

IN THE CONSTITUTIONAL COURT OF ZAMBIA
 HOLDEN AT LUSAKA
 (Constitutional Jurisdiction)



2026/CCZ/008

IN THE MATTER OF: ARTICLE 52(4), (5) AS READ TOGETHER WITH
 110(2) AND 52(6)(b) OF THE CONSTITUTION OF
 ZAMBIA, CHAPTER 1 OF THE LAWS OF ZAMBIA.

IN THE MATTER OF: ARTICLES 1, 2, 100(1)(e), 110(1), 110(2), 110(3), 119,
 128(1)(c) AND 266 OF THE CONSTITUTION,
 CHAPTER 1 OF THE LAWS OF ZAMBIA AS READ
 TOGETHER WITH SECTION 30 OF THE
 ELECTORAL PROCESS ACT NO. 35 OF 2016.

IN THE MATTER OF: THE JOINT NOMINATION OF DR. FRED M'MEMBE
 AND MS. DOLIKA BANDA AS PRESIDENTIAL AND
 VICE-PRESIDENT CANDIDATES FOR THE
 GENERAL ELECTIONS TO BE HELD ON 13TH
 AUGUST, 2026.

BETWEEN:

ISAAC MWANZA 1st PETITIONER

THE CONSORTIUM OF CIVIL SOCIETY ORGANISATIONS
 ON GOVERNANCE AND CONSTITUTIONALISM 2nd PETITIONER

AND

MS. DOLIKA BANDA 1st RESPONDENT

DR. FRED M'MEMBE 2nd RESPONDENT

ELECTORAL COMMISSION OF ZAMBIA 3rd RESPONDENT

ATTORNEY GENERAL 4th RESPONDENT

CORAM Munalula PC, Shilimi DPC, Chisunka, Mulongoti, Mwandenga
 Kawimbe and Yangailo JJC on 17th June, 2026.

For the 1st Petitioner: In Person

For the 2nd Petitioner: Mr. A. Sakala of Messrs. Sakala & Company (Pro bono)

For the 1st and 2nd

Respondents:

Mr. L.C. Lemba & Ms. M. Mumbi of Messrs Mulungushi Chambers and Mr. M. Bhatakati of Messrs Malisa & Partners

For the 3rd Respondent: Mr. M. Bwalya & Mr. C. Siame - In-House Counsel

For the 4th Respondent: Mr. M. Muchende, SC - Solicitor General, assisted by Mr. C. Mulonda – Deputy Chief State Advocate, Mrs. B.M Kamuwanga – Principal State Advocate and Ms. B. Mwanza – State Advocate

JUDGMENT

Kawimbe JC, delivered the Judgment of the Court

Cases referred to:

1. Steven Katuka and Another v Attorney General and Others (2016) Z. R. 226
2. Bizwayo Nkunya v Lawrence Nyirenda and Electoral Commission of Zambia 2019/CCZ/005
3. Action Congress v INEC (2007) 12 NWLR
4. Falek v INEC (2016) LPELR-SC. 648/2016
5. PDO v Degi-Eremienyo and Others (2020) LPELR-49
6. Dr. Sishuwa Sishuwa and Alfred Chileshe Kanda v Nkandu Luo and 16 Others 2021/CCZ/0032
7. Charles Mathias Zulu v Electoral Commission of Zambia and Another 2021/CCZ/0015
8. Godfrey Malembeka v The Attorney General and Another 2016/CC/0013
9. Michelo Chizombe v Edgar Chagwa Lungu and 2 Others 2023/CCZ/0021
10. Mputa Ngalande v The Attorney General 2025/CCZ/0019

Legislation referred to:

The Constitution of Zambia, Chapter 1 of the Laws of Zambia, as amended by Act No. 2 of 2016 and Act No. 13 of 2025

Constitutional Court Rules, Statutory Instrument No. 33 of 2026

Electoral Process (Amendment) Act No. 12 of 2026

Other works referred to:

Phipson on Evidence, 17th Edition Sweet & Maxwell, 2009, UK

Black's Law Dictionary 8th Edition by Bryan A. Garner. Thomas West Publishers, 2004 USA

INTRODUCTION

[1] This petition was filed pursuant to Article 52(4) and Article 128(1)(c) of the Constitution challenging the nomination of Dr. Fred M'membe (2nd respondent) with his running mate, Ms. Dolika Banda (1st respondent) as presidential candidate and running mate, respectively. It is supported by an affidavit and skeleton arguments of even date and an affidavit in reply dated 8th June, 2026.

