

AT THE CONSTITUTIONAL COURT REGISTRY HOLDEN AT LUSAKA

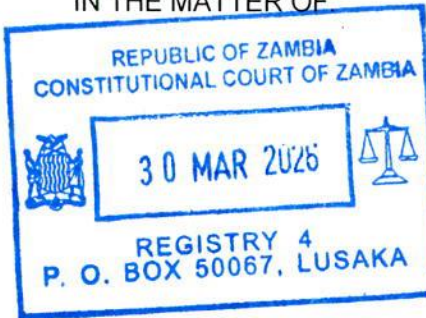
(Constitutional Jurisdiction)

IN THE MATTER OF: ARTICLE 1 (SUPREMACY OF CONSTITUTION), ARTICLE 2 (DEFENCE OF CONSTITUTION) AS READ WITH ARTICLE 128(1)(a)(b) AND 128 (3)(b)(c) (JURISDICTION) OF THE CONSTITUTION OF ZAMBIA (AMENDMENT) ACT NO. 2 OF 2016, CHAPTER 1 OF THE LAWS OF ZAMBIA.

IN THE MATTER OF: THE ALLEGED CONTRAVENTION OF ARTICLE 58(6) OF THE CONSTITUTION OF ZAMBIA (AMENDMENT) ACT NO. 2 OF 2016.

AND

IN THE MATTER OF: A CHALLENGE TO THE CONSTITUTIONALITY OF THE PURPORTED DELIMITATION AND NAMING OF NEW CONSTITUENCIES AND WARDS BY THE 1ST RESPONDENT (ECZ), PURSUANT TO ARTICLE 58(5) OF THE CONSTITUTION OF ZAMBIA (AMENDMENT) ACT NO. 2 OF 2016, TO THE EXTENT THAT THE 1ST RESPONDENT INTENDS TO INCLUDE THESE NEWLY DEFINED ADMINISTRATIVE UNITS IN THE FINAL VOTERS REGISTER FOR THE GENERAL ELECTION SCHEDULED FOR 13TH AUGUST, 2026, DESPITE THE UNDERLYING VOTER REGISTRATION DATA BEING CAPTURED PRIOR TO THE LEGAL FINALIZATION OF SAID BOUNDARIES, AND DISSOLUTION OF PARLIAMENT AND COUNCILS.



BETWEEN:

PEOPLE'S ACTION FOR THE COUNTRY'S TRANSFORMATION	PETITIONER
AND	
ELECTORAL COMMISSION OF ZAMBIA	1ST RESPONDENT
ATTORNEY GENERAL	2ND RESPONDENT

CORAM: SHILIMI, DPC, MUSALUKE, CHISUNKA, MULONGOTI, MWANDENGA, KAWIMBE AND MULIFE, JJC ON 26TH FEBRUARY, 2026 AND 30TH MARCH, 2026.

For the Petitioner:	Mr. P. Sinkamba, Chairman of the Petitioner
For the 1 st Respondent:	Mr. E. Kamwi, Ms. A. Muyumbana and Mrs. M. Mwachela of Messrs EMK & Associates

For the 2nd Respondent: Ms. M. Mulalelo – Senior State Advocate and F.K.
Sakachiva – State Advocate – Attorney General’s
Chambers

JUDGMENT

Mulife, JC, delivered the Judgment of the Court.

Cases referred to:

1. Chishimba Kambwili v Attorney General, 2019/CCZ/009
2. Godfrey Malembeka v Attorney General and Electoral Commission of Zambia Selected Judgement No. 34 of 2017
3. The People v Attorney General (Ex Parte Nickson Chilangwa), 2024/CCZ/R001
4. The Attorney General v Jones Machinists Limited, SCZ Judgment No. 26 of 2000
5. Glenister v President of the Republic of South Africa and Others, CCT 41/08 (2008) ZACC 19
6. New National Party v Government of South Africa (1999) SALR 191
7. Munir Zulu and Celestine Mukandila v Attorney General, 2025/CCZ/009

Legislation referred to:

