IN THE HIGH COURT FOR ZAMBIA **2026/HP/EP/027**
AT THE DISTRICT REGISTRY
HOLDEN AT CHINSALI
(Constitutional Jurisdiction)



IN THE MATTER OF: **PARLIAMENTARY PETITION RELATING TO THE PARLIAMENTARY ELECTION FOR MPIKA NORTH CONSTITUENCY HELD ON 13TH AUGUST, 2026**

AND

IN THE MATTER OF: **THE CONSTITUTION OF ZAMBIA, THE CONSTITUTION OF ZAMBIA ACT, CHAPTER 1 OF THE LAWS OF ZAMBIA AS AMENDED**

AND

IN THE MATTER OF: **ARTICLES 1, 2, 5, 8, 9, 45, 46, 47, 48, 49, 50, 54, 70, 71, 72 AND 73 OF THE CONSTITUTION OF ZAMBIA ACT, CHAPTER 1, VOLUME 1, OF THE LAWS OF ZAMBIA**

AND

IN THE MATTER OF: **SECTIONS 29, 37, 38, 55, 68, 72, 77, 81, 83, 84, 86, 89, 94, AND 95 OF THE ELECTORAL PROCESS ACT NO. 35 OF 2016 OF THE LAWS OF ZAMBIA**

AND

IN THE MATTER OF: **SECTIONS 96, 97, 98, 99, 100, 106, 107 AND 108 OF THE ELECTORAL PROCESS ACT NO. 35 OF THE 2016 OF THE LAWS OF ZAMBIA**

AND

IN THE MATTER OF: **THE ELECTORAL CODE OF CONDUCT, 2016**

AND

IN THE MATTER OF: **RULE 9 OF THE HIGH COURT (ELECTION PETITION) RULES 2026, SI NO. 31 OF 2026**

AND

IN THE MATTER OF: **THE ELECTION OF FRANCIS ROBERT KAPYANGA AS MEMBER OF PARLIAMENT FOR MPIKA NORTH CONSTITUENCY, MPIKA DISTRICT**

BETWEEN:

MORDECAI SICHALWE **PETITIONER**

AND

FRANCIS ROBERT KAPYANGA **1st RESPONDENT**

THE ELECTORAL COMMISSION OF ZAMBIA **2nd RESPONDENT**

Before the Honourable Lady Justice C. M. Lombe in Chambers

For the Petitioner: *Ms. S. K. Mukuka - Messrs C. L Mundia and Company*
For the 1st Respondent: *Mr. I. Simbeye - Messrs Malisa and Partners Legal Practitioners*
For the 2nd Respondent: *N/A*

RULING

CASES REFERRED TO:

1. **Finsbury Investment Limited v Antonio Ventriglia and Others (Selected Judgment No. 42 of 2016)**
2. **William David Carlisle Wise v E.F. Hervey Limited (1985) Z.R. 179 (S.C.)**
3. **Philip Mutantika and Another v Chipungu (SCZ Judgment No. 13 of 2014)**

4. **Lukasu Properties Limited v African Banking Corporation Zambia Limited (SCZ/08/10/2023) [2024] ZMSC 28**
5. **Emmanuel Tumba and Six Others v Zambia Bata Shoe Company Plc (Application No. 7/25/2024) [2025] ZMSC 18**
6. **Aristogerasimos Vangelatos and Another v Metro Investments Limited and Others (Selected Judgment No. 35 of 2016)**
7. **Felopater Zambia Limited and Others v Zambia National Commercial Bank Plc (Application No. 26/2022) [2023] ZMCA 160**
8. **Milingo Lungu v The Attorney General and The Administrator General, 2022/CCZ/006 (Ruling of 15th December 2023)**
9. **Kabulwebulwe and Others v Zambia Pork Products and Others (Appeal No. 30 of 2014) [2016] ZMSC 241**
10. **Henry Kapoko v The People (2016/CC/0023)**
11. **Samson Lee Chisulo SC v C and J Harvey Farms Limited (Appeal No. 219 of 2023) [2024] ZMCA 46**
12. **Commonwealth Development Corporation v Central African Power Corporation (1968) Z.R. 70 (H.C.)**
13. **Nida Properties Limited v Omnia Fertilizers Limited (Appeal No. 164 of 2013) [2016] ZMSC 38**
14. **First National Bank Zambia Limited v ProFab Zambia Limited and Others [2017] ZMHC 564**
15. **Chief Mwanatete v Lushato and Another [2014] ZMHC 100**

LEGISLATION AND OTHER WORKS REFERRED TO

1. **The Constitution of Zambia, Chapter 1 of the Laws of Zambia, as amended by Act No. 2 of 2016**
2. **The High Court (Election Petition) Rules, 2026, Statutory Instrument No. 31 of 2026**
3. **The High Court Act, Chapter 27 of the Laws of Zambia**

4. **The High Court Rules, Chapter 27 of the Laws of Zambia**

5. **The Rules of the Supreme Court of England, 1965 (White Book), 1999 Edition**

1. INTRODUCTION

1.1 This is a ruling on the Petitioner's application, by summons dated 25th September 2026, for leave to file and serve a further affidavit verifying facts in the petition challenging the election of the 1st Respondent as Member of Parliament for Mpika North Constituency. The Petitioner also asks that the further affidavit be deemed properly filed and served upon filing and service, with costs in the cause.