PETITIONERS' CASE

- [2] The facts leading to the petition are that the 2nd respondent and 1st respondent presented their nomination papers on 21st May, 2026 before the Returning Officer for presidential elections who is also the Chairperson of the Electoral Commission of Zambia (3rd respondent).
- [3] The petitioners, having ascertained the academic qualifications required for election to the Office of Vice-President, addressed a letter dated 25th May, 2026 to the Examinations Council of Zambia

seeking confirmation of the 1st respondent's qualifications. By its response dated 26th May, 2026, the Examinations Council of Zambia referred the petitioners to the 3rd respondent. The petitioners thereafter directed their request to the 3rd respondent, who failed to address the matter. The petitioners aver that the 3rd respondent bears a constitutional and statutory duty to publish the affidavit of a validly nominated candidate attesting to their qualifications for election to the Office of President or Vice-President, together with the candidate's particulars, which duty it neglected.

[4] The petitioners further aver that a similar request was sent to the Zambia Qualifications Authority asking it to confirm:

- a) Whether a foreign academic qualification presented by the 1st respondent had been verified; and
- b) If the same had been evaluated and determined to be equivalent to a Grade twelve certificate in Zambia.

[5] The Zambia Qualifications Authority in its response declined to disclose the information citing legal implications flowing from the Data Protection Act No. 3 of 2021.

[6] The petitioners aver that the 1st respondent's Cambridge OCR General Certificate of Secondary Education, obtained in 1978, does

not constitute the equivalent of a Grade twelve certificate. They contend, therefore, that the acceptance of her nomination by the 3rd respondent amounts to a contravention of the Constitution.

[7] The petitioners further allege that the presidential election under the Constitution is binary and joint in nature as: the President and the Vice-President are elected together on a joint ticket; the Vice - President assumes office together with the President; and the constitutional validity of the nomination of one candidate is inseparable from that of the other. That by virtue of this position, the disqualification of the 1st respondent renders the nomination of the 2nd respondent invalid and unconstitutional. The petitioners therefore seek:

1. A declaration that the 1st respondent does not possess a Grade twelve certificate or its equivalent within the meaning of Article 100(1)(e), 110(2) and 266 of the Constitution.
2. A declaration that the nomination of the 1st respondent is invalid.
3. A declaration that the nomination of the 2nd and 1st respondents is joint and inseparable under Article 110 of the Constitution.
4. A declaration that the invalidity or disqualification of the 1st respondent equally invalidates the joint nomination of the 1st and 2nd respondents.
5. An order, pursuant to Article 52(6)(b), disqualifying the 1st and 2nd respondents from participating in the presidential election scheduled for 13th August, 2026.

6. An order directing the 3rd respondent to remove the names of the 1st and 2nd respondents from the presidential ballot.
7. An interim order directing the Examinations Council of Zambia, represented herein by the 4th respondent, to produce before this Honourable Court a copy of the Cambridge OCR General Certificate of Secondary Education allegedly obtained by the 1st respondent in 1978 and purportedly relied upon as equivalent to a grade twelve certificate.
8. Costs to be borne by the respondents.
9. Any other relief that this Honourable Court may deem fit.

[8] In their submissions, the petitioners argue that Article 110 of the Constitution extends the qualifications and disqualifications of a presidential candidate to a running mate. That Article 100(1)(e) requires presidential candidates to possess as a minimum academic requirement a Grade twelve certificate or its equivalent. Relying on the authority of **Steven Katuka and Another v Attorney General and Others**¹, the petitioners urge the Court to construe the provisions in issue in a manner that promotes and gives effect to the object, spirit and purpose of the Constitution.

