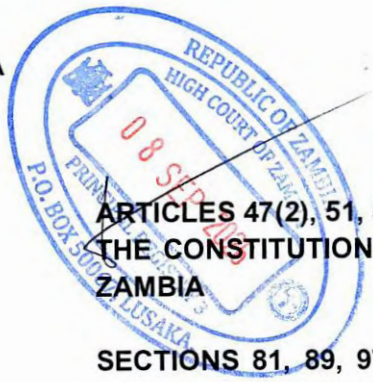
Form II
(Rules 5(1) and 10(1))
2026/HP/EP/0035

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



IN THE MATTER OF:	**ARTICLES 47(2), 51, 54, 68, 72(2)(c), 73(1) OF THE CONSTITUTION OF THE REPUBLIC OF ZAMBIA**
AND	
IN THE MATTER OF:	**SECTIONS 81, 89, 97(1), 98(c), 99, 100(2)(a) OF THE ELECTORAL PROCESS ACT NO. 35 OF 2016**
AND	
IN THE MATTER OF:	**CODE OF CONDUCT RULES 12, 15(a), (h), (k)**
AND	
IN THE MATTER OF:	**VUBWI CONSTITUENCY ELECTIONS HELD IN ZAMBIA ON THE 13TH DAY OF AUGUST, 2026**
AND	
IN THE MATTER OF:	**RULE 9(1) OF THE HIGH COURT (ELECTION PETITION) RULES 2026, STATUTORY INSTRUMENT NO. 31 OF 2026**
AND	
IN THE MATTER OF:	**RULE 10(1) OF THE HIGH COURT (ELECTION PETITION) RULES 2026, STATUTORY INSTRUMENT NO. 31 OF 2026**

BETWEEN:	
ACKLEO I. BANDA	**PETITIONER**
AND	
MARGARET MITI	**1ST RESPONDENT**
ELECTORAL COMMISSION OF ZAMBIA	**2ND RESPONDENT**

ANSWER TO PETITION

THE FIRST RESPONDENT'S ANSWER TO THE PETITION HEREIN SHOWETH THAT:

1. At the hearing of this Petition and as a point *in limine*, the 1st Respondent shall raise a preliminary objection that the Petition is incompetent and a nullity, the same having been filed out of time.

2. As the Petition itself discloses at paragraph 2 thereof, the Returning Officer duly declared the result of the election for Vubwi Constituency on 15th August 2026, and the Petition was filed on 31st August 2026, that is, on the sixteenth day after the declaration and two (2) days outside the fourteen days prescribed by section 100(3) of the Electoral Process Act No. 35 of 2016.

3. The said time limit is mandatory and jurisdictional, and the Petition having been presented out of time, this Honourable Court is divested of jurisdiction to hear and determine it, and the Petition ought to be dismissed in limine with costs.

4. This Answer is filed without prejudice to, and subject to, the said preliminary objection and application.

5. Save as is hereinafter expressly admitted, the 1st Respondent denies each and every allegation of fact contained in the Petition, as if the same were set out herein and traversed seriatim, and the 1st Respondent puts the Petitioner to strict proof thereof.

6. Paragraph 1 of the Petition is admitted. The Petitioner was a candidate in the Vubwi Constituency parliamentary election held on 13th August 2026, having stood under the United Party for National Development (UPND).

7. Paragraph 2 of the Petition is admitted. The candidates at the said election were Margaret Miti, Ackleo I. Banda, Alex P. Banda and Bathromew Zulu, and the Returning Officer declared the 1st Respondent as duly elected on 15th August 2026. The 1st Respondent denies that she was not validly elected and puts the Petitioner to strict proof thereof.

8. Paragraph 3 of the Petition is admitted. The Returning Officer declared the following results — Margaret Miti (NRPUP) 7,183; Ackleo I. Banda (UPND) 6,397; Alex P. Banda (UPPZ) 204; Bathromew Zulu (PP) 152, being a margin of 786 votes in favour of the 1st Respondent. The 1st Respondent pleads that the said result reflects the free will of the voters of Vubwi Constituency.

9. Paragraph 4 of the Petition is admitted. The said election was conducted by the 2nd Respondent, the Electoral Commission of Zambia.

