IN THE HIGH COURT FOR ZAMBIA
AT THE DISTRICT REGISTRY
HOLDEN AT CHINSALI
(Constitutional Jurisdiction)

2026/HP/EP/027

IN THE MATTER OF: A 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**

REPUBLIC OF ZAMBIA JUDICIARY HIGH COURT OF ZAMBIA 29 SEP 2026 CIVIL REGISTRY CHINSALI HIGH COURT P.O. BOX 480094, CHINSALI.

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 ON APPLICATION TO FILE BUNDLES OF DOCUMENTS

CASES REFERRED TO:

1. **Finsbury Investment Limited v Antonio Ventriglia and Others (Selected Judgment No. 42 of 2016)**
2. **Mutantika and Another v Chipungu (Appeal No. 94 of 2012) [2014] ZMSC 127; SCZ Judgment No. 13 of 2014; (2014) 1 Z.R. 352**
3. **Lukasu Properties Limited v African Banking Corporation Zambia Limited (SCZ/08/10/2023) [2024] ZMSC 28 (15 August 2024)**
4. **Emmanuel Tumba and Six Others v Zambia Bata Shoe Company Plc (Application No. 7/25/2024) [2025] ZMSC 18 (14 August 2025)**
5. **Aristogerasimos Vangelatos and Another v Metro Investments Limited and Others (Selected Judgment No. 35 of 2016)**
6. **Felopater Zambia Limited and Others v Zambia National Commercial Bank Plc (Application No. 26/2022) [2023] ZMCA 169 (23 May 2023)**
7. **Milingo Lungu v Attorney General and Administrator General (2022/CCZ/006)**
8. **Derrick v Williams (1939) 55 T.L.R. 676**
9. **Hyams v Stuart King [1908] 2 K.B. 696 at 724**
10. **J. Leavey & Co. v Hirst [1944] K.B. 24 at 27**
11. **Busch v Stevens [1963] 1 Q.B. 1; [1962] 1 All E.R. 412**
12. **Kabulwebulwe and others v Zambia Pork Products and others (Appeal No. 30 of 2014) [2016] ZMSC 241 (10 August 2016)**
13. **JCN Holdings Limited v Development Bank of Zambia (2013) 3 Z.R. 299**
14. **Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Limited (1989) K.L.R. 19**
15. **Elias Tembo v Florence Chiwela Salati and Others (SCZ Appeal No. 200 of 2016)**

16. **Isaac Mwanza and Others v Chitalu Chilufya and Others (2026/HP/EP/002)**
17. **Kayombo Saviye v Victor Lumayi and Another (2026/HP/EP/001)**

LEGISLATION REFERRED TO:

1. **The Constitution of Zambia, Chapter 1 of the Laws of Zambia**
2. **The Constitution of Zambia (Amendment) Act, 2016**
3. **The Electoral Process Act No. 35 of 2016**
4. **The Electoral Code of Conduct, 2016**
5. **The High Court Act, Chapter 27 of Laws Zambia**
6. **The High Court (Election Petition) Rules, 2026, Statutory Instrument No. 31 of 2026**
7. **The Rules of the Supreme Court of England (1999) Edition**

1. INTRODUCTION AND BACKGROUND

1.1 This is an interlocutory application arising from a parliamentary election petition concerning the election for Mpika North Constituency held on 13th August, 2026. The Petitioner is Mordecai Sichalwe, the 1st Respondent is Francis Robert Kapyanga, while the Electoral Commission of Zambia is the 2nd Respondent.

1.2 The Petitioner commenced the proceedings challenging the election of the 1st Respondent as Member of Parliament for Mpika North Constituency. He thereafter took out an Ex Parte Summons for an Order for Leave to File and Serve a Bundle of Documents, stated to be pursuant to *Rule 17(1) of the High Court*

(Election Petition) Rules, 2026. The Court directed that this matter be heard inter partes.

1.3 The application is supported by an affidavit sworn by the Petitioner and skeleton arguments. It is opposed by the 1st Respondent through an affidavit sworn by Isaac Simbeye and skeleton arguments in opposition. In response, the Petitioner filed an affidavit in reply sworn by Abigail Chuma Sakanga, together with further skeleton arguments.

2. THE PETITIONER'S CASE

2.1 In his affidavit in support, the Petitioner deposed that the Petition was filed within the period prescribed by law and was accompanied by the documents which had been prepared and were available at the time, including the Affidavit Verifying Facts, Skeleton Arguments and List of Authorities.