[9] The petitioners also submit that the minimum academic qualification is mandatory and has to be met separately by a running mate as a condition precedent to a valid nomination. That a person who does not possess constitutional qualifications cannot be considered eligible for nomination and eligibility for nomination is not retrospective.

Reliance is placed on the case of **Bizwayo Nkunika v Lawrence Nyirenda and Electoral Commission of Zambia**² on what amounts to an equivalent of a Grade twelve certificate to buttress the argument that the 1st respondent's Cambridge OCR General Certificate of Secondary Education is not an equivalent of the necessary academic requirement.

[10] It is the petitioners' position that the constitutional framework in Zambia establishes a joint presidential ticket where the President and running mate are elected at the same time. That the mandate obtained from the electorate is indivisible, implying that the nomination of a presidential candidate cannot be separated from that of a running mate. They argue that if a single component of the ticket is constitutionally defective, then the entire ticket is constitutionally defective.

[11] The petitioners in fortifying their position cite cases from other jurisdictions, such as the Supreme Court of Nigeria, namely **Action Congress v INEC**³ (pt.1048) 220, **Faleke v INEC**⁴ and **PDP v Degi-Eremienyo and Others**⁵, which speak to the inseparability of a joint ticket and the effect of a disqualification of one part of a ticket. The petitioners urge the Court to adopt the reasoning articulated by the

Supreme Court of Nigeria, notwithstanding that such decisions are of persuasive rather than binding authority.

[12] The petitioners contend that the position of a running mate is not a ceremonial one and a person incapable of constitutionally assuming Office of President cannot occupy that position. That the absence of a Grade twelve certificate is not a technical irregularity but a substantive constitutional defect that goes to the root of eligibility. They further contend that the 3rd respondent cannot waive such a constitutional requirement and a nomination made to the contrary amounts to a nullity.

[13] As for the effect of the disqualification, the petitioners submit that having made the nomination jointly and indivisibly on the presidential ticket, the nomination of the 2nd respondent is also nullified. Their prayer is for the Court to grant the relief sought.

1st AND 2nd RESPONDENT'S CASE

[14] In response, the 1st and 2nd respondents filed an answer, affidavit in opposition and skeleton arguments dated 2nd June, 2026. They deny the petitioners' assertion that the 1st respondent does not possess the equivalent of a Grade twelve certificate and aver that the 3rd respondent was within its constitutional mandate to accept their

nominations. Albeit, that no action can be brought against the 1st respondent under the provisions of Article 52 (4) of the Constitution.

[15] In their submissions, the 1st and 2nd respondents argue that the petition is incompetently before Court as no challenge under Article 52 of the Constitution can be mounted against the 1st respondent in her capacity as running mate at nomination stage. The case of **Dr. Sishuwa Sishuwa and Alfred Chileshe Kanda v Nkandu Luo and 16 Others**⁶ is cited as authority for their assertion.

[16] In the alternative, the 1st and 2nd respondents argue that their evidence shows that the 1st respondent does possess the minimum academic requirements for election. In acknowledging that Article 100 (1)(e) of the Constitution has never been interpreted by this Court, the 1st and 2nd respondents submit that Article 70(1)(d) of the Constitution is materially identical to the subject provision and was considered in the cases of **Bizwayo Nkunika**² and **Charles Mathias Zulu v Electoral Commission of Zambia and Another**⁷ though dismissed on a technicality.