10. As to paragraph 5(i) of the Petition, alleging that the 1st Respondent and her agents were seen collecting voters' cards from UPND members in UPND strongholds before and on polling day, and that the matter was reported at Vubwi Police Station where it "is not yet concluded", the 1st Respondent denies the allegation in its entirety and puts the Petitioner to strict proof thereof.

11. The 1st Respondent will show that neither she nor any election agent or polling agent appointed by her collected, or caused or permitted to be collected, any voter's card from any person in Vubwi Constituency or at all.

12. As to paragraph 5(ii) of the Petition, alleging threats broadcast on Mudzi Wathu Radio Station in Malawi that Zambian soldiers would arrest voters found without a BCG vaccination, the 1st Respondent denies the allegation in its entirety and puts the Petitioner to strict proof thereof.

13. The 1st Respondent has no knowledge of any such broadcast. No such threat was made by her, by any agent of hers or by any person acting with her knowledge, consent or approval; nor did she cause, procure, instigate or authorise any broadcast on Mudzi Wathu Radio Station or any other radio station.

14. As to paragraph 5(iii) of the Petition, alleging that as a result of the alleged broadcast a lot of voters in favour of the UPND candidate did not participate in the poll, the 1st Respondent denies the allegation in its entirety and puts the Petitioner to strict proof thereof.

15. The 1st Respondent will show that no voter was prevented from, or deterred from, participating in the poll; that the allegation is unquantified speculation identifying no voter, polling station or figures; and that polling in Vubwi Constituency proceeded peacefully with normal turnout.

16. As to paragraph 5(iv) of the Petition, alleging the distribution of non-political branded materials such as salt on the night before polling after the close of the campaign period, the 1st Respondent denies the allegation in its entirety and puts the Petitioner to strict proof thereof.

17. The 1st Respondent pleads affirmatively that neither she nor any agent of hers distributed salt or any other materials to any voter, whether before, during or after the campaign period, and that her campaign was conducted in compliance with the Electoral Code of Conduct and within the prescribed campaign period.

18. As to paragraph 5(v) of the Petition, alleging vote-buying by the giving of SIM cards said to contain money, with PIN numbers allegedly shared, the 1st Respondent denies the allegation in its entirety and puts the Petitioner to strict proof thereof.

19. The 1st Respondent shall aver that neither she nor any agent of hers gave any SIM card, money or thing of value to any voter, and that no PIN was shared by her or at her instance for the purpose alleged or at all.

20. As to paragraph 5(vi) of the Petition, alleging that the 1st Respondent and her agents prevented all UPND polling agents from accessing the totalling centre so that they could not monitor the election results, the 1st Respondent denies the allegation in its entirety and puts the Petitioner to strict proof thereof.

21. The 1st Respondent pleads that the UPND polling agents duly accredited by the 2nd Respondent were present at the polling stations and at the totalling centre, and signed the prescribed forms without protest.

22. The 1st Respondent will further demonstrate that all participating political parties were represented at every polling station in Vubwi Constituency and that the accredited local observers confirmed the poll to be free, fair and in accordance with the prescribed electoral standards.

23. Paragraph 6 of the Petition is denied and the 1st Respondent shall show that no corrupt practice, illegal practice or other misconduct was committed in connection with the said election by her, with her knowledge, consent or approval, or by her election agent or polling agent. The 1st Respondent shall further show that the majority of voters in Vubwi Constituency were not, and could not have been, prevented from electing the candidate whom they preferred.

24. In answer to the Petition generally, the 1st Respondent pleads that the Petition and the Petitioner's Affidavit Verifying Petition, read together, contain no particulars of the names of persons alleged to have committed the acts complained of, the voters allegedly affected, relevant dates and times, polling stations, witnesses or supporting documents.

25. The 1st Respondent shall show that the allegations are speculative, frivolous and vexatious and disclose no ground capable of proof to the standard required, namely proof to a fairly high degree of convincing clarity.

26. The 1st Respondent pleads affirmatively that the Vubwi Constituency parliamentary election held on 13 August 2026 was free, fair, peaceful and transparent, and was conducted substantially in accordance with the provisions of the Electoral Process Act No. 35 of 2016 and the principles of the Constitution, and that the result declared by the Returning Officer reflects the free will of the voters of Vubwi Constituency.

