REPUBLIC OF ZAMBIA
HIGH COURT OF ZAMBIA
CIVIL DISTRICT
09 OCT 2026
REGISTRY
P.O. Box 2 Kabwe, CHIPATA

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

2026/HP/EP/011

IN THE MATTER OF: **A PARLIAMENTARY ELECTION PETITION FOR THE NYIMBA NORTH CONSTITUENCY SITUATED IN THE EASTERN PROVINCE OF THE REPUBLIC OF ZAMBIA, HELD ON 13TH AUGUST 2026.**

IN THE MATTER OF: **ARTICLE 73 (1) AND ARTICLE 45 (2) (A) AND (B) OF THE CONSTITUTION OF ZAMBIA CHAPTER 1 OF THE LAWS OF ZAMBIA, AS AMENDED BY ACT NO. 2 OF 2016**

IN THE MATTER OF: **PART III AND RULE 9 (1) AND (2) OF THE HIGH COURT, ELECTION PETITION RULES, 2026 (SI NO 31 OF 2026)**

IN THE MATTER OF: **SECTIONS 81, 83, 87, 89, 96, 97 (2), 98 (C), 99 (A), 100 (2) (A) OF THE ELECTORAL PROCESS ACT NO. 35 OF 2016 AS AMENDED BY ACT NO 12 OF 2026 [THE ELECTORAL PROCESS AMENDMENT ACT, 2026]**

IN THE MATTER OF: **THE ELECTORAL PROCESS (CODE OF CONDUCT) REGULATIONS 2016**

BETWEEN:
MENYANI ZULU **PETITIONER**
AND

PAUL LUNGU (MALE) **1ST RESPONDENT**
ELECTORAL COMMISSION OF ZAMBIA **2ND RESPONDENT**

Before the Hon. Mr. Justice C. Chanda in Open Court on the 9th October 2026.

For the Petitioner: Mr. W. Chitungu, Messrs Wallace & Co. Legal Practitioners
For the 1st Respondent: Mr. J. Phiri, Messrs Joseph Chirwa & Company with Mr. W. Sakateti, Messrs Zambezi Chambers
For the 2nd Respondent: Mr. J. Hakasenke, Messrs Stembridge Chirambo & Associates.

RULING

Cases referred to:

1. *Chrispin Siingwa v Stanley Kakubo (2018) ZMCC 2691*
2. *Cosmas Moono and Priscilla Kamanga v Ngandu Magande and The Electoral Commission of Zambia (2008) 2 ZR 7*
3. *Shabula v Monde (2018) ZMCC 16*

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4. *Kapongo Bwanga Jeffery Wisamba v Mathews McKay Makayi (1979) ZR 295*
5. *Michael Chilufya Sata v Rupiah Bwezani Banda, the Electoral Commission of Zambia and the Attorney General SCZ/8/EP/01 2008*
6. *Miyanda v Handahu (1993-94) ZR 187*
7. *Polythene Products Zambia Limited v Cyclone Hardware and Construction Limited (2012) 3 ZR 396*
8. *Zambia National Holdings Limited and The United National Independence Party (UNIP) v The Attorney General (1993/94) ZR 115*
9. *Kapango Bwanga Jeffrey Wisamba v Matthews Mckay Makayi (1979) ZR 2959*
10. *Hakainde Hichilema and Others v The Government of the Republic of Zambia Appeal No. 28 Of 2017*
11. *Lewanika & Others v Chiluba (1998) ZR 79*
12. *Michael Chilufya Sata v Rupiah Bwezani Banda, The Electoral Commission of Zambia and The Attorney General SCZ/8/EP/01/2008*
13. *Turnkey Properties Limited v Lusaka West Development Company Limited (1984) ZR 856*

Legislation and Other Materials referred to:

1. *The High Court (Election Petition) Rules, 2026, (Statutory Instrument No.31 of 2026)*
2. *The High Court Act, Chapter 27 of the Laws of Zambia*
3. *The Electoral Process Act [No. 35 of 2016]*
4. *The Electoral Act No. 12 of 2006 (Repealed)*
5. *The Electoral Process (General Regulations), Statutory Instrument No. 63 of 2016*

1. **MENYANI ZULU**, the Petitioner herein, had on the 25th September 2026 moved an application by way of summons issued in terms of the provisions of **Rule 17 of the High Court (Election Petition) Rules 2026[1]** as read together with **Order 3 Rule 2 of the High Court Rules Chapter 27 of the Laws of Zambia[2]**. By the said application, the Petitioner seeks an order directing a recount of the votes cast and the election results declared in respect of the Nyimba North Constituency Parliamentary elections held on the 13th August 2026 on grounds contained in his supporting affidavit.

2. And in his affidavit in support, the Petitioner deposed in the main that the said election was materially compromised by widespread corruption, bribery, intimidation, violence, voter inducement, irregularities in the counting and recording of votes, and other illegal and improper electoral practices occurring throughout the seven (7) wards of the said Constituency. It was thus alleged that the election of the 1st Respondent was invalid in that the declared results were alleged not to reflect the votes that were lawfully cast

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and counted. It was alleged in this regard that there were serious discrepancies and irregularities in the counting, recording and transmission and/totaling of votes at various polling stations. To that end, it was averred that the cumulative effect of the aforesaid irregularities and illegal practices negatively affected the integrity and reliability of the electoral process. It was thus alleged that the said acts prevented the majority of voters from freely and fairly exercising their right to choose a candidate of their own choice.

3. The Petitioner further alleged that the said election was not conducted in accordance with the requirements of a free and fair election in that the 1st Respondent knew or ought to have reasonably known of the acts of corruption, bribery, intimidation, violence and other electoral malpractices allegedly perpetrated by persons who were allegedly closely associated with him. The Petitioner furthermore deposed that he did raise several complaints and/or objections in Form Gen 15 for certain results to officials of the 2nd Respondent and the Zambia Police at various times as per exhibits marked "MZ1-4" but the said objections were ignored. In addition, the Petitioner complained that his agents were not allowed to sign and get copies of the Gen 20 Forms containing the results, thereby casting doubt on the authenticity and genuineness of the results declared. That the said results, upon verification, reflected discrepancies in the totaling and some were swapped for the 1st Respondent much to his disadvantage as per exhibits marked "MZ5-9" respectively.

4. In his skeleton arguments, the Petitioner cited and relied on the authorities of **CHRISPIN SIINGWA V STANLEY KAKUBO[1]** and **COSMAS MOONO AND PRISCILLA KAMANGA V NGANDU MAGANDE AND THE ELECTORAL COMMISSION OF ZAMBIA[2].** It was contended in that regard that an order for a recount required the Petitioner to establish a *pima facie* case of serious arithmetical anomalies, missing Gen 20 forms and systematic counting variances which can only be cured by Judicial scrutiny of the physical ballots. It was further contended that as per the case of **SHABULA V MONDE[3]** a recount was an evidentiary bridge meant to ascertain the will of

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the people where cogent evidence revealed tallying manipulation. The Petitioner therefore prayed for an order for a recount of the votes cast and the results in the interest of justice.

5. **PAUL LUNGU**, the 1st Respondent, opposed the application and filed an affidavit in opposition. It was averred in the main by the 1st Respondent that he was the duly elected Member of Parliament for Nyimba North Constituency in an election he described had been held freely and fairly and whose results reflected the true intention of the majority of the voters in the said constituency of a preferred candidate of their own choice. The 1st Respondent denied all the allegations and contended that the Gen 20 forms exhibited by the Petitioner were fake and forged, and that the Petitioner did not personally perceive any of the facts alleged. The 1st Respondent further averred that a vote recount undertaken prior to trial would be premature as the Petitioner had not proved any of the allegations contained in his main Petition and prayed for the dismissal of the interlocutory application with costs and allow the matter to proceed to trial.