[17] The 1st and 2nd respondents urge the Court to apply a literal interpretation of the words "minimum academic qualification" in Article 100(1)(e) in line with its guidance in **Godfrey Malembeka v The**

- Attorney General and Another**⁸. That the decision in **Bizwayo Nkunika**² is flawed at paragraph 8.7 thereof as the interpretation creates difficulty by the removal of words and punctuation that were not accidental but an integral part of the constitutional text.
- [18] The 1st and 2nd respondents further argue that the question that should have been asked in the **Bizwayo Nkunika**² judgment was whether the candidate had obtained, as a “minimum academic qualification” a Grade twelve certificate or its equivalent and not whether a candidate possesses the same. That by formulating the constitutional question in the manner it did, the Court inadvertently shifted focus away from the threshold set by the drafters of the Constitution to possession of a particular qualification.
- [19] The 1st and 2nd respondents aver that the central question, herein, is whether the candidate possesses academic qualifications that meet or exceed the minimum academic qualification. Hence, when Article 100(1)(e) of the Constitution is applied, it is apparent that possession of a Grade twelve certificate or its equivalent is merely the lowest threshold for nomination as a presidential candidate or running mate. That while this is a mandatory requirement for eligibility for either the presidential candidate or running mate, its interpretation runs contrary to the intention of the drafters of the Constitution.

- **[20]** To cure the perceived defect stemming from the **Bizwayo Nkunika**² case and by way of illustration, the 1st and 2nd respondents cite Article 125(3) of the Constitution, which provides that while the Supreme Court is bound by its own decisions, it can depart from them if it is warranted in the interests of justice and the development of jurisprudence.

- [21]** That although no equivalent provision expressly applies to this Court, the decision in **Michelo Chizombe v Edgar Chagwa Lungu and Others**⁹ affirms the Court's inherent jurisdiction to depart from its previous decisions. On that basis, the respondents argue that the Court has consistently treated the Grade twelve certificate, or its equivalent, not merely as the lowest academic threshold contemplated under Article 70(1)(d) of the Constitution, but as the very qualification that candidates must possess in order to be eligible for election.

- [22]** According to the 1st and 2nd respondents, this matter presents a proper occasion for the Court to revisit the **Bizwayo Nkunika**² judgment. In the same breath, they contend that the petitioners' case ought to be dismissed with costs, as the issues raised seek to invite an interpretation of Article 100(1)(e) of the Constitution that was

neither contemplated by its framers nor consistent with our prior decision in **Dr. Sishuwa Sishuwa**⁶.

3rd RESPONDENT'S CASE

[23] The 3rd respondent filed an answer, affidavit and skeleton arguments dated 4th June, 2026, where it avers that it began conducting presidential nominations from 18th to 22nd May, 2026. That it received nomination papers from the 2nd and 1st respondents as presidential candidate and running mate respectively, under the Socialist Party on 20th May, 2026. That it subsequently processed and validated the nomination papers.

[24] It is averred that on 21st May, 2026, the 3rd respondent received communication from the Examinations Council of Zambia indicating that the 1st respondent does not possess a Grade twelve certificate or its equivalent, and requesting that her nomination be invalidated. That the 3rd respondent, having already concluded the nomination process, declined to act on the request on the ground that it was *functus officio* in respect of nominations.

[25] That, by its letter dated 27th May, 2026, the 3rd respondent advised the 2nd petitioner that the Examinations Council of Zambia is the competent authority mandated to issue and verify academic

qualifications of candidates. Further, that the 3rd respondent duly reviewed all documents furnished, including those obtained from the Examinations Council of Zambia in the course of processing the nominations of the 1st and 2nd respondents. Accordingly, the 3rd respondent maintains that its conduct was in full compliance with the law.

[26] In its submissions, the 3rd respondent relies on Article 52(2) of the Constitution, section 2 of the Electoral Process (Amendment) Act No. 12 of 2026, and the decision in **Bizwayo Nkunika**² to demonstrate its constitutional and statutory mandate during nominations. It asserts that its mandate is to either accept or reject nomination papers in strict compliance with the law. That having exercised its mandate in this matter, the 3rd respondent contends that the petition is devoid of merit.

4th RESPONDENT'S CASE

[27] The 4th respondent filed an answer, affidavit in opposition and skeleton arguments dated 4th June, 2026. He averred that on 21st May, 2026, the Examinations Council of Zambia wrote a letter to the 3rd respondent where it requested for documents that had been submitted in support of the 1st respondent's nomination as running

mate. That this was done because she does not possess a Grade twelve certificate or its equivalent.