27. In the further alternative, and without prejudice to the foregoing, the 1st Respondent pleads that she personally committed no corrupt practice or illegal practice; that she had no knowledge of, and neither consented to nor approved, any such practice; and that she and her election agent took all reasonable means to prevent the commission of any corrupt practice or illegal practice at the said election.

28. By reason of the matters aforesaid, the 1st Respondent shall pray that the Petition be dismissed with costs and that it be declared that the 1st Respondent, **Margaret Miti**, was duly elected Member of Parliament for Vubwi Constituency.

29. Save as is hereinbefore expressly admitted, the 1st Respondent denies each and every allegation of fact contained in the Petition, as if the same were set out herein and traversed seriatim, and the 1st Respondent puts the Petitioner to strict proof thereof.

Dated at Lusaka this _____ day of _____ 2026.

Signed: .....

MARGARET MITI

Per:

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Advocates for the 2nd Respondent



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

2026/HP/EP/0035

IN THE MATTER OF:	**ARTICLES 47(2), 51, 54, 68, 72(2)(c), 73(1) OF THE CONSTITUTION OF THE REPUBLIC OF ZAMBIA**
AND IN THE MATTER OF:	**SECTIONS 81, 89, 97(1), 98(c), 99, 100(2)(a) OF THE ELECTORAL PROCESS ACT NO. 35 OF 2016**
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AND IN THE MATTER OF:	**RULE 9(1) OF THE HIGH COURT (ELECTION PETITION) RULES 2026, STATUTORY INSTRUMENT NO. 31 OF 2026**
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BETWEEN:

ACKLEO I. BANDA	**PETITIONER**
AND	
MARGARET MITI	**1ST RESPONDENT**
ELECTORAL COMMISSION OF ZAMBIA	**2ND RESPONDENT**

1ST RESPONDENT'S LIST OF AUTHORITIES AND SKELETON ARGUMENTS

LIST OF AUTHORITIES

1. LEGISLATION

1.1 The Constitution of Zambia (Amendment) Act No. 2 of 2016;

1.2 The Electoral Process Act No. 35 of 2016 (as amended by the Electoral Process (Amendment) Act No. 32 of 2021 and the Electoral Process (Amendment) Act No. 12 of 2026);

1.3 The Electoral Process (General) Regulations, Statutory Instrument No. 63 of 2016; and

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

2. CASES

A. Supreme Court of Zambia

2.1 *Akashambatwa Mbikusita Lewanika & Others v Frederick Jacob Titus Chiluba*, S.C.Z. Judgment No. 14 of 1998; S.C.Z./8/EP/3/96 etc.; [1998] ZMSC 11; (1998) Z.R. 49 (S.C.); (1999) 1 LRC 138 (9 November 1998).

2.2 *Anderson Kambela Mazoka & Others v Levy Patrick Mwanawasa & Others*, S.C.Z./EP/01,02,03/2002; (2005) Z.R. 138 (S.C.); [2005] ZMSC 25 (16 February 2005).

2.3 *Mubika Mubika v Poniso Njeulu*, SCZ Appeal No. 114 of 2007; [2008] ZMSC 127 (22 May 2008).

B. Constitutional Court of Zambia

2.4 *Herbert Shabula v Greyford Monde*, Constitutional Court Appeal No. 13 of 2016 (2016/CC/A032); [2018] ZMCC 16 (20 June 2018).

2.5 *Christabel Ngimbu v Prisca Chisengo Kucheka & Electoral Commission of Zambia*, Appeal No. 16 of 2017 (HP/EP/0025/2016); Selected Judgment No. 2 of 2018; [2018] ZMCC 2 (24 January 2018).

2.6 *Nkandu Luo & Electoral Commission of Zambia v Doreen Sefuke Mwamba & Attorney-General*, CCZ Appeal No. 10/2016 (2016/CC/A016 & A042); Selected Judgment No. 51 of 2018; [2018] ZMCC 254 (16 November 2018).

2.7 *Poniso Njeulu v Mubika Mubika*, Constitutional Court Appeal No. 9 of 2017 (2016/CC/A031); [2019] ZMCC 16 (7 March 2019).