6. In his skeleton arguments, the 1st Respondent, citing the authorities of **KAPONGO BWANGA JEFFERY WISAMBA V MATHEWS MCKAY MAKAYI**[4] and **MICHAEL CHILUFYA SATA V RUPIAH BWEZANI BANDA, THE ELECTORAL COMMISSION OF ZAMBIA AND THE ATTORNEY GENERAL**[5] that it is necessary for the applicant to have demonstrated prior to the application and through the calling of evidence that there exist grounds on which the Court can exercise its jurisdiction to order a recount of all votes cast. The first Respondent further contends that the Petitioner's evidence is not cogent enough for the application to be granted.

7. At the hearing of the application, Counsel for the Petitioner and the 1st Respondent relied on their documents on record and briefly orally augmented their submission. The 2nd Respondent did not oppose the application. Counsel for the Petitioner emphasized that the **High Court (Election Petition) Rules 2026**[1] allowed a party to make an interlocutory

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application in an election petition in order that the same may be heard and determined by the Court. He added that **Rule 3** of the said rules vested Jurisdiction in this Court to hear and determine the application arising from an election petition in line with the practice and procedures provided in the rules, the High Court Act and any other written law. As regards the basis upon which the application had been made, it was his contention that **Sections 69 and 70 of the Electoral Process Act[3]** were being called in aid for the purpose of the court ordering a recount of the ballot papers.

8. Counsel for the 1st Respondent, on the other hand, submitted that **Sections 69 and 70** of the **Electoral Process Act[3]** did not apply in this instance and maintained that the application before this Court remained premature and could only be adequately addressed by this Court upon hearing the totality of the evidence to be given for and against the petition.

9. I have carefully considered the application, the affidavit evidence, the arguments and submissions of the parties as well as the authorities cited and relied upon. It is not necessary for me to recite all the arguments and authorities relied upon except where necessary.

10. By way of a background, the Petitioner herein had on the 28th August 2026 filed his petition seeking the following main reliefs:

    i. ***An order directing the 2nd Respondent to conduct an audit and a recount of the votes cast on the 13th of August 2026 with respect to the Nyimba North constituency parliamentary election in the presence of both the Petitioner and the 1st Respondent, their advocates and/or their agents.***
    ii. ***After the recount ordered above is conducted and the votes cast are corrected accordingly, make a declaration that the Petitioner was duly elected as Member of Parliament for Nyimba North constituency, instead of the 1st Respondent***

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iii. ***A declaration that the declaration by the 2nd Respondent that the 1st Respondent is a winner and duly elected Member of Parliament for Nyimba North constituency is null and void.***

iv. ***In the alternative a declaration that the illegal practices committed by the 1st Respondent, his authorized agents and 2nd Respondent affected the election results and therefore the election of the 1st Respondent as a Member of Parliament for the Nyimba North Constituency is invalid.***

v. ***An order that the 1st and 2nd Respondents bear the costs of this petition***

vi. ***Any other reliefs the court may deem fit.***

11. In determining this application, I will bear in mind the above set out reliefs. The Petitioner has anchored this purported interlocutory application on the provisions of **Rule 17 of the High Court (Election Petition) Rules, 2026, (Statutory Instrument No.31 of 2026)**[1] and **Order 3 Rule 2 of the High Court Rules, Chapter 27 of the Laws of Zambia**[2] aforesaid.

12. **Rule 17 of the High Court (Election Petition) Rules 2026**[1] provides as follows:

> *"17. Interlocutory applications*
>
> *(1) Subject to subrule (3), a party may make an interlocutory application to be heard and determined by the Court.*
>
> *(2) The Court may give directions or orders in relation to any interlocutory matter.*
>
> *(3) Despite subrule (1), an interlocutory application shall not be raised seven days before commencement of trial"*

13. And **Order 3 Rule 2 of the High Court Rules**[2] provides as follows:

> ***"Subject to any particular rules, the Court or a Judge may, in all causes and matters, make any interlocutory order which it or he considers necessary for doing justice, whether such order has been***

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expressly asked by the person entitled to the benefit of the order or not."