2.2 He explained that the documentary material upon which he intended to rely comprised documents obtained from different sources and/or documents requiring verification and proper collation before being assembled into a coherent bundle. Consequently, while the Petition and what he regarded as the documents essential to its commencement were filed within the prescribed period, the Bundle of Documents was not filed contemporaneously with the Petition.

2.3 The Petitioner stated that the omission was inadvertent and was not intended to disregard the Rules of Court. He further deposed that some of the documents contained in the proposed Bundle

relate to matters already pleaded in the Petition and are intended to support the grounds upon which the Petition is founded.

2.4 The Petitioner maintained that the Court has power to grant the application and to give appropriate directions in respect of an interlocutory matter. His position was that the Respondents would suffer no prejudice incapable of being addressed by appropriate directions of the Court. He undertook to serve the Bundle immediately upon leave being granted and to afford the Respondents such period as the Court may direct to consider it.

2.5 He further contended that refusing leave would result in the Petition being determined without the benefit of documentary material relevant to the issues already placed before the Court. He accordingly sought leave to file and serve the Bundle of Documents.

2.6 In the skeleton arguments initially filed in support of the application, the Petitioner relied upon *Rule 17(1) and (2) of the High Court (Election Petition) Rules, 2026.* The submission was that those provisions empower the Court to hear and determine interlocutory applications and to give directions or orders in relation to interlocutory matters.

2.7 Reliance was also placed upon **Finsbury Investment Limited v Antonio Ventriglia and Others (Selected Judgment No. 42 of 2016)**[1], in support of the proposition that proceedings in the High Court are judge-driven and that the Court has power to grant appropriate relief at an interlocutory stage.

2.8 The Petitioner submitted that a sufficient explanation for the failure to file the Bundle with the Petition had been given and emphasised the strict and compressed timelines applicable to election petitions. It was contended that priority had been given to ensuring that the Petition and the documents essential to its commencement were filed within time.

3. THE 1ST RESPONDENT'S CASE

3.1 The application is opposed by the 1st Respondent.

3.2 In the affidavit in opposition sworn by Isaac Simbeye, it is contended that the application is misconceived because it neither identifies nor particularises the documents which the Petitioner seeks leave to introduce. It is stated that, in the absence of identification of those documents, the 1st Respondent is unable to ascertain the nature and extent of the proposed documentary material and to assess whether it may occasion prejudice.

3.3 The 1st Respondent further contends that the Petitioner, having known that he had a Bundle of Documents, ought to have filed it together with the Petition. It is asserted that permitting the introduction of an unspecified bundle after commencement of the Petition has the potential to occasion both substantive and procedural prejudice.

3.4 The further position taken by the 1st Respondent is that where a Petition is not accompanied by documents required to be filed with it and upon which the Petitioner intends to rely, the

omission renders the Petition fatally irregular and incapable of being cured by a subsequent application for leave.

3.5 In the skeleton arguments in opposition, the 1st Respondent identifies, in substance, two questions. The first concerns whether the Court may permit the filing of the Bundle after the Petition in light of the requirements of *Rule 9(3) of the High Court (Election Petition) Rules, 2026.* The second concerns the effect of the Petitioner's failure to identify or place before the Court the documents which are the subject of the application.

3.6 The 1st Respondent relies particularly upon *Rule 9(3),* which provides that an election petition shall be accompanied by specified documents. Those documents include, under subrule (3)(d), a list and description of documents to be relied on, if any, and, under subrule (3)(e), a bundle of documents, if any.

3.7 It is submitted for the 1st Respondent that the use of the words "shall be accompanied by" makes compliance mandatory where there are documents upon which a Petitioner proposes to rely.

3.8 Reliance is placed upon **Mutantika and Another v Chipungu (Appeal No. 94 of 2012) [2014] ZMSC 127; SCZ Judgment No. 13 of 2014; (2014) 1 Z.R. 352**[2] in support of the proposition advanced by the 1st Respondent concerning compliance with provisions couched in mandatory language.

3.9 The 1st Respondent further relies upon **Lukasu Properties Limited v African Banking Corporation Zambia Limited (SCZ/08/10/2023) [2014] ZMSC 28 (15 August 2024)**[3] for the contention that omission of documents required to accompany

originating process may affect the jurisdiction of the Court. On that footing, the 1st Respondent submits that the Petitioner's failure to file the Bundle with the Petition is fundamental and cannot be cured through the present application.