[28] In addition, that the 3rd respondent was advised on 2nd May, 2026, that the 1st respondent presented to the Examinations Council of Zambia - Lusaka Service Centre, a copy of her General Certificate of Education Ordinary Level (GCE O Level) with six (6) subjects but without English Language. In addition, she presented a copy of her General Certificate of Education Advanced Level (GCE A Level) with four (4) subjects that included English for the purpose of equating all her qualifications to the Zambian standard.

[29] That the Examinations Council of Zambia equated the grades of the subjects on the General Certificate of Education Ordinary Level (GCE O Level) of the 1st respondent to Zambia's Grade twelve results because they were at the same Ordinary level. However, the 1st respondent's GCE O Level certificate was found not to be equivalent to Zambia's Grade twelve certificate, because it lacked English language, which is mandatory for the award of that certificate in Zambia.

[30] The 4th respondent avers that it was advised by the Examinations Council of Zambia that it did not equate the 1st respondent's four (4)

GCE A level results, which included English Language to the Zambian standard, because the level is advanced and not offered at the Zambian Ordinary level. Dissatisfied with the response, the 1st respondent claimed and was refunded the payment made for equating her GCE A Level results.

[31] It is further averred that on 9th May, 2026, the 1st respondent wrote a letter to the Examinations Council of Zambia requesting it to reconsider its position on her results. That on 13th May, 2026, the Examinations Council of Zambia responded by affirming its earlier decision that the English language could not be substituted by English Literature.

[32] That based on the foregoing, the 4th respondent advised the 3rd respondent that it ought not to accept the nomination of any presidential candidate or his/her running mate unless it was satisfied that both candidates met the constitutional threshold of possessing a minimum Grade twelve certificate or its equivalent.

[33] The essence of the 4th respondent's submissions is that the nominations of the 1st and 2nd respondents must be treated as a joint ticket, with no distinction in the qualifications required of each candidate. He, then, argues that any defect in the constitutional

qualifications of the running mate necessarily vitiates the validity of the presidential candidate's nomination.

[34] In relation to the 3rd respondent's acceptance of the nomination, the 4th respondent argues that such acceptance is not final and that the Court retains jurisdiction to invalidate it. The Court is urged to seize this matter as an opportunity to provide guidance to the 3rd respondent on its duty to require evaluation certificates from the Zambia Qualifications Authority. That this must be a condition precedent to accepting nominations from candidates relying on foreign qualifications. In concluding, the 4th respondent prays that the petition be upheld.

HEARING

[35] During the hearing, the parties relied on their respective affidavits, list of authorities and skeleton arguments. They also made extensive submissions in augmentation on the issues between them, which we shall not recite for reasons that will become apparent in this judgment.

CONSIDERATION AND DETERMINATION

[36] We have considered the petition, the answers, affidavit evidence, written and oral submissions of the rival parties. In our view, the two issues raised in this petition are:

- (i) whether the alleged non-qualification of the 1st respondent's nomination as running mate invalidates the joint nomination of the 2nd respondent as presidential candidate?
- (ii) whether the 1st respondent possesses a valid Grade twelve certificate or its equivalent within the meaning of Articles 100(1)(e), 110(2) and 266 of the Constitution to stand as running mate?

[37] Before we interrogate the petitioners' allegation, we wish to restate the jurisdiction of this Court as provided in Article 128 of the Constitution 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.

[38] By operation of law, we are obliged under Article 267(1) of the Constitution to interpret the Constitution in accordance with the Bill of Rights and in a manner that promotes its purposes, values and principles, permits the development of the law and contributes to good governance.

[39] As we stated in the case of **Mputa Ngalande v The Attorney General**¹⁰, the Court is also required in constitutional interpretation to read all the relevant provisions as an integrated whole and not in a narrow or pedantic sense that does not achieve its objective. Therefore, when courts are interpreting the Constitution, Article 267 thereof and all relevant provisions on the subject of a dispute will be considered, while taking into account their historical context, the prevailing circumstances and societal needs. This is the approach we take in determining the issues before us.