14. Clearly, there is no dispute that the above cited rules of Court confer jurisdiction on this Court to hear and determine interlocutory applications in election petitions. The question, however, is whether or not this application is competently before me.

15. It must be noted that trial of this petition was set down to commence on **5th October 2026** as per the order for directions I had issued on 14th September 2026. And yet the Petitioner only filed the application on 25th September 2026 which was five (5) days before the trial date, without counting the excluded days of Saturday and Sunday. Rule 17 (3) of the Election Petition Rules referred to above provides in mandatory terms that *an interlocutory application shall not be raised seven days before commencement of trial.* It follows, therefore, that this application is incompetently before me and I have no jurisdiction to entertain it as it does not comply with the provisions of the very rule under which it has been brought.

16. Be that as it may, and due to the importance of the legal issue that the application presents, I will, nonetheless, proceed to determine the merits of the application.

17. The fundamental legal issue that this application raises is whether or not an order of a recount of votes by the High Court is tenable under the **Electoral Process Act No. 35 of 2016**[3]. In other words, has this High Court got jurisdiction to order and direct a recount of the votes cast and the result thereof in an election petition as prayed for by the Petitioner?

18. Unlike the repealed **Electoral Act No. 12 of 2006**[4], there is no express provision in the **Electoral Process Act**[4] empowering the High Court to make such an order upon a trial of an election petition. Section 20 of the repealed **Electoral Act**[4] had provided as follows:

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"(1). Any of the following reliefs may be claimed in an election petition:

(a) a declaration that the election was void.

(b) a declaration that any candidate was duly elected.

(2). In addition to the foregoing reliefs, a petitioner may apply to the High Court upon the trial of an election petition for a scrutiny to be carried out by the High Court in such a manner as the Court may determine.

(4). In this section "scrutiny" means an enquiry as to the validity of the votes cast, and includes the determination of the number of the valid votes cast for each candidate in the election in respect of which the application for scrutiny is made."

19. No similar provision is found in the **Electoral Process Act**[3] prescribing the reliefs the High Court may grant upon a trial of an election petition as set out above. Instead, **Section 99** of the **Electoral Process Act**[3] enacts as follows:

"99. Any of the following reliefs may be claimed in an election petition:

(a) a declaration that the election was void; or

(b) a declaration that any candidate was duly elected."

20. In so far as the legislature did not make express provision for "scrutiny or recount" in **Section 99** of the **Electoral Process Act**[3] cited above, demonstrates that the legislature had intended that scrutiny or recount of votes cast were no longer a remedy subject to judicial litigation but are now an administrative remedy, as I will demonstrate. What addresses the grievances that the Petitioner has raised regarding the alleged manner the ballots were counted or alleged swapping of votes and the alleged arithmetical errors is now provided for in **Sections 69** and **70** of the **Electoral Process Act**. **Section 69**[3] thereof enacts as follows:

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"(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"

21. And **Section 70** of the **Electoral Process Act**[3] equally enacts as follows:

"(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."

22. Furthermore, **Regulation 47** of the **Electoral Process (General Regulations) Statutory Instrument No. 63 of 2016**[5] goes on to guide as follows:

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"A candidate, an election agent or Polling agent may, if present when the counting or recounting of the votes is completed, request the presiding officer to have the votes re-counted, or the presiding officer may have the votes re-counted or again re-counted, except that the presiding officer may refuse the request if, in the opinion of the presiding officer, it is unreasonable."

23. Beyond what has been provided for above, there is no escalation of the above procedure to the High Court. The above provisions are unambiguous and convey a clear legislative intent requiring no esoteric interpretation, that a recount is now a preserve of a presiding officer at a particular polling station following a formal objection to that effect. In fact, the said procedure even provides for an appeal to the returning officer, making the process complete and self-contained.