1.2 The application is supported by an affidavit sworn by Sharon Mukuka and skeleton arguments. The 1st Respondent opposes it by an affidavit sworn by Isaac Simbeye and skeleton arguments. The 2nd Respondent filed no process in respect of the application.

2. PETITIONER'S CASE

2.1 It was deposed that the Petition was filed within the prescribed period with the documents prepared and available at the time, including an affidavit verifying facts, skeleton arguments and a list of authorities. It was stated that the affidavit verifying facts lacked essential exhibits because they had to be obtained from different sources and required verification and proper collation. The omission, it was stated was inadvertent.

2.2 It was also stated that some of the proposed exhibits relate to matters already pleaded in the Petition and mentioned in the affidavit verifying facts. The exhibited index, marked "SM1",

lists a video of the 1st Respondent campaigning at TAZARA township in Lubambala Ward dated 25th July 2026; eight polling agents' oaths or affirmations dated 7th August 2026; Gen 20 forms from various polling stations dated 13th August 2026; a video of a confrontation with the 1st Respondent's agents dated 13th August 2026; a medical report concerning Mathews Mumba dated 18th August 2026; and a request for authentication and forensic report of video footage dated 17th September 2026.

2.3 The Petitioner contends that the Respondents will suffer no prejudice because the documents concern matters already before the Court. He says that they can address the material at trial or under directions given before trial, and offers to serve the further affidavit immediately if leave is granted. He submits that refusal would deprive the Court of relevant documentary material.

2.4 In the skeleton arguments, the Petitioner relies on *Rule 17(1) and (2) of the High Court (Election Petition) Rules, 2026* and the Court's interlocutory powers as discussed in **Finsbury Investment Limited v Antonio Ventriglia and Others, Selected Judgment No. 42 of 2016**[1]. She also invokes *Article 118(2)(e)* of the Constitution and the compressed timetable for election petitions. Although the summons seeks leave to file a further affidavit verifying facts, the supporting affidavit and skeleton arguments also seek permission to file and serve a bundle of documents.

3. 1ST RESPONDENT'S CASE

3.1 It was deposed that the proposed further affidavit has not been exhibited, leaving the Court and the 1st Respondent unable to ascertain the scope of the facts to be introduced. The 1st Respondent contends that the applicable rules require the facts

and documents relied upon to accompany the Petition so that the opposing parties can know the case they must meet and prepare their answer promptly.

3.2 The principal submission is that *Rule 9(3) of the High Court (Election Petition) Rules, 2026* is mandatory, and that the omission of essential documents is a fundamental defect affecting the Court's jurisdiction. The 1st Respondent relies on **William David Carlisle Wise v E.F. Hervey Limited (1985) Z.R. 179 (S.C.)**[2] concerning notice of the case to be met; **Philip Mutantika and Another v Chipungu (SCZ Judgment No. 13 of 2014)**[3] concerning mandatory procedural requirements; and **Lukasu Properties Limited v African Banking Corporation Zambia Limited (SCZ/08/10/2023)**[4], concerning omitted documents required at commencement. He also refers to **Emmanuel Tumba and Six Others v Zambia Bata Shoe Company Plc (Application No. 7/25/2024)**[5], **Aristogerasimos Vangelatos and Another v Metro Investments Limited and Others (Selected Judgment No. 35 of 2016)**[6], and **Felopater Zambia Limited and Others v Zambia National Commercial Bank Plc (Application No. 26/2022) [2023] ZMCA 160**[7] on jurisdiction. He asks that the application and the Petition be dismissed with costs.

3.3 Alternatively, the 1st Respondent submits that the application should be dismissed because the proposed further affidavit and documents have not been exhibited or particularised sufficiently for their scope to be assessed. He relies on the notes to *Order 20 of the Rules of the Supreme Court of England, 1965 (White Book), 1999 Edition*, **Milingo Lungu v The Attorney General and The Administrator General (2022/CCZ/006) (Ruling of 15th**

December 2023)[8] and **Kabulwebulwe and Others v Zambia Pork Products and Others (Appeal No. 30 of 2014) [2016] ZMSC 241**[9], concerning the formulation of proposed amendments. He says that leave would alter the case and prejudice him.