The Constitution of Zambia as amended by the Constitution of Zambia (Amendment) Act No. 2 of 2016

The Constitution of Zambia as amended by the Constitution of Zambia (Amendment) Act No. 13 of 2025

The Constitutional Court Rules, Statutory Instrument No. 37 of 2016

Works referred to:

Southern Africa Development Community (SADC) Principles and guidelines Governing Democratic Elections adopted in 2015

INTRODUCTION

[1] This judgment arises from a petition filed by the Petitioner on 16th January, 2026. The petition was brought pursuant to Articles 45, 58, 128(1)(a)(b) and 128(3)(b)(c) of the Constitution of Zambia as amended by the Constitution of Zambia (Amendment) Act No. 2 of 2016 (Constitution) as well as Order IV, rule 1 of the Constitutional Court Rules, Statutory Instrument No. 37 of 2016 (CCR).

[2] By the said petition, the Petitioner seeks relief framed in the following terms:

- (i) **An order to stay the implementation of the new 211 constituency boundaries until a fresh, post-delimitation voter registration exercise is conducted;**
- (ii) **A declaration that the current delimitation process is null and void for failing to follow the mandatory sequence process of delimitation followed by registration of voters; and**
- (iii) **An injunction restraining the ECZ from certifying the register on 30th April, 2026.**

ABOUT THE PARTIES

[3] The Petitioner is an incorporated company limited by guarantee. Its mandate is to promote peace, unity, good governance and protecting the democratic rights of Zambian citizens. The entity is represented in these proceedings by Mr. P. Sinkamba who describes himself as its Chairman.

[4] The 1st Respondent is a body corporate established pursuant to Article 229 of the Constitution. Its mandate includes, registration of voters, conducting presidential, parliamentary and local government elections as well as delimitation of electoral boundaries.

[5] The 2nd Respondent is the principal legal advisor to the Government and has been sued pursuant to Article 177(1) of the Constitution.

THE PETITIONER'S CASE

- [6] The factual matrix is set out in the petition, the affidavit verifying facts, the replies and the accompanying affidavits. In summary, the 1st Respondent instituted a constituency delimitation exercise after having already concluded a voter registration exercise. The delimitation exercise is intended to give effect to the Constitution of Zambia as amended by the Constitution of Zambia (Amendment) Act No. 13 of 2025 (Act No. 13 of 2025) which increased the number of constituencies from 156 to 226 for purposes of the general election scheduled for 13th August, 2026 (forthcoming general election). Consequently, the delimitation exercise seeks to create 70 new constituencies.
- [7] The Petitioner asserts that the 1st Respondent's conduct violates "constitutional and international best practices" which require constituency delimitation to precede voter registration. However, no specific example of such best practices or authoritative source was cited in support of the assertion.
- [8] It is the Petitioner's further argument that his preferred sequencing of the delimitation and voter exercises will ensure that voters are registered within the correct, lawful geographic and administrative constituencies.

- [9] The 1st Respondent is also said to have conducted the impugned voter registration exercise under the repealed constitutional framework comprising 156 constituencies and voter's cards have already been issued based on those old boundaries.
- [10] Further, the Petitioner contends that the implementation of the newly defined boundaries prior to the dissolution of Parliament and councils on 13th May, 2026, contravenes Article 58(6) of the Constitution.
- [11] It is the Petitioner's averment that unless the 1st Respondent's delimitation exercise is halted, the new electoral boundaries will form part of the forthcoming general election. The Petitioner contends that such a position would result into the disenfranchisement of 8, 861, 718 voters whose particulars may be tied to constituencies that may no longer exist or whose boundaries may have shifted as a consequence of the delimitation exercise.
- [12] The Petitioner avers that by conducting voter registration prior to the delimitation exercise, the 1st Respondent has created a provisional voter register that raises a possibility of "ghost voters". This, it is argued, arises because the provisional voter register cannot be accurately audited in the event that new constituencies and wards to be birthed by the ongoing delimitation exercise are implemented.