24. It is trite law that the duty of the Court is to always find out the expressed intention of the legislature. I call in aid the wisdom of the Supreme Court expressed in the case of **MIYANDA V HANDAHU[6]** as follows:

"It is not what the legislature meant to say or what their supposed intentions were with which the Court should be concerned; the Court's duty is to find out the expressed intention of the legislature. When the language is plain and there is nothing to suggest that any words are used in a technical sense or that the context requires a departure from the fundamental rule, there would be no occasion to depart from the ordinary and literal meaning and it would be inadmissible to read into the terms anything else on grounds such as policy, expedience, justice or political exigency, motive of the framers and the like..."

25. I am therefore, fortified in my finding that the current electoral legal regime does not provide a recount of votes as a judicial remedy but as an administrative remedy. This is so because it is trite that where a statute

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provides a specific procedure to follow, that is the procedure which ought to be followed. This is what can be discerned from the reasoning of the Supreme Court in the case of **POLYTHENE PRODUCTS ZAMBIA LIMITED V CYCLONE HARDWARE AND CONSTRUCTION LIMITED**[7] where it held as follows:

> ***"Where a statute provides for the procedure of commencing an action a party has no option but to abide by the procedure."***

26. Although the above case refers to commencement of matters, its *ratio decidendi* in my considered view, applies with equal force to this issue where a statute has laid down a clear procedure to follow on how a request for a recount ought to be made and determined. To that extent, the Petitioner has no option but to follow the said laid down procedure. In fact, the Petitioner already exhausted that laid down administrative procedure as per the exhibits produced of his objections and appeals. In the circumstances of the case, the Petitioner cannot invent another procedure of now approaching the Court seeking to undertake the same process of a recount which he had earlier requested for but was rejected. Thus, contrary to the submissions of the Petitioner's Counsel, the objections made to the presiding officers and appeals made to the returning officer were not merely conditional precedents for making an application to Court, but rather constituted the full and final determination of the Petitioner's grievances regarding the manner the ballot papers were sorted and votes counted.

27. It stands to reason, therefore, that had the legislature intended that the issue of a recount of votes ought to have been escalated to the High Court far and beyond a polling station, the legislature would have expressly said so. It can reasonably be concluded, therefore, that the legislature had intended that all the issues surrounding any alleged irregularities with regard to sorting of ballots and counting of votes were administratively attended to speedily there and then at the polling station level. This is the spirit I gather from the

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provisions of **Sections 69 and 70** of the **Electoral Process Act[3]** as the legislature was already aware of these provisions when enacting the provisions of **Section 99** thereof which restricted the reliefs a High Court can grant on an election petition.

28. As such, it would be absurd in my considered view to read into the said provisions any judicial remedies and interventions of allowing the High Court to come in and order a recount of the votes and the results for the entire constituency including other polling stations were no such alleged irregularities occurred. Especially that any recount is now triggered by a formal objection to a presiding officer before the results are declared. Therefore, given the scheme of arrangement of the provisions of the **Electoral Process Act[3]**, it was never the intention of the legislature that any alleged infraction at a given polling station would then be used to affect the results of all the rest of the polling stations. But rather, any infraction at each polling station has to follow its own course of being formally raised before the Presiding Officer, who is then mandated to deal with those objections before the results are announced.

29. Consequently, an order for a recount of votes and results to be made by the High Court as prayed for by the Petitioner, would not only be tantamount to circumventing the provisions of **Sections 69 and 70** of the **Electoral Process Act[3]**, but also usurping the statutory powers vested exclusively in the presiding officer of a polling station. And by extension usurping the appeal powers of the returning officer of a constituency. It is trite law that where a statute vests certain powers and authority in a particular administrative official, it is that official and no other who would make such a decision and the Court has no jurisdiction to substitute its decision with that of that particular official. The best the Court can do is to review such decision-making process under the principle and spirit of checks and balances. In this regard, granting an order for a recount of the votes and results will be tantamount to trespassing on the forbidden turf of legislative

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enactment which is the sole preserve of the legislature under the doctrine of separation of powers.