2.8 *Mwapela v Chinga* (Richard Sikwebele Mwapela v Miyutu Chinga), CCZ Appeal No. 14 of 2017 (2016/CC/A037); [2019] ZMCC 22 (23 January 2019), on appeal from the High Court (Mbewe J), 2016/HP/EP/016.

2.9 *Christine Phiri & Rosemary Banda v Melessiana Phiri & Electoral Commission of Zambia*, 2021/CCZ/A0037; [2022] ZMCC 41 (31 August 2022).

C. High Court for Zambia

2.10 *Tom Michelo v Miles Sampa & Electoral Commission of Zambia*, 2021/HP/EP/0011; [2021] ZMHC 33 (19 November 2021).

2.11 *Alfonso Kaziche Phiri v Ackleo Isaiah Aaron Banda & Electoral Commission of Zambia*, 2021/HP/EP/0037; [2021] ZMHC 40 (23 November 2021).

2.12 *Chikonkolo Chilufya v Robert Kaela Kalimi*, 2021/HP/EP/022; [2021] ZMHC 46 (2 November 2021).

2.13 *Albert Munanga v Stephen Kampyongo & Electoral Commission of Zambia*, 2021/HP/EP/007; [2021] ZMHC 47 (24 November 2021).

2.14 *Elizabeth Phiri v Monty Chinkuli & Electoral Commission of Zambia*, 2021/HP/EP/0057; [2021] ZMHC 54 (26 November 2021).

2.15 *Beauty Undi Phiri v Philimon Twasa & Electoral Commission of Zambia*, 2021/HP/EP/0044; [2021] ZMHC 59 (18 November 2021).

2.16 *Mulenga v Chisanga & Another*, 2021/HP/EP/0052; [2021] ZMHC 65 (23 November 2021).

D. Secondary Authorities

2.17 *Brelsford James Gondwe v Catherine Namugala*, Appeal No. 175 of 2012

2.18 *Saul Zulu v Victoria Kalima*, SCZ Judgment No. 2 of 2014

2.19 *Chrispin Siingwa v Stanley Kakubo*, CCZ Appeal No. 7 of 2017

2.20 *Austin Liato v Sitwala Sitwala*, Selected Judgment No. 23 of 2018; *Richwell Siamunene v Sialubalo Gift*, Selected Judgment No. 58 of 2017.

2.21 *Margaret Mwanakatwe v Charlotte Scott*

2.22 *Abuid Kawangu v Elijah Muchima*, CCZ Appeal No. 8 of 2017

2.23 *Michael Chilufya Sata v Rupiah Bwezani Banda*, SCZ/8/EP/01/2008

2.24 *Sikota Wina & 2 Others v Michael Mabenga* —

SKELETON ARGUMENTS

MAY IT PLEASE THIS HONOURABLE COURT, these are the 1st Respondent's List of Authorities and Skeleton Arguments, filed in support of the 1st Respondent's Answer and Affidavit in Support of Answer sworn by the 1st Respondent, MARGARET MITI, pursuant to Rule 10(1) and (2) of the High Court (Election Petition) Rules, 2026, SI No. 31 of 2026.

A. INTRODUCTION

1. My Lord/Lady, the Petitioner, ACKLEO I. BANDA, challenges the declaration that the 1st Respondent, MARGARET MITI, was duly elected as Member of Parliament for Vubwi Constituency in the parliamentary election held on 13th August 2026, the result of which was duly declared by the Returning Officer on 15th August 2026. The declared results, as pleaded in the Petition itself were:

    i. Margaret Miti (NRPUP) 7,183;

    ii. Ackleo I. Banda (UPND) 6,397;

    iii. Alex P. Banda (UPPZ) 204; and

    iv. Bartholomew Zulu (PP) 152.

2. A margin of 786 votes in favour of the 1st Respondent out of 13,936 votes cast. The 1st Respondent relies on her Answer and Affidavit in Opposition filed herewith, whose contents she adopts as part of these arguments.

3. At the outset, the 1st Respondent maintains a preliminary objection that the Petition is incompetent and a nullity, having been presented out of time. The bar is apparent on the face of the Petition itself and paragraph 2 discloses that the result was declared on 15 August 2026, while the Petition was filed on 31st August 2026, the sixteenth day after the declaration, two (2) days outside section 100(3) of the Act. A summons to dismiss for irregularity is pending and these arguments are filed without prejudice thereto.