The Petitioner further contends that such a position violates Article 45(a)(c) and (d) of the Constitution, which mandates that the electoral system be free, fair, accountable, efficient, transparent, simple and practical.

[13] In its skeleton arguments, the Petitioner has submitted that the Constitution is supreme and thereby nullifies any act or law that is inconsistent with it. In support of this proposition, reliance was placed on Article 1(1) of the Constitution and the case of **Chishimba Kambwili v Attorney General** ⁽¹⁾.

[14] The Petitioner submits that in the present case, the “reverse order” in which the 1st Respondent conducted the voter registration and constituency delimitation exercises, violates Article 58 of the Constitution and is therefore null and void.

[15] It was the Petitioner’s contention that the 1st Respondent’s failure to align voter’s cards with the imminent new constituency boundaries, would result in the disenfranchisement of eligible voters. The Petitioner further argued that such a position violates Article 45 of the Constitution and contravenes the principle laid down by this Court in the case of **Godfrey Malembeka v Attorney General and Electoral Commission of Zambia** ⁽²⁾ namely, that the right to vote is fundamental to all eligible citizens.

[16] The Petitioner has further argued that the principle of legality requires that the exercise of power such as delimitation, must be rational and not arbitrary. It was also submitted that constitutional adjudication must preserve not only the letter but also the spirit of the Constitution. In support of this latter proposition, reliance was placed on our decision in **The People v Attorney General (Ex Parte Nickson Chilangwa)** ⁽³⁾.

THE 1ST RESPONDENT'S RESPONSE

[17] The 1st Respondent opposes the petition. It filed an answer supported by an affidavit in which it averred that it is constitutionally mandated to register voters, carry out the delimitation of electoral boundaries and determine the names of constituencies and wards, which are to take effect upon the next dissolution of Parliament and councils. The 1st Respondent contends that Article 58 of the Constitution empowers any person to apply to this Court for a review of its decision made under that provision.

[18] The 1st Respondent further contends that the petition is premature as it has not yet made any decision under Article 58 of the Constitution warranting review by this Court. It is argued that the petition is intended, instead, to prevent the 1st Respondent from

discharging its constitutional function of creating 70 new constituencies as required by Act No. 13 of 2025.

[19] The 1st Respondent averred that voter registration is a continuous exercise and there is no law prescribing when such registration should be undertaken or the sequence of activities to follow prior to, or after the voter registration exercise.

[20] The 1st Respondent further averred that, according to the “Application to Register as a Voter Form” prescribed under Regulation 10(1) of the Electoral Process (Registration of Voters) Regulations, the delimitation detail required of an applicant is the polling district and polling station of his or her choice. It was emphasised that the constituency name or boundary is not included on a voter’s card.

[21] The 1st Respondent contended that the increase in the number of constituencies introduced by Act No. 13 of 2025, has no bearing on the voter’s cards that have already been issued or on the voter registration exercise that has already been conducted. It was further argued that the increase will neither create any mismatch between the voters’ cards and the new constituency boundaries nor pose any risk of disenfranchising voters.

- [22] The 1st Respondent averred that in the year 2016, it similarly conducted a delimitation exercise subsequent to voter registration, resulting in the creation of six new constituencies as prescribed by the then Constitutional amendment.
- [23] The 1st Respondent clarifies that, contrary to the Petitioner's averment, it did not register 8, 861, 718 voters. Instead, it registered 1, 615, 922 new voters and 1, 832, 368 transfers and replacement of voter's cards.
- [24] That the certification of a voter's register by the Chief Electoral Officer prior to events such as filing of nominations by candidates and the conduct of the forthcoming general election, constitutes a mandatory legal requirement. That candidates can only file their nominations (in the present case, between 15th and 20th May, 2026), upon proof of support from voters whose names appear on the certified voter's register. Furthermore, as a requirement to filing a nomination, each candidate must establish that his or her name is duly certified in the voter's register.
- [25] That in light of the foregoing requirements, it is imperative that the impugned voter's register should be certified by the Chief Electoral Officer and 30th April, 2026 is the date set for the certification.