3.10 The arguments also refer to **Emmanuel Tumba and six Others v Zambia Bata Shoe Company Plc (Application No. 7/25/2024) [2025] ZMSC 18 (14 August 2025)**[4], **Aristograsimos Vangelatos and Another v Metro Investments Limited and Others (Selected Judgment No. 35 of 2016)**[5], and **Felopater Zambia Limited and Others v Zambia National Commercial Bank Plc (Application No 26/2022) [2023] ZMCA 169 (23 May 2023)** [6] in support of the jurisdictional argument advanced.

3.11 In the alternative, the 1st Respondent submits that even if the Court has jurisdiction to entertain the application, it ought not to grant leave where the documents sought to be introduced have neither been identified nor exhibited.

3.12 Reference is made in that regard to *the Rules of the Supreme Court of England, 1965* and to **Milingo Lungu v Attorney General and Administrator General (2022/CCZ/006)**[7], together with **Derrick v Williams (1939) 55 T.L.R. 676 (1939) 55 T.L.R. 676**[8], **Hyams v Stuart King [1908] 2 K. B. 696 AT 724**[9], **J. Leavey & Co. v Hirst [1944] K.B. 24 AT 27**[10] and **Busch v Stevens [1963] 1 Q.B.1; [1962] 1 ALL E.R. 412**[11]. The argument advanced is that proposed material in respect of which the Court's leave is sought should be sufficiently identified to enable the Court to determine the extent of the relief being

sought. Reliance is also placed upon **Kabulwebulwe and others v Zambia Pork Products and others (Appeal No. 30 of 2014) [2016] ZMSC 241 (10 August 2016)[12].** The 1st Respondent consequently seeks dismissal of the application and also contends that the entire Petition ought to be dismissed with costs.

4. THE PETITIONER'S REPLY

4.1 The Petitioner, through the affidavit in reply denies that the application is misconceived merely because the documents were not initially particularised in the manner contended for by the 1st Respondent. It is stated that the 1st Respondent will have an opportunity to inspect the documents upon service and, where necessary, raise objections concerning their relevance, admissibility or otherwise.

4.2 It is further denied that the 1st Respondent is incapable of ascertaining the nature or extent of the documents or that the application would occasion incurable prejudice.

4.3 The Petitioner disputes the contention that the mere fact that documentary material was in his possession necessarily rendered the Petition incompetent because the Bundle was not filed simultaneously with the Petition.

4.4 It is also denied that the filing of the Bundle pursuant to leave of Court would occasion substantive or procedural prejudice incapable of being addressed by appropriate directions.

4.5 The Petitioner expressly disputes the assertion that failure to file a Bundle of Documents contemporaneously with the Petition

renders the Petition fatally irregular. His position is that the question whether a procedural omission renders a Petition incompetent must depend upon the wording and effect of the applicable law.

4.6 The Petitioner further maintains that the Court has jurisdiction in appropriate interlocutory proceedings arising from an election petition to make such orders and give such directions as may be necessary for the just and expeditious determination of the Petition.

4.7 In answer to the objection concerning particularisation, it is deposed that the present application is not an amendment application requiring particularisation. The affidavit nevertheless states that, in order to assist the Court in determining the relevance of the documents, an index of the documents sought to be produced was exhibited and marked *"ACS1."*

4.8 The Petitioner accordingly maintains that the application is competent and that the Petition should not be dismissed.

5. PETITIONER'S FURTHER SKELETON ARGUMENTS

5.1 In the further skeleton arguments filed in support of the affidavit in reply, the Petitioner relies upon *Rule 9(3)(e)* together with *Rule 17(1) of the High Court (Election Petition) Rules, 2026.*

5.2 The Petitioner's argument is founded in part upon the expression "if any" appearing in *Rule 9(3)(d) and (e).* It is submitted that the drafting of the Rule is deliberate because paragraphs (a), (b) and

(c) are expressed without qualification, whereas paragraphs (d) and (e) contain the words "if any".

5.3 The Petitioner submits that those words must be given meaning and cannot be treated as surplusage. It is argued that the provision recognises circumstances in which an election petition may have documents upon which the Petitioner intends to rely and circumstances in which there may be no Bundle of Documents.

5.4 The Petitioner therefore disputes the 1st Respondent's contention that the use of the expression "shall be accompanied by", considered in isolation, necessarily means that failure to file a Bundle automatically renders a Petition irregular.

5.5 The authorities relied upon by the 1st Respondent concerning particularisation are also said by the Petitioner to be distinguishable on the basis that they principally concern amendment or particularisation of pleadings, whereas the present application seeks leave to file and serve a Bundle of Documents.