30. Am mindful that the High Court is vested with original and unlimited jurisdiction in that no cause is beyond the jurisdiction of the High Court. The unlimited jurisdiction of the High Court was eloquently put in its proper context by the Supreme Court in the celebrated case of **ZAMBIA NATIONAL HOLDINGS LIMITED AND THE UNITED NATIONAL INDEPENDENCE PARTY (UNIP) V THE ATTORNEY GENERAL[8]**. It is now settled that the jurisdiction of the High Court is not limitless, as the High Court is bound by any limitations placed on it by any statutory rules and procedures such as **Sections 70 and 99** of the **Electoral Process Act[3]**.

31. I note, however, that a body of case law has been developed in this jurisdiction providing for the remedy of a recount as a common law right. Such common law right for instance was recognized in the case of **KAPANGO BWANGA JEFFREY WISAMBA V MATTHEWS MCKAY MAKAYI[9]** wherein this Court held that:

> ***"Although the Act does not provide for a recount, there is a common law right in the matter and this is done by way of interlocutory summons supported by affidavit before the trial of the petition".***

32. Be that as it may, it is still my considered view that with the enactment of the **Electoral Process Act[3]**, a recount as a common law right ceased to exist as it is now expressly provided for in the relevant statute as set out above. Nonetheless, the Petitioner has moved this application purporting to be an interlocutory application in terms of the provisions of **Order 3 Rule 2** of the **High Court Rules[2]**. When I enquired from Mr. Chitungu the Learned Counsel for the Petitioner as to whether this application was not the same as the one sought in the main petition, he insisted that it was different as this was an interlocutory application. And according to his submissions, the order sought can be granted on a *prima facie* basis.

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33. With respect to Mr. Chitungu, there is no difference between the recount of votes sought in the main petition and this purported interlocutory application. I say so because the grounds for seeking a recount are intricately intertwined with the grounds upon which the Petitioner seeks to annul the election in his petition. This application, as per the allegations contained in the affidavit in support as set out above, is premised not only on the manner ballots were sorted and the votes were counted, but also on allegations of widespread corruption, bribery, intimidation, violence, voter inducement and other illegal and improper electoral practices allegedly occurred throughout the seven (7) wards of Nyimba North Constituency. These allegations have been vehemently denied by the Respondents.

34. As the recount of the votes is a final order sought in the petition on which recount the Petitioner seeks to be declared as the duly elected Member of Parliament, such order is not tenable at law under **Order 3 Rule 2** of the **High Court Rules**[2]. The Supreme Court fairly recently pronounced itself on the proper application of **Order 3 Rule 2** to final orders in the case of **HAKAINDE HICHILEMA AND OTHERS V THE GOVERNMENT OF THE REPUBLIC OF ZAMBIA**[10] as follows:

> ***"Looking at the provisions of Order 3 Rule 2 of the High Court Rules, it is clear that the order only applies to interlocutory orders and not final orders. According to Order 59/1A of the Rules of the Supreme Court, a judgment or order of a court "shall be treated as final" if the entire cause or matter would be finally determined. This is what happened in this case. The court granted what it termed as an interlocutory order of dismissal" on the ground that it was clothed with jurisdiction to make any order under Order 3 Rule 2 of the High Court Rules without any regard as to whether such order was interlocutory or final."***

35. It is clear that the order for a recount sought is not interlocutory but final in nature and hence not tenable under **Order 3 Rule 2** of the **High Court**

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Rules[2]. Given the circumstances of this case, can the relief of a recount be granted on a *prima facie* basis on the affidavit evidence before the commencement of trial?