- [26] That a certified voter's register together with the boundaries of newly created constituencies to be *gazetted*, shall only take effect upon the dissolution of the current Parliament and councils on 15th May, 2026.
- [27] That based on the foregoing, the petition is devoid of merit and ought to be dismissed with costs.
- [28] In its skeleton arguments filed into Court on 28th January, 2026, the 1st Respondent reiterated the averments contained in the petition and the affidavit in support. It relied on the case of **The Attorney General v Jones Machinists Limited** ⁽⁴⁾, to assert that a person cannot be restrained from performing a statutory-imposed function. In the present case, the 1st Respondent contends that it cannot be prevented from undertaking the delimitation exercise as this duty is expressly imposed by the Constitution specifically by Article 58.

THE 2ND RESPONDENT'S RESPONSE

- [29] The 2nd Respondent opposes the petition, through an answer and a supporting affidavit filed on 28th January, 2026. The answer and supporting affidavit substantially mirror those of the 1st Respondent. Accordingly, they shall not be recited.

[30] In his skeleton arguments, the 2nd Respondent contends that the petition is premature as there is presently no decision ripe for review by this Court within the meaning of Article 58 (7) of the Constitution. He argues that a reviewable decision within the meaning of Article 58(7) of the Constitution, entails the determination of names, boundaries and *gazettement* of new constituencies – none of which has yet been undertaken in the present case.

[31] The 2nd Respondent cites the South African Constitutional Court decision in **Glenister v President of the Republic of South Africa and Others**⁽⁵⁾, to emphasise that courts must refrain from intervening in matters that have not crystallized into enforceable acts or rights, or absent clear evidence of irreversible harm. In relation to the present matter, the 2nd respondent contends that a cause of action can only accrue within the meaning of Article 58(7) of the Constitution, upon naming and setting boundaries and *gazetting* of the new constituencies – steps which have not yet been undertaken.

[32] It is the 2nd Respondent's further contention that the Petitioner has failed to demonstrate any breach of the Constitution, given that the impugned delimitation exercise is being undertaken within the

timeframe of ten years prescribed by Article 58(5) of the Constitution.

[33] The 2nd Respondent further argues that the Petitioner has not demonstrated breach of Articles 45 and 46 of the Constitution, as its allegations of voter disenfranchisement and the existence of ghost voters, remain speculative. He relies on the South African Constitutional Court decision in **New National Party v Government of South Africa**⁽⁶⁾, to assert that no fault arises where a body mandated to conduct elections has not instituted measures that undermine the right to vote. In the present case, the 2nd Respondent contends that the Petitioner has neither shown that the 1st Respondent's action infringed upon the rights of any eligible voter, nor established that the impugned delimitation exercise is being conducted outside the Constitution.

THE PETITIONER'S REPLY

[34] In its reply, filed on 28th January, 2026, to the 1st Respondent's answer, the Petitioner argues that the cause of action has accrued, as a register of voters has been generated and is merely awaiting certification. The Petitioner further contends that if implemented, the said register of voters would occasion irreparable harm to the

constitutional order. Under these circumstances, the Petitioner submits that it is preferable to prevent such harm.

[35] The Petitioner departs from the grounds relied on in the petition by alleging breach of Article 59 of the Constitution by the 1st Respondent, that the impugned delimitation fails to adhere to the threshold prescribed therein. Specifically, the Petitioner contends that the required threshold relating to population trends and projections has been disregarded, as the delimitation is based on the outdated 2019 census report rather than the current 2022 census report. In addition, the Petitioner argued that the roadmap for the delimitation exercise does not provide dates for public sittings or stakeholder consultations.

[36] The Petitioner further argues that the 1st Respondent cannot purport to carry forward the old 156 constituencies, as these were abolished by Act No. 13 of 2025. In addition, that the abolishment of the constituencies entails the dissolution of the wards, polling districts, and polling stations which constituted integral components of the abolished constituencies.

