF THOSE AUTHORITIES.**

[9] **MY LORDS/LADIES**, a plethora of authorities is clear that where a provision in a statute or rules use the word "shall" compliance of that rule becomes mandatory. In the case of **JNC HOLDINGS LIMITED AND OTHERS V DEVELOPMENT BANK OF ZAMBIA, SCZ APPEAL NO. 7 OF 2012,** the Court of Appeal held, *inter alia*, that:

"....it is settled law that if a matter is improperly before court, that court has no jurisdiction to make any orders or grant any remedies....." **(Emphasis Ours).**

Furthermore, in the case of **SAVIOUR CHIBIYA V. CRYSTAL GARDENS LODGE AND RESTAURANT LIMITED- APPEAL NO. 97 OF 2013,**

"We would be shirking in our responsibility as the last court of the land if we fail to stop parties who appear before us from using their own lapses and inefficiencies to contradict the spirit of expedition in the fair and just conclusion of appeals which is a core value of our justice system." **(Emphasis Ours).**

[10] **MY LORD/LADY,** the combined effect of the foregoing authorities is that where the rule is mandatory, the court has no jurisdiction to interfere with its import. Furthermore, it is trite law that petitions are not only time bound, but are *"sui generis."* This means that courts endeavour to dispose of them as quickly as possible.

[11] **MY LORDS/LADIES,** in the case of **ISAAC MWANZA V CHITALU CHILUFYA AND OTHERS**, the court held, inter alia, that:

"In other words, the petition must be filed with an affidavit verifying facts, Skeleton Arguments, a list of authorities and copies of those authorities, a list and description of documents to be relied on and a bundle of documents..."

The Court then deduced at paragraph 7.2 of the Ruling that:

"The failure to file the aforementioned documents together with the petition is a fundamental omission that is fatal and renders the petition incompetent and improperly

***before the court. The result is that the court is divested of the jurisdiction to hear and determine the petition.*" (Emphasis ours).**

[12] **MY LORD/LADY,** it is clear from the record that the Petitioner has violated the same rule and therefore, the petition ought to be dismissed.

[13] **CONCLUSION**

[14] **MY LORD/LADY**, based on the facts and authorities hereinbefore set out, it is our humble submission that the petition be dismissed with costs to the 1st Respondent to be taxed in default of agreement.

WE ARE OBLIGED

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

Settled by Counsel of: ----------

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