4. HEARING

4.1 At the hearing on 29th September 2026, the Petitioner and the 1st Respondent relied on their respective affidavits and skeleton arguments. The Petitioner emphasised that the further affidavit would not alter the affidavit verifying facts or the pleadings and would occasion no prejudice. The 1st Respondent maintained that it would alter the facts and renewed his request to dismiss both the application and the Petition. In reply, the Petitioner submitted that the authorities concerning a failure to file an affidavit verifying facts were distinguishable because such an affidavit had been filed with this Petition.

5. ISSUES FOR DETERMINATION

5.1 The issues are whether the omission of documents said to be required by *Rule 9(3)* renders the Petition incompetent; whether the Court may entertain an application for leave to file a further affidavit and documents after the Petition has been filed; and, if so, whether the proposed material and the circumstances justify the exercise of that discretion in the Petitioner's favour.

6. THE LAW

6.1 *Rule 9(3) of the High Court (Election Petition) Rules, 2026* provides that an election petition "shall be accompanied by" 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, if any", and "a bundle of documents, if any". *Rule 17(1)*, subject to subrule (3), permits a party to make an interlocutory application, and *Rule 17(2)* permits the Court to give directions or orders in relation to an interlocutory matter.

6.2 *Article 73(2)* of the Constitution requires an election petition to be heard within ninety days of filing. *Article 118(2)(e)* directs the courts to administer justice without undue regard to procedural technicalities. As stated in **Henry Kapoko v The People, 2016/CC/0023**[10], that principle does not license disregard of the rules of court. The Court's interlocutory powers, discussed in **Finsbury Investment Limited v Antonio Ventriglia and Others (Selected Judgment No. 42 of 2016)**[1] are exercised within the governing procedural framework.

6.3 In **Samson Lee Chisulo SC v C and J Harvey Farms Limited (Appeal No. 219 of 2023) [2024] ZMCA 46**[11], the Court of Appeal distinguished an affidavit in reply, which an applicant may file as of right in the ordinary sequence of an application, from a further or supplementary affidavit, which requires leave. The Court referred to **Commonwealth Development Corporation v Central African Power Corporation (1968) Z.R. 70 (H.C.)**[12], where Magnus J recognised a discretion to admit affidavits in excess of the number ordinarily submitted under the High Court Rules and practice, especially where neither side objected.

6.4 In **Nida Properties Limited v Omnia Fertilizers Limited (Appeal No. 164 of 2013) [2016] ZMSC 38**[13], the Supreme Court held that a court was at liberty to ignore additional

affidavits filed without an application and without leave after the hearing had closed. The desire to determine a matter on its merits did not dispense with the rules governing reception of new evidence. **First National Bank Zambia Limited v ProFab Zambia Limited and Others [2017] ZMHC 564**[14] applied that principle to further affidavits filed without leave.

6.5 In **Chief Mwanatete v Lushato and Another [2014] ZMHC 100**[15], the High Court emphasised that a party should ordinarily put forward the facts supporting its case in the first affidavit, rather than assume a further opportunity to supplement it. The decision considered whether matters could reasonably have been anticipated, their necessity for determination, and the opposing party's opportunity to respond. Its treatment of an affidavit in reply must be read subject to the later clarification in **Samson Lee Chisulo SC v C and J Harvey Farms Limited (Appeal No. 219 of 2023) [2024] ZMCA 46**[11].

6.6 **William David Carlisle Wise v E.F. Hervey Limited (1985) Z.R. 179 (S.C.)**[2] explains the role of pleadings in defining the issues and giving notice of the case to be met. **Philip Mutantika and Another v Chipungu (SCZ Judgment No. 13 of 2014)**[3] and **Lukasu Properties Limited v African Banking Corporation Zambia Limited (SCZ/08/10/2023)**[4] address the consequences of noncompliance with mandatory filing requirements in their respective procedural settings. **Emmanuel Tumba and Six Others v Zambia Bata Shoe Company Plc (Application No. 7/25/2024) [2025] ZMSC 18**[5], **Aristogerasimos Vangelatos and Another v Metro Investments Limited and Others (Selected Judgment No. 35 of 2016)**[6] and **Felopater Zambia**

Limited and Others v Zambia National Commercial Bank Plc (Application No. 26/2022) [2023] ZMCA 160[7] concern the consequences of an absence of jurisdiction.

6.7 **Milingo Lungu v The Attorney General and The Administrator General, 2022/CCZ/006 (Ruling of 15th December 2023)**[8], and **Kabulwebulwe and Others v Zambia Pork Products and Others (Appeal No. 30 of 2014)**[9] concern the need to formulate proposed amendments precisely. They arose in the context of amendment, rather than an application to file a further affidavit. Their relevance here lies in the need for the Court to know the scope of the relief it is asked to permit.