[37] In its reply to the 2nd Respondent, the Petitioner contends that the petition is ripe as the challenge is directed at the 1st Respondent's decision to conduct the impugned delimitation exercise on an

outdated framework and without allocating specific timeframes for its implementation.

[38] The Petitioner further contends that the 1st Respondent misconstrued the decision in **Glenister v President of South Africa**⁽⁵⁾ wherein the Court recognised that intervention is permissible where material and irreversible harm is demonstrated. In the present case, the Petitioner argues that once the current register of voters - based on the abolished 156 constituencies - is certified, it would occasion irreparable harm to the Constitution.

[39] In its skeleton arguments in reply to the 2nd Respondent, the Petitioner largely reiterates the reply save for the following: that Article 2 of the Constitution empowers it to take proactive measures in defence of the Constitution. The Petitioner further argues that the 1st Respondent's revised 2026 election roadmap, which includes certification of the impugned register of voters, constitutes a decision warranting this Court's review within the meaning of Article 58 of the Constitution. Accordingly, the petition cannot be dismissed as being speculative.

HEARING

[40] At the hearing held on 26th February, 2026, the parties essentially reiterated their written arguments and respective filed process.

Accordingly, they will not be restated herein, save to highlight that the Petitioner additionally submits that this Court should halt both the impugned delimitation exercise and the pending certification of the register of voters, and instead order that the delimitation exercise precedes voter registration.

[41] In reply to the Respondents' oral arguments, the Petitioner maintained that the petition is not premature, as the 1st Respondent has already commenced implementation of the impugned delimitation exercise.

CONSIDERATION AND DETERMINATION

[42] We have considered the petition, replies (which the Petitioner erroneously referred to as 'answers'), and respective affidavits in support thereof. We have similarly considered the Respondents' answers and supporting affidavits. In addition, we have carefully reviewed the parties' written submissions as well as their oral arguments.

[43] We begin by addressing the Petitioner's contention that Act No. 13 of 2025 in essence, abolishes the existing 156 constituencies that were in place prior to the constitutional amendment. This contention is misconceived.

[44] In our considered view, Act No. 13 of 2025 does not abolish the existing constituencies, but rather provides for an increase through the creation of 70 constituencies. To construe the Act in the manner suggested by the Petitioner would lead to the untenable implication that Parliament stands dissolved notwithstanding that Members of Parliament are lawfully in office and actively discharging their representative mandate. Such an interpretation would occasion constitutional absurdity and institutional chaos, a result which this Court must firmly guard against. Accordingly, the argument by the Petitioner is devoid of merit and is hereby dismissed.

[45] Turning to our substantive consideration, various constitutional provisions, which, most relevant to this judgment include Articles 2, 58 and 128, have been cited in support of the petition. However, the Petitioner maintains that being proactively in defence of the Constitution, the petition is fundamentally anchored on Article 128(1)(a)(b), (3)(b)(c) read with Article 2 of the Constitution.

[46] Article 2 of the Constitution grants every person the authority to defend or prevent the Constitution from violation. It states as follows:

2. Every person has the right and duty to –

- (a) defend the Constitution; and**
- (b) resist or prevent a person from overthrowing, suspending or illegally abrogating this Constitution.**

[47] Article 128 of the Constitution is a jurisdictional provision. It vests this Court with general jurisdiction to adjudicate all constitutional breaches, save for those arising under the Bill of Rights (Articles 11 – 26 of the Constitution). In this regard, Article 128 of the Constitution provides as follows:

128. (1) Subject to Article 28, the Constitutional Court has original and final jurisdiction to hear-

- (a) a matter relating to the interpretation of this Constitution;**
- (b) a matter relating to a violation or contravention of this Constitution;**
- (c) a matter relating to the President, Vice-President or an election of a President;**
- (d) appeals relating to election of Members of Parliament and councillors; and**
- (e) whether or not a matter falls within the jurisdiction of the Constitutional Court.**

(2) Subject to Article 28 (2), where a question relating to this Constitution arises in a court, the person presiding in that court shall refer the question to the Constitutional Court.