4. The Petition rests on six allegations against the 1st Respondent "and her Agents" as follows:

    i. Collection of voters' cards from UPND members, said to have been reported at Vubwi Police Station where the matter "is not yet concluded";

    ii. Threats broadcast on Mudzi Wathu Radio Station in Malawi;

iii. That, as a result of (ii), "a lot of voters" in favour of the Petitioner did not participate in the poll;

iv. Distribution of salt on the night before voting;

v. Vote-buying by sim cards said to contain money; and

vi. Prevention of UPND polling agents from accessing the totalling centre.

5. The 1st Respondent's position is fourfold:

i. First, the Petition pleads no names, dates, polling stations, perpetrators, witnesses or documents: it is unparticularised and cannot be tried;

ii. Secondly, nothing pleaded is attributable to the 1st Respondent or any duly appointed election or polling agent of hers;

iii. Thirdly, even if any allegation were proved, there is no evidence that the majority of voters were or may have been prevented from electing the candidate they preferred;

iv. Fourthly, the prayer for a recount is misconceived in law.

B. THE LEGAL FRAMEWORK

6. My Lord/Lady, a parliamentary election may be questioned only by an election petition under Part IX of the Electoral Process Act No. 35 of 2016 ("the Act") as per section 97(1). The reliefs are confined to section 99: "(a) a declaration that the election was void; or (b) a declaration that any candidate was duly elected."

7. The ground on which the Petition is founded is section 97(2)(a) of the Act, under which an election is void only if it is proved to the satisfaction of the Court that "a corrupt practice, illegal practice or other misconduct has been committed in connection with the election:

i. By a candidate; or

ii. With the knowledge 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 ... were or may have been prevented from electing the candidate ... whom they preferred".

8. Section 97(2)(a) thus imposes a two-limb, cumulative test being "An additional requirement under section 97(2)(a) is that the Petitioner must prove that as a result of the corrupt or illegal practice or misconduct, the majority of the electorate in the constituency, district or ward were or may have been prevented from electing their preferred candidate" (**Poniso Njeulu v Mubika Mubika [2019] ZMCC 16, pp. J35–J36**). Failure on either limb is fatal and we submit that the Petitioner has failed on both.

C. BURDEN AND STANDARD OF PROOF

9. The burden of proof rests wholly on the Petitioner, and the standard is higher than the ordinary civil standard. In **Lewanika v Chiluba [1998] ZMSC 11**, it was held that election petitions must be "established to a fairly high degree of convincing clarity", a standard adopted in **Mazoka v Mwanawasa (2005) Z.R. 138 (S.C.)**. The burden is the Petitioner's as "he who alleges must prove" (**Brelsford James Gondwe v Catherine Namugala**, as cited in **Njeulu v Mubika [2019] ZMCC 16, pp. J36–J37**); and though elevated, the standard is "lower than the standard of beyond a reasonable doubt required in criminal cases" (**Abuid Kawangu v Elijah Muchima**, as cited in **Mulenga v Chisanga [2021] ZMHC 65**). The Petitioner must prove his case by "hard facts", not "hearsay or/and unfounded inferences" (**Chikonkolo Chilufya v Robert Kaela Kalimi [2021] ZMHC 46**).

10. In **Elizabeth Phiri v Monty Chinkuli & Electoral Commission of Zambia [2021] ZMHC 54** (paras 138–139), quoting **Mazoka v Mwanawasa** the court guided that: "Once the pleadings have been closed, the parties are bound by their pleadings and the Court has to take them as such."

11. Based on the standard stipulated above, we submit that the Petition is incurably defective: no agent of the 1st Respondent is named; no voter whose card was allegedly collected is named; no person who allegedly received salt, a SIM card or money is named; no date of any act is given; no polling station is identified; no transcript, recording or even a named listener of the alleged Mudzi Wathu Radio broadcast is provided; and no document of any kind is produced.

12. The consequence, as **Saul Zulu v Victoria Kalima, SCZ Judgment No. 2 of 2014** establishes, is that a Petitioner "is not allowed to bring in any evidence other than the evidence which is connected to the pleadings and goes to support those pleadings." The Petitioner cannot reconstruct his case at trial through witnesses speaking to matters never pleaded.