[40] On the first issue, the petitioners allege that the 1st respondent's non-qualification as running mate invalidates the joint nomination of the 2nd respondent as presidential candidate. They, therefore, contend

that the 1st and 2nd respondents joint nomination to vie for election to Office of Vice-President and President of the Republic of Zambia must be invalidated.

[41] For this challenge, the petitioners principally rely on the foundational Article 52 of the Constitution as amended by Act No. 13 of 2025, which enables any person to challenge the nomination of a candidate. Consequently, they ask whether the running mate's educational qualifications can be challenged under Article 52(4). Read in its entirety, Article 52 of the Constitution provides as follows:

- 52.(1) A candidate shall file that candidate's nomination paper to a returning officer, supported by an affidavit stating that the candidate is qualified for nomination as President, Member of Parliament or councillor, in the manner, on the day, and at the time and place set by the Electoral Commission by regulation.**
- (2) A returning officer shall, immediately on the filing of a nomination paper, in accordance with clause (1), duly reject the nomination paper if the candidate does not meet the qualifications or procedural requirements specified for election to that office.**
- (3) The information contained in a nomination paper and affidavit shall be published by the Electoral Commission, as prescribed.**
- (4) A person may challenge, before a court or tribunal, as prescribed, the nomination of a candidate within seven days of the close of nomination and the court shall hear the case within twenty-one days of its lodgment.**

(5) The processes specified in clauses (1) to (4) shall be completed at least thirty days before a general election.

(6) Where a candidate –

(a) resigns after having been nominated in accordance with this Article, the candidate shall not be eligible to contest the election, and the election shall proceed to be held on the date prescribed for holding the election;

(b) has been disqualified by a court, after close of nominations, the candidate shall not be eligible to contest the elections, and the election shall proceed to be held on the date prescribed for holding the election;

or

(c) sponsored by a political party dies before the date prescribed for the holding of an election, the Electoral Commission shall cancel the election, and call for the filing of a fresh nomination by the political party whose candidate died, and the election shall be held within thirty days of filing of the fresh nomination.

[42] As we espoused in the case of **Dr. Sishuwa Sishuwa**⁶ at page J27 the terms "running mate" or "vice presidential candidate" are not mentioned anywhere in Article 52 of the Constitution. In the said proceedings, the action was instituted against the running mates to the exclusion of candidates. Article 52 specifically refers to a "candidate" and makes provision for nominations regarding a candidate. Article 52(1) only makes mention of a candidate being qualified for nomination as President, Member of Parliament or Councillor.

[43] The words candidate and running mate are defined in Article 266 as follows:

...

'candidate' means a person contesting a presidential, parliamentary or local government election;

...

'running mate' means a person who is selected by a presidential candidate to stand with the presidential candidate in a presidential election so that the person becomes the Vice-President if that presidential candidate is elected as President;

...

[44] On qualifications to Office of the President, Article 100(1) of the Constitution provides as follows:

100. (1) A person qualifies to be nominated as a candidate for election as President if that person —

- (a) is a citizen by birth or descent;
- (b) has been ordinarily resident in Zambia;
- (c) is at least thirty-five years old;
- (d) is a registered voter;
- (e) has obtained, as a minimum academic qualification, a grade twelve certificate or its equivalent;
- (f) is fluent in the official language;
- (g) has paid that person's taxes or has made arrangements, satisfactory to the appropriate tax authority, for the payment of the taxes;
- (h) declares that person's assets and liabilities, as prescribed;
- (i) pays the prescribed election fee on, or before, the date fixed for the delivery of nomination papers; and

(j) is supported by at least one hundred registered voters from each Province.

[45] Article 110 on the Office of Vice-President provides in part:

- (1) There shall be a Vice-President for the Republic who shall be the running mate to a presidential candidate in a presidential election.
- (2) The qualifications and disqualifications applying to a presidential candidate apply to the person selected by the presidential candidate to be the running mate.
- (3)

[46] In view of the **Dr. Sishuwa Sishuwa**⁶ case, we reiterate that there can be no direct challenge against the 1st respondent because such a challenge to the running mate is jurisdictionally incompetent.