(3) Subject to Article 28, a person who alleges that –

- (a) an Act of Parliament or statutory instrument;**
- (b) an action, measure or decision taken under law; or**
- (c) an act, omission, measure or decision by a person or an authority;**
contravenes this Constitution, may petition the Constitutional Court for redress.

[48] While generally disputing alleged constitutional breaches, the Respondents argue that the petition is premature as the 1st Respondent has not yet rendered any decision within the meaning of Article 58(7) of the Constitution, that would warrant review by this Court. The Petitioner, however, maintains that the petition is ripe as

the factors which triggered it (the impugned delimitation and the imminent certification of the register of voters), are presently being undertaken by the 1st Respondent. The Petitioner further asserts that if these processes are permitted to mature, they will contravene the Constitution.

[49] The full text of Article 58 of the Constitution is reproduced below:

- 58. (1) Zambia shall be divided into constituencies and wards for purposes of elections to the National Assembly and councils, respectively.**
- (2) The number of constituencies shall be equal to the number of seats of elected members in the National Assembly.**
- (3) The number of wards in a district shall be prescribed.**
- (4) The Electoral Commission shall determine the names and boundaries of constituencies and wards.**
- (5) The Electoral Commission shall, at intervals of not more than ten years, review the names and boundaries of constituencies and wards.**
- (6) The names and details of the boundaries of constituencies and wards shall be published in the Gazette and shall come into effect on the next dissolution of Parliament or councils.**
- (7) A person may apply to the Constitutional Court for review of a decision of the Electoral Commission made under this Article.**

[50] Article 58(7) of the Constitution which forms the principal basis of the Respondents' opposition to the petition, similarly confers jurisdiction on this Court. However, unlike Article 128, Article 58(7) of the Constitution establishes a specific jurisdiction limited to matters arising under Article 58 of the Constitution. These matters

pertain to the mandate of the 1st Respondent to review the names and boundaries of constituencies and wards at intervals not exceeding ten years.

[51] Against the foregoing background, the central issue that falls for our determination is whether the ongoing delimitation exercise is null and void for being implemented after the voter registration exercise. Key to the issue is the question whether the petition falls within the constitutional frameworks of Articles 58(7) or 128 of the Constitution.

[52] It is common ground that the dispute arises from the manner in which the 1st Respondent is implementing the delimitation exercise. The Petitioner is impeaching the exercise on two principal grounds. First, that it ought to have preceded the voter registration exercise, yet it is being undertaken subsequent to that process. Second, that the impugned exercise is being conducted in disregard of Article 59 of the Constitution which prescribes the factors to guide the delimitation process.

[53] Article 59 of the Constitution is set out in full below:

- 59. The Electoral Commission shall, in delimiting the boundaries of constituencies and wards-**
- (a) take into account the history, diversity and cohesiveness of the constituency or ward;**
 - (b) have regard to population density, trends and projections;**

- (c) ensure that the number of inhabitants in each constituency or ward is reasonable, taking into account the means of communication and geographical features;
- (d) ensure that constituencies and wards are wholly within districts; and
- (e) seek to achieve an approximate equality of constituency and ward population, subject to the need to ensure adequate representation for urban and sparsely populated areas.

[54] It is sufficient to emphasise that the functions of voter registration and the delimitation of electoral boundaries are expressly conferred upon the 1st Respondent by Article 229 of the Constitution. Quoting only relevant portions, Article 229 of the Constitution provides as follows:

- 229.(1) There is established the Electoral Commission of Zambia...**
- (2) The Electoral Commission shall –**
 - ...
 - (b) conduct elections...;**
 - (c) register voters;**
 - (d) delimit electoral boundaries....**

[55] Whereas the delimitation of electoral boundaries is amplified in Articles 58 and 59 of the Constitution, voter registration and eligibility to vote are elaborated under Article 46 of the Constitution. Accordingly, Article 46 of the Constitution guarantees the right of eligible citizens to be registered as voters and to vote in an election. This is expressed in the following terms: *“A citizen who has attained the age of eighteen years is entitled to be registered as voter and vote in an election by secret ballot”*.