D. ATTRIBUTION AND AGENCY

13. This Honourable Court will note that every allegation is framed against "the 1st Respondent and her Agents" but section 2 of the Act defines an election agent as "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," and Regulation 55(1) of SI No. 63 of 2016 provides that "[a] candidate shall name an election agent in the nomination paper". Throughout, the Petition identifies no such person.

14. **13.** Supporters, cadres or party members are not agents by implication. In **Lewanika v Chiluba** (supra), as quoted in **Njeulu v Mubika [2019] ZMCC 16** (p. J43): "a candidate is only answerable for those things which he has done or which are done by his election agent or with his consent. In this regard, we note that not everyone in ones political party is ones election agent since ... an election agent has to be specifically so appointed." **Chrispin Siingwa v Stanley Kakubo, CCZ Appeal No. 7 of 2017** (as cited in **Phiri v Chinkuli [2021] ZMHC 54 at para 148**), is to the same effect: stretching "agent" beyond what the law provides "would also entail ascribing fault to candidates for electoral malpractices committed by persons who are not appointed by the candidate as election agents."

15. Nor can attribution be inferred from party affiliation: "To so hold would amount to speculation and it is not the duty of this Court to make assumptions based on nothing more than party membership and candidacy in an election" (**Richwell Siamunene v Sialubalo Gift, Selected Judgment No. 58 of 2017**, as cited in **Njeulu v Mubika [2019] ZMCC 16, pp. J42–J43**). The bare incantation "and her Agents", without a single named agent, cannot satisfy the attribution element.

E. SPECIFIC ALLEGATION

16. **Allegation (i) — collection of voters' cards and the police report said to be "not yet concluded".** "Some voters cards", from unnamed voters, by unnamed collectors, on no stated date. This exact allegation was before the Constitutional Court in **Mwapela v Chinga [2019] ZMCC 22**, where the petition alleged that "the Respondent and his agents collected voters' cards and national registration cards from the electorate which they returned to them upon recording the details" (p. J3), and it failed. Further, in **Mulenga v Chisanga [2021] ZMHC 65**, a like allegation failed because "the Petitioner did not call the alleged victims to testify." Unless the very voters whose cards were allegedly taken are called, the allegation remains hearsay.

17. Further, the plea that the matter "was reported at Vubwi Police Station where the matter is not yet concluded" does not advance the Petitioner's case. A police report is not proof of commission: no occurrence-book entry, docket, caution statement or charge is produced, and no proceedings against the 1st Respondent or any agent of hers have been concluded or, to her knowledge, commenced.

18. An unproved assertion of an unproved report cannot attain the elevated **Lewanika/Mazoka** standard of "a fairly high degree of convincing clarity". In **Njeulu v Mubika [2019] ZMCC 16 (pp. J75–J76)**, the absence of any such report counted against the petitioner: "...RW5, a police officer ... testified that there were no reports of any particular political party giving out money to solicit for votes. ... we thus agree that this allegation was not proved to the required standard." A bare report without outcome proves nothing.

19. **Allegation (ii) — threats via Mudzi Wathu Radio Station (Malawi).** As regards this allegation, no date, programme, presenter, transcript, recording or named listener is pleaded and nothing connects any broadcast to the 1st Respondent or any appointed agent of hers; and the complaint machinery in Rule 12 of the Electoral Code of Conduct and Regulation 38(2)–(3) of SI No. 63 of 2016 (objections in Form GEN 15) was never used.

20. **Allegation (iii) — "a lot of voters" allegedly deterred from voting.** It is our submission that this is an unquantified speculation as not one voter is named, not one polling station is identified, and no figure is pleaded as to who, or how many, allegedly stayed away.

21. **Allegation (iv) — distribution of salt on the eve of the poll.** The case of **Mwapela v Chinga [2019] ZMCC 22,** is on all fours and is decisive (pp. J40–J41) and the holding therein is relevant to the extent that the Court stated as follows:

> *"...the evidence of PW12 was not capable of proving the allegation regarding the distribution of salt as he was only informed of it by unknown people who were not called to support the allegation. The trial Judge therefore cannot be faulted for holding that the allegation of bribery involving the distribution of salt was not proven to a fairly high degree of convincing clarity..."*

22. **Allegation (v) — vote-buying by sim cards on polling day.** No voter, giver, polling station, amount, sim card or mobile-money record is pleaded or identified. The same deficiencies defeated the bribery allegation in **Mwapela v Chinga [2019] ZMCC 22**

(pp. J45–J46), where the partisan witness who alleged he had taken a bribe was "a witness with a possible interest to serve … his testimony required to be corroborated by independent evidence."