[47] We, however, wish to state that, where a petition is properly mounted against a presidential candidate, the Court may examine the running mate's qualifications derivatively, because the running mate forms part of the presidential nomination package.

[48] This derivative scrutiny does not convert the running mate into a "candidate" under Article 52(4); it merely reflects the composite nature of the presidential nomination.

[49] We do not consider it contradictory to hold, on the one hand, that a running mate cannot be directly challenged under Article 52(4), and on the other hand, that the running mate's qualifications may be

examined where the presidential candidate is properly challenged. The distinction lies in the constitutional architecture of the presidential ticket. Article 52(4) permits challenges only to the nomination of a candidate, as stated in the **Dr. Sishuwa Sishuwa**⁶ case that a running mate is not a “candidate” for that purpose. Articles 100 and 110, however, establish that a presidential nomination is a composite nomination, comprising both the presidential candidate and the running mate.

[50] We take the view that when a presidential candidate is challenged under Article 52(4), the Court is entitled, indeed obliged, to examine whether the components of that composite nomination satisfy the Constitution. In that context, the running mate’s qualifications are scrutinised derivatively, not as an independent candidature but as an integral element of the presidential ticket. The two positions, therefore, operate at different levels and are constitutionally harmonious. No direct challenge lies against the running mate, but the running mate’s qualifications may affect the validity of the presidential candidate’s nomination when the latter is properly placed in issue.

[51] For the avoidance of doubt, we emphasise that when the Court states that the running mate’s qualifications may be examined “derivatively”,

it does not mean that the running mate becomes a candidate capable of being challenged under Article 52(4). Rather, it means that the Court scrutinises the running mate's qualifications only because the presidential candidate who is the proper subject of an Article 52(4) challenge, has been brought before the Court.

[52] Accordingly, by instituting proceedings against both the 1st and 2nd respondents, we find that the present matter is properly before us.

[53] This brings us to the second issue, which from our preliminary view touches on important evidentiary and procedural principles, such as the procedural right to a fair hearing and treatment of evidence which we must address.

[54] It is a cardinal principle of law that he who alleges bears the burden to prove allegations made against the opponent through material facts and admissible evidence. Regarding the burden of proof in civil cases, the learned authors of **Phipson on Evidence, 17th edition, Sweet & Maxwell, 2009, UK** in paragraph 6-06 at page 151 state as follows:

So far as the persuasive burden is concerned, the burden of proof lies upon the party who substantially asserts the affirmative of the issues. If, when all the evidence is adduced by all parties, the party who has this burden has not discharged it, the decision must be against him.

- [55] The petitioners allege that the 1st respondent does not have a Grade twelve certificate or its equivalent, and consequently, that this affects the joint presidential nomination ticket that she is running on with the 2nd respondent. Should the Court find merit in that allegation, then they must both be disqualified from vying for the Office of President and Vice President, respectively.
- [56] What the petitioners have produced in their affidavit as evidence are two letters that the 1st petitioner wrote to the Examinations Council of Zambia and Zambia Qualifications Agency demanding the 1st respondent's certificates. This is the only evidence from the petitioners and nothing else. For her part, the 1st respondent denied the petitioners' allegations and exhibited her qualifications in her affidavit. The 2nd respondent also denied the petitioners' allegations that he breached the Constitution.
- [57] Be that as it were, what appears to fortify the petitioners' case is the 4th respondent's answer and evidence, alleging that the 1st respondent does not have a Grade twelve certificate or equivalent according to the Examinations Council of Zambia and Zambia Qualifications Agency.