[56] We have been adequately guided by the constitutional architecture in resolving the issue whether the present petition is located either in Article 58(7) or Article 128 of the Constitution.

[57] Our understanding of this constitutional architecture is that by extracting matters relating to delimitation from the general jurisdictional provision in Article 128 of the Constitution and assigning them a separate enforcement mechanism, the framers of the Constitution intended delimitation disputes to be addressed distinctly from Article 128 of the Constitution. Otherwise, there would be no rationale for enacting a specific jurisdictional clause away from the sweeping general provision.

[58] It follows, therefore, that all disputes relating to delimitation must be anchored in, and enforced pursuant to Article 58(7) of the Constitution – specifically by way of review of the 1st Respondent's decision arising from its performance of the delimitation function. We underscored this position at paragraph 44 of page J19-20 in the case of **Munir Zulu and Celestine Mukandila v Attorney General**⁽⁷⁾, in the following terms:

Article 58(7) of the Constitution provides for a special mechanism to protect the Constitution in the event of a delimitation process. It provides that any person may apply to the Constitutional Court for a review of the decision of the Electoral Commission (ECZ). This entails that the people have a say in the decision of the ECZ on the

delimitation of constituencies and wards before they come into effect...

[59] The deliberate vesting of jurisdiction under Article 58(7) of the Constitution to specifically address delimitation matters is intended to safeguard the operational independence of the 1st Respondent as guaranteed by Article 216 of the Constitution. In this respect, Article 216 of the Constitution provides as follows:

A Commission shall-

- (a) be subject only to this Constitution and the law;
- (b) be independent and not be subject to the control of a person or an authority in the performance of its functions...

[60] This position is consistent with the **Southern Africa Development Community (SADC) Principles and guidelines Governing Democratic Elections adopted in 2015** (SADC Principles) to which Zambia is a party. Accordingly, the SADC principles require Member States to guarantee the independence of Electoral Management Bodies such as the 1st Respondent, in the following terms:

5.1.5. As a commitment to the SADC Treaty and the Protocol on Politics, Defence and Security Cooperation, Member States shall undertake to implement Interventions designed to promote democratic principles and practices. To this end, the responsibilities of Member States shall be to...ensure that the EMB [Electoral Management Body] or other legally designated institution, is independent...

7.1.1. (e) In conformity with the applicable provisions of the SEAC [SADC Electoral Advisory Council] Structure, Rules and

Procedures, the objective of the SEAC shall be to advise SADC and its electoral institutions on all matters pertaining to electoral processes and the enhancement of democracy and good governance in the SADC region. In this regard, the SEAC shall report on these matters to the Ministerial Committee...of the Organ on Politics, Defence and Security Cooperation.... In order to ensure effective application of the SADC Principles and Guidelines Governing Democratic Elections, the SEAC Structures, Rules and Procedures. To this end, the Executive Secretary of SADC shall in consultation with the Member State holding elections and in line with Article 9 of the SEAC Structures, Rules and Procedures, constitute and send Goodwill Missions in the period prior to elections in order to achieve the following...(e) encourage the specific Member State holding elections to uphold and respect the independence and autonomy of the EMBS...*(emphasis is ours)*

[61] With that said, it is our firm view that the present petition cannot be sustained under Article 58(7) of the Constitution. We say so because a cause of action pursuant to Article 58(7) of the Constitution only accrues once the 1st Respondent has made a determination in the exercise of its delimitation function. In the present matter, a cause of action has not accrued because the impugned delimitation exercise is still ongoing.

[62] Away from Article 58(7) of the Constitution, we find that extending the preventive framework of Articles 2 and 128 of the Constitution to the circumstances of the present case, would undermine the operational independence of the 1st Respondent, as intended by the framers of the Constitution. Moreover, the Petitioner's contention that the petition falls within the ambit of Article 128 of the Constitution, is not supported by the two grounds on which the

delimitation exercise is being challenged. Thus, the ground alleging breach of Article 59 is outside the ambit of Article 128 of the Constitution because Article 59 sets out factors that should be considered in implementing Article 58. Consequently, any allegation of breach of Article 59 of the Constitution cannot be adjudicated outside the framework of Article 58(7) of the Constitution which provides for the enforcement mechanism of Article 58 of the Constitution.