23. **Allegation (vi) — exclusion of UPND polling agents from the totalling centre.** This allegation is directed, in substance, at the conduct of the poll administered by the 2nd Respondent. Identical complaints failed in **Tom Michelo v Miles Sampa [2021] ZMHC 33 (paras 18.1–18.3)**, where "no credible and cogent [evidence] was adduced to prove that the alleged acts of electoral misconduct or illegal practices were committed with the consent and knowledge or approval of the 1st Respondent or his appointed election/polling agents or that the alleged acts were widespread and may have prevented the majority of voters … from electing their preferred candidate." No agent, station, date or consequence is pleaded here.

24. **Common thread** — all six allegations share these infirmities. In **Alfonso Kaziche Phiri v Ackleo Isaiah Aaron Banda & Electoral Commission of Zambia [2021] ZMHC 40**, Ruth Chibbabbuka J dismissed like allegations where non-eye-witness testimony and victims never called could not sustain the petition and the incidents "were not widespread so as to prevent the majority of voters in Vubwi Constituency from electing a candidate they preferred". The voters of Vubwi, including in the very wards named in the Petition, voted freely.

25. The Petition contains not a single statistic in terms of the number of cards collected, listeners to the broadcast, quantity of salt, sim cards, or agents excluded, and no figures at all as to how any of this could have prevented the majority of voters from electing their preferred candidate.

26. My Lord/Lady, **Austin Liato v Sitwala Sitwala, Selected Judgment No. 23 of 2018 (as cited in** *Nkandu Luo v Mwamba* [2018] ZMCC 254, pp. J50–J51), holds that:

> *"…it is not sufficient for a petitioner to prove only that a candidate committed an illegal or corrupt practice or engaged in other misconduct in relation to the election without proof that the illegal or corrupt practice or misconduct was widespread and prevented or may have prevented the majority of the voters in the constituency, district or ward from electing a candidate of their choice."*

27. We submit that measured against the above principles, the Petition's majority/widespread case rests on a single formulaic sentence with no number of voters affected, no turnout data, no polling-station figures and no witness identified. Cogent

evidence, including, where appropriate, statistics of the voters affected, is required and has not been provided.

28. The Court in **Mubika Mubika v Poniso Njeulu [2008] ZMSC 127 (p. J31)** stated as follows:

> *"In this type of allegation, statistics of registered voters who attended the rallies should have been given to assist the trial court on the extent of influence in the constituency. In the final analysis, we find that it was not proved that the majority of voters in the constituency were or might have been prevented from voting for their preferred candidate."*

29. To the same effect the Court in **Margaret Mwanakatwe v Charlotte Scott** stated that:

> *"...it is not sufficient for a petitioner to prove only that a candidate committed an electoral offence in relation to the election without further proving that the electoral offence was widespread and prevented the majority of the voters from electing a candidate of their choice."*

30. In casu, no statistics, figures or affected voters are pleaded or adduced at all, and the failure to adduce credible and cogent evidence on either limb is precisely the vice identified in Michelo v Sampa [2021] ZMHC 33.

F. THE PRAYER FOR A RECOUNT IS MISCONCEIVED

31. One of the reliefs sought by the Petitioner herein is a recount of the ballot. We submit that a recount is not a relief provided by section 99 of the Act but an interlocutory relief obtainable only on a formal application supported by affidavit and cogent evidence: **Christabel Ngimbu v Prisca Chisengo Kucheka [2018] ZMCC 2**: "Only where a Petitioner files a formal interlocutory application can the court order a vote re-count. An order for a recount is interlocutory, made only on the basis of cogent evidence justifying the making of such an order." Therefore, in **Beauty Undi Phiri v Philimon Twasa [2021] ZMHC 59**, it was held that: "An order for recount of votes is therefore not a relief ... no formal application was made before this Court. ... the Petitioner's request for an order of recount is misconceived."