5.6 The Petitioner reiterates that because of the strict timelines applicable to election petitions, priority was given to filing the Petition and documents regarded as essential to commencement within the prescribed period. It is again stated that some of the documents required verification and proper collation before they could be placed in a coherent Bundle.

5.7 The Petitioner further invokes *Article 118(2)(e) of the Constitution of Zambia (Amendment) Act, 2016,* which provides that justice shall be administered without undue regard to procedural technicalities.

5.8 It is submitted that the proposed Bundle will assist the Court to determine the Petition on its merits and that the constitutional principle referred to is relevant in determining whether the procedural omission complained of should result in dismissal of the Petition.

5.9 The Petitioner also relies upon *Rule 17(1)* as conferring jurisdiction upon the Court to determine interlocutory applications arising in election petitions.

5.10 As regards prejudice, the Petitioner contends that a bare assertion of prejudice is insufficient and maintains that the Court can protect the interests of the 1st Respondent by imposing appropriate conditions upon any grant of leave. It is further submitted that the 1st Respondent has not demonstrated how the grant of leave would prejudice him.

5.11 The Petitioner accordingly asks the Court to exercise its discretion in favour of granting leave to file and serve the Bundle of Documents.

6. ISSUE FOR DETERMINATION

6.1 From the application, the affidavits and the respective submissions, the principal issue arising for determination is whether, in the circumstances disclosed in the application, the Petitioner may be granted leave to file and serve the Bundle of Documents after the filing of the Election Petition.

6.2 That issue encompasses the competing contentions concerning the effect of *Rule 9(3) of the High Court (Election Petition) Rules, 2026;*

the Court's powers under *Rule 17;* the consequence, if any, of the Bundle not having accompanied the Petition when it was filed; and the objection initially raised concerning the identification or particularisation of the documents for which leave is sought.

7. LAW

7.1 The starting point is *Rule 9(3) of the High Court (Election Petition) Rules, 2026* which provides that an election petition challenging the election of a Member of Parliament ***"shall be accompanied by"*** the documents specified in paragraphs (a) to (e). Paragraph (d) calls for a list and description of documents to be relied on, "if any"; paragraph (e) calls for "a bundle of documents, if any." The qualification accommodates a petition for which there are no such documents. Where a petitioner intends to rely on documents, the rule prescribes their presentation with the petition.

7.2 *Rule 17(1),* subject to subrule (3), permits a party to make an interlocutory application and subrule (2) empowers the Court to give directions or orders in relation to an interlocutory matter. It does not expressly provide for the enlargement of the time specified by Rule 9(3) or for retrospective compliance with that provision. **Finsbury Investment Limited v Antonio Ventriglia and Others**[1] was invoked for the Court's power to grant interlocutory relief. That general power must be considered alongside the particular requirements of the election petition rules. **Mutantika and Another v Chipungu**[2] was cited

concerning compliance with a provision expressed in mandatory language.

7.3 The distinction between an obligation and the consequence of its breach is important. *Rule 9(6)* requires a deposit of security for costs within five days, subject to the Act and in an amount not exceeding eight thousand fee units as the Court may order. *Rule 9(7)* expressly states that, upon failure to deposit security in accordance with subrule (6), the Court "shall not hear and determine an election petition or any other proceedings relating to that election petition." *Rule 9(3)(e)* contains no equivalent direction or express declaration that a petition without a bundle is void or must be dismissed. The provision considered in **Lukasu Properties Limited v African Banking Corporation Zambia Limited**[3] expressly stated that a writ lacking prescribed accompanying documents ***"shall not be accepted"***; that wording is materially different.

7.4 The jurisdiction authorities identified in the parties' arguments must be applied to the particular defect alleged. **JCN Holdings Limited v Development Bank of Zambia (2013) 3 Z.R. 299**[13] and **Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Limited (1998) K.L.R. 19**[14] address the fundamental character of jurisdiction; **Elias Tembo v Florence Chiwela Salati and Others (SCZ Appeal No. 200 of 2016)**[15] concerns an incompetent process. **Emmanuel Tumba and Six Others v Zambia Bata Shoe Company Plc**[4], **Aristograsimos Vangelatos and Another v Metro Investments Limited and Others**[5], and

Felopater Zambia Limited and Others v Zambia National Commercial Bank Plc[6] were likewise cited on competence and jurisdiction. Those propositions require the Court first to determine whether the present omission, under the language governing this petition, has that effect.