[63] The ground alleging that the impugned delimitation ought to have preceded the voter registration exercise, is without merit as it lacks legal foundation. This is because Article 46 of the Constitution, which governs voter registration and Article 58 of the Constitution, which governs delimitation, do not cross-reference each other. Similarly, there is no constitutional or statutory provision expressly prescribing the sequence in which voter registration and delimitation of electoral boundaries must be undertaken. In addition, Article 46 of the Constitution neither conditions eligibility to register as a voter nor the right to vote, on the existence of finalised electoral boundaries.

[64] In light of the foregoing, the petitioner's argument that the constitutional framework prioritizes delimitation of electoral

boundaries over voter registration lacks legal basis. Had the framers of the Constitution intended a mandatory sequencing of the two processes, they would have expressly provided for it.

[65] We therefore find that though complementary, the two processes were designed to operate independently. Accordingly, the delimitation exercise can be undertaken subsequent to the voter registration exercise or vice versa. The sole limitation as regards delimitation being the ten-year interval prescribed under Article 58(5) of the Constitution. Consequently, the contention that the current delimitation exercise is invalid for failing to follow the sequence suggested by the Petitioner, is unsustainable.

[66] It suffices to add that these processes defeat the Petitioner's allegation of voter disenfranchisement or the creation of ghost voters arising from the new constituencies under the impugned delimitation.

CONCLUSION

[67] In sum, it is our finding that the petition essentially seeks to restrain the 1st Respondent from performing its constitutional mandate. The Petitioner has however, failed to demonstrate any breach of the Constitution in that regard by the 1st Respondent. We opine that this Court cannot grant orders that would impede the 1st Respondent in

the discharge of its constitutionally assigned functions in the absence of demonstrated constitutional violation.

ORDERS

[68] The petition is dismissed for lack of merit

[69] Parties shall bear own costs.



A.M. SHILIMI

DEPUTY PRESIDENT OF THE CONSTITUTIONAL COURT



M. MUSALUKE

CONSTITUTIONAL COURT JUDGE



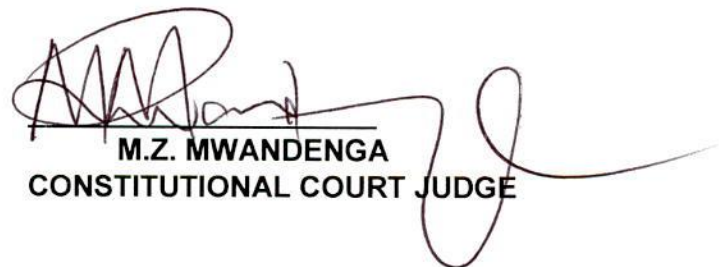
M.K. CHISUNKA

CONSTITUTIONAL COURT JUDGE



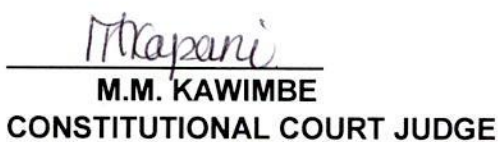
J.Z. MULONGOTI

CONSTITUTIONAL COURT JUDGE



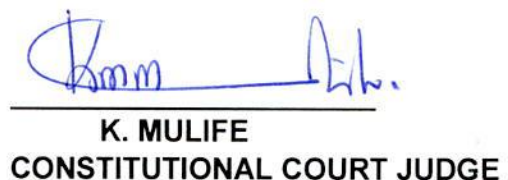
M.Z. MWANDENGA

CONSTITUTIONAL COURT JUDGE



M.M. KAWIMBE

CONSTITUTIONAL COURT JUDGE



K. MULIFE

CONSTITUTIONAL COURT JUDGE