G. CONCLUSION

32. For the reasons set out above, we submit that:

i. The Petition is unparticularised and the Petitioner is bound by his pleadings;

ii. No allegation is attributable to the 1st Respondent or any duly appointed election or polling agent of hers;

iii. Every allegation rests, at best, on hearsay from unnamed sources and none can be proved to a fairly high degree of convincing clarity;

iv. Even if any were proved, there is no evidence, statistic, figure or affected voter showing that the majority of voters were or may have been prevented from electing the candidate they preferred, the majority limb resting on a single formulaic sentence.

33. Based on the foregoing, the Petition discloses no merit. The 1st Respondent therefore prays that this Honourable Court:

i. **Dismiss the Petition with costs**; and

ii. **Declare that the 1st Respondent, MARGARET MITI, was duly elected as Member of Parliament for Vubwi Constituency** pursuant to section 99(b) of the Electoral Process Act No. 35 of 2016.

WE ARE MOST OBLIGED.

Dated at Lusaka this _____ day of _____ 2026.

Per:

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LUSAKA

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P.O. Box 50274
LUSAKA

Advocates for the 2nd Respondent

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

2026/HP/EP/0035



IN THE MATTER OF:	**ARTICLES 47(2), 51, 54, 68, 72(2)(c), 73(1) OF THE CONSTITUTION OF THE REPUBLIC OF ZAMBIA**
AND	
IN THE MATTER OF:	**SECTIONS 81, 89, 97(1), 98(c), 99, 100(2)(a) OF THE ELECTORAL PROCESS ACT NO. 35 OF 2016**
AND	
IN THE MATTER OF:	**CODE OF CONDUCT RULES 12, 15(a), (h), (k)**
AND	
IN THE MATTER OF:	**VUBWI CONSTITUENCY ELECTIONS HELD IN ZAMBIA ON THE 13TH DAY OF AUGUST, 2026**
AND	
IN THE MATTER OF:	**RULE 9(1) OF THE HIGH COURT (ELECTION PETITION) RULES 2026, STATUTORY INSTRUMENT NO. 31 OF 2026**
AND	
IN THE MATTER OF:	**RULE 10(1) OF THE HIGH COURT (ELECTION PETITION) RULES 2026, STATUTORY INSTRUMENT NO. 31 OF 2026**

BETWEEN:

ACKLEO I. BANDA	**PETITIONER**
AND	
MARGARET MITI	**1ST RESPONDENT**
ELECTORAL COMMISSION OF ZAMBIA	**2ND RESPONDENT**

FIRST RESPONDENT'S LIST OF DOCUMENTS

The following is a list of documents relating to the matter in question in the action which are or have been in possession, custody or power of the above-named First Respondent.

1. The First Respondent has in her possession custody or power the documents relating to the matter in question in this suit set forth in the First and Second parts of the First Schedule hereto.

2. The First Respondent objects to producing the documents set forth in the second Part of First Schedule hereto on the grounds that the same are privileged and came into existence

and were made after this litigation was in contemplation and in view of such litigation for the purpose of obtaining and furnishing to its Solicitors evidence and information as to the evidence which might be obtained and otherwise for use of the Petitioner's use to enable them to conduct this action and otherwise obtain advise.

3. The First Respondent had but not now in her possession or power documents relating to the matters in this suit set forth in the Second Schedule hereto.

4. The First Respondent has not had in her possession custody or power or in the possession custody of power of their agent or the possession custody or power of any person or persons on their behalf any deed, account, book of account, voucher, receipt, letter, memorandum, paper or writing of any other document whatsoever relating to the matters in question in this suit or any of them wherein any entry has been made relating to such matter or any of them other than and except the documents set forth in the First and Second Schedule hereto.

FIRST SCHEDULE

PART 1

Item No.	Description of Document	Date
1.	Declaration of Vubwi Parliamentary Election Results	15/08/2026
2.	Polling Station Result forms	15/08/2026
3.	Totalling Centre Records	15/08/2026

PART 2

Correspondence passing between the First Respondent and her Advocates after the commencement of or relating to the Institution of the proceedings in this suit.

SCHEDULE 2

Originals of the Documents listed in Part I of Schedule 1 hereto.

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

Per:

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