[58] All courts in Zambia are bound by the principle of due process which is embedded in Article 18 of the Constitution incorporating the *audi alteram partem*, rule that is 'hear the other side'. The 4th respondent makes a serious allegation against the 1st respondent that she does not possess a Grade twelve certificate or its equivalent. From the structure of litigation of petitions before this Court as embedded in the Constitutional Court Rules Statutory Instrument No. 33 of 2026 (CCR), which apply in this case, and under normal pleading rules, the course expected for petition proceedings starts with Order IV rule 1 of the CCR which provides as follows:

Commencement of Proceedings

1. (1) **Except as otherwise provided in the Constitution, the Act or these Rules, all matters brought before the Court shall be commenced by a petition ...**

[59] On the contents of a petition, Order IV rule 1(2)(c) and (d) relevantly provide that a petitioner must state the constitutional provision allegedly violated and the relief sought. Order IV rule 1(4) provides among others that a petition shall be supported by an affidavit, skeleton arguments and list of authorities.

[60] In the next step of proceedings under Order IV rule 7(1), a respondent(s) has a right to file an answer and pertinently in sub-rule

(8) the right to file a cross-petition, which in itself constitutes an independent action and to which parties can be joined.

[61] The process in petition proceedings ends with a petitioner's reply to the respondent's answer provided in Order IV rule 8(4) and vice versa where the respondent files a cross-petition.

[62] As seen from the above, there is no opportunity in the CCR for a person who is sued in a petition and allegations brought against them by a co-respondent to have any opportunity to mount any contest.

[63] As a general rule, it follows that, a respondent's answer or evidence cannot be used against a co-respondent. This flows from the fundamental due process rights that a party cannot be bound by or prejudiced by another party's statements which they have had no opportunity to challenge according to the *res inter alios acta* principle, which according to the **Black's Law Dictionary 8th Edition** by **Bryan A. Garner, Thomas West Publishers, 2004 USA** states:

“a thing done between others” ... Evidence. The rule prohibiting the admission of collateral facts into evidence.

[64] In other words, a thing done between others does not harm or benefit those not party to it. As such, evidence that is for instance in this case supplied by the 4th respondent is generally binding only on that

respondent and not the others. The reasons for the proposition are that a party's own answer and evidence such as the 4th respondent in this case, is only binding against the petitioners. If at all it should be used against the 1st and 2nd respondents, it would be in a case where there is a show of conspiracy, agency, or joint venture that attributes the 4th respondents' case to the 1st and 2nd respondents. This is not the position in this case.

[65] Otherwise, it bears on the petitioners in carrying their burden of proof to build independent evidence against each respondent. The petitioners cannot simply rely on a respondent's answer to establish liability against another respondent who has had no opportunity to defend themselves. Doing so would amount to a violation of the respondent's right to due process and fair hearing.

[66] In concluding, the petitioners have adduced no evidence of their own to establish the allegation that the 1st respondent does not possess a Grade twelve certificate or its equivalent. They cannot, therefore, rely on the pleadings or evidence of the 4th respondent to bolster, supplement, or cure that evidentiary deficiency as the burden of proving the allegation lies squarely on them. Evidence emanating from the 4th respondent may only be considered to the extent that it corroborates allegations already pleaded and supported by the


petitioners' own evidence. In other words, it cannot be used to repair a deficient case or to substitute for the petitioners' failure to adduce proof.

[67] Accordingly, the petition is dismissed.

[68] Each party shall bear their costs.



M. M. Munalula (JSD)
President



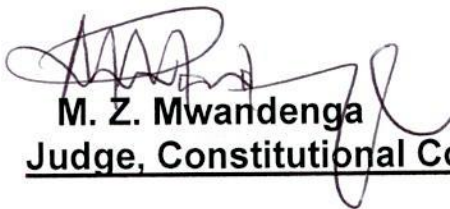
A. M. Shilimi
Deputy President



M. K. Chisunka
Judge, Constitutional Court



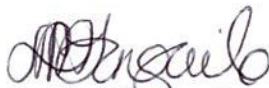
J. Z. Mulongoti
Judge, Constitutional Court



M. Z. Mwandenga
Judge, Constitutional Court



M. Mapani-Kawimbe
Judge, Constitutional Court



P. K. Yangailo
Judge, Constitutional Court