7.5 **Isaac Mwanza and Others v Chitalu Chilufya and Others (2026/HP/EP/002)**[16] and **Kayombo Saviye v Victor Lumayi and Another (2026/HP/EP/001)**[17] concern the prescribed accompanying authorities in nomination petitions. The accounts of those decisions in the material before the Court do not establish a holding on the distinct wording of *Rule 9(3)(e)* concerning a bundle "if any" or on whether omission of that bundle, by itself, extinguishes a parliamentary election petition. They therefore do not resolve the present question without examining this Rule.

7.6 *Article 118(2)(e)* of the Constitution requires justice to be administered without undue regard to procedural technicalities. It does not authorise the Court to disregard the prescribed filing requirements. Equally, it does not itself prescribe dismissal where the relevant rule does not state that consequence. The objection about identification of the proposed documents, and the authorities advanced in connection with particularisation, bear on whether the Court could responsibly grant the relief requested; they do not change the time of filing prescribed by *Rule 9(3)(e).*

7.7 Against that framework, the Court must decide whether the Petitioner had a bundle to file with the Petition, whether Rule 17

permits its later introduction, and whether the established omission also requires dismissal of the Petition itself.

8. ANALYSIS

8.1 The Petitioner's own affidavit establishes that he intended to rely on documents obtained from different sources, some requiring verification and collation. This was not a case in which no documentary material was contemplated. The words "if any" in *Rule 9(3)(e)* therefore do not excuse the failure to lodge the Bundle with the Petition. Although the explanation accounts for the delay, it does not establish compliance with the Rule.

8.2 *Rule 17* enables the Court to entertain this interlocutory application. Its general power to make orders and directions does not, however, supply an express exception to the requirement that an existing Bundle accompany the Petition. Applying the mandatory wording of *Rule 9(3)(e)* and the principle for which **Mutantika**[2] was invoked, I am unable to grant leave retrospectively to file the Bundle. The general interlocutory power discussed in **Finsbury**[1] cannot displace that specific filing requirement.

8.3 The 1st Respondent also asks that the entire Petition be dismissed as incompetent. This calls for a separate inquiry. The express prohibition in *Rule 9(7)* follows failure to deposit security for costs; no comparable prohibition follows omission of the Bundle under *Rule 9(3)(e)*. Nor does the latter provision say that the Petition shall not be accepted, the consequence present in the rule considered in **Lukasu Properties**. The mandatory requirement to

file the Bundle with the Petition does not, by itself, answer whether the Petition ceases to exist upon non-compliance.

8.4 The jurisdiction cases, including **JCN Holdings**[13], **Owners of the Motor Vessel "Lillian S"**[14], **Elias Tembo**[15], **Emmanuel Tumba**[4], **Aristograsimos Vangelatos and Felopater**[5], do not dispense with that prior examination of the governing provision. The nomination petition decisions cited concerning missing copies of authorities address a different category of accompanying material. On the language of *Rule 9(3)(e)* and the circumstances disclosed here, I am not persuaded that the failure to file the Bundle deprived the Court of jurisdiction over the Petition.

8.5 The Petition was accompanied by an Affidavit Verifying Facts, Skeleton Arguments and a List of Authorities. It remains capable of determination on the material properly filed, subject to the applicable rules. *Article 118(2)(e)* does not cure the late filing of the Bundle but neither does it require the Court to add a sanction of dismissal which *Rule 9(3)(e)* does not prescribe.

8.6 Finally, the 1st Respondent objected that the proposed documents had not been identified or exhibited. The affidavit in reply states that an index was subsequently exhibited as "ACS1". The Court need not decide whether this answers the particularisation objection. Even if the documents were adequately identified at that stage, the index would not remedy the failure to file the Bundle with the Petition. The application therefore fails on the principal ground already addressed.

9. CONCLUSION

9.1 Where a petitioner has a Bundle of Documents upon which he intends to rely, *Rule 9(3)(e)* requires it to accompany the Election Petition at filing. *Rule 17* does not provide a basis to permit this Bundle to be filed subsequently. The application for leave to file and serve the Bundle of Documents is dismissed.

9.2 The separate request to dismiss the entire Election Petition is declined. *Rule 9(3)(e)* does not prescribe that consequence for the omission found in this case. The Petition remains before the Court and shall proceed in accordance with the Court's directions.

9.3 Costs ordered in the cause.

Delivered at Chinsali this 29th day of September, 2026.

C. M. LOMBE
HIGH COURT JUDGE

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