36. The 1st Respondent has contended that this application was premature before a trial is held and before any cogent evidence was established. It is trite that election petitions are not proved on a *prima facie* basis but rather on a higher degree of convincing clarity above the balance of probability. The Supreme Court was emphatic on the standard of proof required in election petitions when it held in the case of **LEWANIKA AND OTHERS V CHILUBA**[11] as follows:

> ***"As part of the preliminary remarks which we make in this matter, we wish to assert that it cannot be seriously disputed that parliamentary elections have generally long required to be proved to a standard higher than on a mere balance of probability. It follows therefore, that in this case where the petition has been brought under constitutional provisions and would impact upon governance of the nation and the deployment of the constitutional power and authority, no less a standard of proof is required. It follows also that the issues raised are required to be established to a fairly high degree of convincing clarity."***

37. Even assuming for a moment that this application is competently before me and I have the necessary jurisdiction to order a recount, in that event the Petitioner still ought to adduce cogent evidence of convincing clarity beyond mere averments made in his affidavit. I am fortified in this regard by the decision of the Supreme Court in the case of **MICHAEL CHILUFYA SATA V RUPIAH BWEZANI BANDA, THE ELECTORAL COMMISSION OF ZAMBIA AND THE ATTORNEY GENERAL**[12] cited by the 1st Respondent wherein it held as follows:

> ***"The Affidavits in support of the application for a recount and the affidavit in opposition to the said application show that what is alleged by the petitioner is heavily contested by the Respondents. It is***

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common cause that trial in this Petition has not started. The Petitioner is seeking an order for recount upfront, before calling any evidence. This procedure has not been used in the trial of an election petition in our Courts."

38. The Supreme Court further went on to hold as follows:

"The question, therefore, is whether evidence adduced through affidavit would be cogent enough to warrant the granting of an order for a recount? In this case, allegations have been made by the Petitioner. To these allegations, there are the makers of the documents which have been exhibited; there are eyewitnesses who were present at the polling station and who can testify as to the actual number of votes obtained by each candidate in those Polling Stations; or indeed whether it was the numbers in figures and not words which were used for tallying or whether party agents were present when the ballot boxes were sealed and unsealed to retrieve election documents and there were monitors who witnessed the counting process. While the Petitioner can allude to information collected from his agents, only those agents can testify as to the veracity of the allegations."

39. Viewed on its own, the Petitioner's affidavit evidence without more does not disclose any cogent evidence proving the heavily contested allegations which constitute hearsay evidence. I am persuaded by the 1st Respondent's contention that the Petitioner did not personally perceive all the allegations contained in his affidavit constituting inadmissible evidence that falls below the threshold of the proof required in election petitions. Granting the order for a recount in the circumstances will be tantamount to circumventing the high standard of proof required in election petitions. For all intents and purposes, an interlocutory application serves to meet the ends of justice so as to guarantee a fair trial. An interlocutory application, therefore, is not to be used as a tactical device to snatch an unfair advantage against the other

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party as was forbidden by the Supreme Court in the case of **TURNKEY PROPERTIES LIMITED V LUSAKA WEST DEVELOPMENT COMPANY LIMITED**[13]. In that case, when dealing with an injunction, the Supreme Court held that:

> ***"An interlocutory injunction cannot be regarded as a device by which the applicant can attain or create new conditions favourable only to himself, which tip the balance of contending interests in such a way that he is able or more likely to influence the final outcome by bringing about an alteration to the prevailing situation which may weaken the opponent's case and strengthen his own."***

40. For the above reasons and considerations, I find that the Petitioner's application is incompetently before me, lacks merit and is not tenable at law. The Petitioner has, therefore, failed to make out a case for an order for a recount of votes and results in Nyimba North Constituency and this application is hereby **dismissed**.

41. As this application did not in any way disrupt the trial of the petition, I exercise my discretion and order that the costs of this application will be in the cause.

42. Leave to appeal is hereby granted.

Delivered at Chipata this 9th day of October 2026

C. CHANDA
JUDGE

REPUBLIC OF ZAMBIA
HIGH COURT OF ZAMBIA
HIGH COURT JUDGE
09 OCT 2026
CHIPATA HIGH COURT
P.O. Box 510403 CHIPATA

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