7. ANALYSIS

7.1 The Petitioner filed an affidavit verifying facts with the Petition. The 1st Respondent's submission that no such affidavit accompanied the originating process therefore does not describe this record. *Rule 9(3)(d) and (e)* expressly qualify the requirement for a list and bundle of documents with the words "if any". The authorities on missing documents required for the commencement of other proceedings cannot, without consideration of this rule and what was actually filed, establish that the Court has no jurisdiction over the Petition. The application may be determined under *Rule 17*. The request to dismiss the Petition on the footing that the Court lacks jurisdiction is refused.

7.2 That conclusion does not establish an entitlement to add evidence after the Petition has been filed. The proposed affidavit is a further affidavit intended to supply exhibits in support of the Petition, not an affidavit in reply to opposition on an

interlocutory application. Under **Samson Lee Chisulo SC v C and J Harvey Farms Limited (Appeal No. 219 of 2023) [2024] ZMCA 46**[11], it requires leave. **Nida Properties Limited v Omnia Fertilizers Limited (Appeal No. 164 of 2013) [2016] ZMSC 38**[13], and **First National Bank Zambia Limited v ProFab Zambia Limited and Others [2017] ZMHC 564**[14] reinforce that additional affidavit evidence cannot be put on the record merely by filing it. The Petitioner has sought leave, but must give the Court a sufficient basis for exercising its discretion.

7.3 The proposed further affidavit has not been exhibited. "SM1" identifies six categories of material by description and date, but does not supply their contents or explain which pleaded allegation each item is intended to support. Paragraph 7 of the supporting affidavit says that "some" of the exhibits concern matters already pleaded. It does not identify which ones, nor explain the relationship of the others to the pleaded case. The Court cannot determine from the index whether the proposed affidavit merely proves existing allegations or introduces additional facts. The concern for precise notice expressed in **William David Carlisle Wise v E.F. Hervey Limited (1985) Z.R. 179 (S.C.)**[2] is acute in a time bound election petition. Although **Milingo Lungu v The Attorney General and The Administrator General, 2022/CCZ/006 (Ruling of 15th December 2023)**[8], and **Kabulwebulwe and Others v Zambia Pork Products and Others (Appeal No. 30 of 2014) [2016] ZMSC 241**[9] concern amendments, their insistence on a defined proposed change illustrates why leave cannot sensibly be granted without knowing the extent of what would be admitted.

7.4 **Commonwealth Development Corporation v Central African Power Corporation (1968) Z.R. 70 (H.C.)**[12] confirms a discretion to receive excess affidavit evidence, but its circumstances do not furnish a reason to grant leave here. The additional affidavits there had been prepared and were available to the judge and neither side objected. Here, the proposed affidavit and its exhibits are not before the Court and the 1st Respondent expressly objects. The Court cannot assess their relevance and utility merely from the index. The caution in **Chief Mwanatete v Lushato and Another [2014] ZMHC 100**[15] against assuming a second opportunity to develop an affidavit case also bears on this request.

7.5 The explanation for the omission is that the exhibits had to be obtained from different sources and required verification and collation. It does not identify which of the listed items was unavailable when the Petition was filed, when it was sought, or what prevented its earlier filing. The description of the omission as inadvertent does not supply those particulars. The application is made before trial, unlike the post hearing requests considered in **Nida Properties Limited v Omnia Fertilizers Limited (Appeal No. 164 of 2013) [2016] ZMSC 38**[13]. Even allowing for that distinction, the Court still needs a sufficiently explained request and identifiable proposed material to exercise its discretion judicially.

7.6 The Petitioner submits that the Respondents can answer the documents at or before trial under directions. That possibility is relevant but the absence of the proposed affidavit and exhibits prevents the Court from identifying what response would be required or framing directions proportionate to it. The 1st

Respondent's objection to meeting unidentified material within the ninety day period prescribed by *Article 73(2)* cannot be resolved solely by a general assurance that there will be no prejudice. *Article 118(2)(e)* and the power to give interlocutory directions do not remove the need for the Court to assess the substance and effect of what it is asked to admit.

7.7 On the material placed before the Court, the proposed addition is insufficiently defined, its omission insufficiently explained and its effect on the opposing parties cannot be assessed with confidence. The Court therefore declines to exercise its discretion to grant leave. This conclusion concerns the present application; it does not determine the merits of the election petition.

8. CONCLUSION

8.1 The 1st Respondent's request that the Petition be dismissed for want of jurisdiction is refused. The Petitioner's application for leave to file and serve a further affidavit verifying facts is denied and dismissed. The Petition shall proceed on the process as filed. Costs of the application shall be in the cause.

Delivered at Chinsali this 30th day of September, 2026.

C. M. LOMBE
HIGH COURT JUDGE

REPUBLIC OF ZAMBIA
HIGH COURT OF ZAMBIA
30 SEP 2026
C. M. LOMBE, J
P.O. BOX 60110, LIVINGSTONE