

**IN THE HIGH COURT FOR ZAMBIA**

**2026/HP/EP001**

**AT THE PRINCIPAL REGISTRY**

**HOLDEN AT LUSAKA**

**(Civil Jurisdiction)**



**IN THE MATTER OF: ARTICLE 52(4) OF THE CONSTITUTION OF ZAMBIA**

**IN THE MATTER OF: RULE 4 OF THE HIGH COURT (ELECTION PETITION)  
RULES, 2026 SI NO. 31 OF 2026**

**AND**

**IN THE MATTER OF: NOMINATION OF VICTOR LUMAYI FOR CHAVUMA  
PARLIAMENTARY ELECTION**

**KAYOMBO SAVIYE**

**PETITIONER**

**AND**

**VICTOR LUMAYI**

**1<sup>ST</sup> RESPONDENT**

**ELECTORAL COMMISSION OF ZAMBIA**

**2<sup>ND</sup> RESPONDENT**

**Before the Hon. Mrs. Justice T.S. Musonda**

**For the Petitioner : Mr. A. Mwila of Messrs. Kaunda &  
Kaunda Legal Practitioners & Mr. J.  
Katati of Messrs. Katati Newtons  
Legal Practitioners**

**For the 1<sup>st</sup> Respondent : Mr. J. Mataliro & Mrs. C. Tembo Chilinda  
Of Messrs. James & Doris Legal  
Practitioners**

**For the 2<sup>nd</sup> Respondent : Mr. E.M. Kamwi, Mrs. A.M. Sinyangwe &  
Mrs. M. Machela of Messrs. EMK and  
Associates**

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**RULING**

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**Legislation referred to:**

- (1) The High Court Rules, Chapter 27 of the Laws of Zambia**
- (2) The Supreme Court Rules (White Book), 1999 Edition**
- (3) The High Court (Election Petition) Rules, Statutory Instrument No. 31 of 2026**
- (4) The Constitution of Zambia (Amendment), Act No. 2 of 2016**
- (5) The Constitutional Court Rules, Statutory Instrument No. 33 of 2026**
- (6) The Interpretation and General Provisions Act, Chapter 2 of the Laws of Zambia**
- (7) The Intestate Succession Rules, Statutory Instrument No. 38 of 2023**

**Cases referred to:**

- (1) JNC Holdings Ltd v. Development Bank of Zambia, SCZ Appeal No. 07 of 2012**
- (2) Owners of the Motor Vessel "Lillian S" v. Caltex Oil (Kenya) Ltd, [1989] KLR 1**
- (3) Elias Tembo v Florence Chiwala Salati & Others, SCZ/8/239/2016**
- (4) Lukasu Properties Limited v African Banking Corporation Zambia Limited, SCZ Appeal No. 5 of 2023**
- (5) Isaac Mwanza & Another v Chitalu Chilufya & Others, 2026/HP/EP/002**
- (6) Coburn v College, [1897] 1 QB 702**
- (7) African Banking Corporation Zambia v Mubende Country Lodge Limited, SCZ Appeal No. 116 of 2016**
- (8) Kashikoto Conservancy Limited v Darrel Alexander Watt, CAZ Appeal No. 146 of 2019**
- (9) Kalusha Bwalya v Chardore Properties Ltd, 2009/HPC/0294**
- (10) Intelligent Mobility Solutions v Lamise Trading Ltd, CAZ Appeal No. 214 of 2022**
- (11) Twampane Mining Co-operative Society Ltd v Storti Mining Ltd, SCZ Judgment No. 20 of 2011**
- (12) Dr. Godfrey Hampway & Others v The Council of the University of Zambia, 2023/CCZ/0027**

- (13) **John Sangwa v Sunday Bwalya Nkonde SC, SCZ Appeal of 2021**
- (14) **Hirdyanath Roy & Ors v Ram Chandra Barua Sarma & Ors, 58IND.CAS.806**
- (15) **African Banking Corporation Zambia Limited (T/A Atlas Mara) v Mattaniah Investments Limited (In Receivership) & Others, CAZ Application NO. 73/2019**
- (16) **Bamaiyi v State, [2001] 8 NWLR (Pt 715)**
- (17) **Severian Wilbard v. The Republic & Benard Mwesiga, Case No. 222/2019**
- (18) **Jamal S. Mkumba and Another v. Attorney General, Civil Appeal No. 240/01 of 2019 CA (unreported)**
- (19) **Mildred Luwaile v Attorney General, 2023/CCZ/0022**
- (20) **Hakainde Hichilema & Others v The Government of the Republic of Zambia, SCZ Appeal No. 28 of 2017**
- (21) **Tedworth Properties Inc. v Anti-Corruption Commission & Another, CAZ Appeal No. 300 of 2024**
- (22) **Eastern and Southern Africa Trade v. Finsbury Investment Limited, CAZ Appeal No. 90 of 2022**
- (23) **Matildah Mutale v Emmanuel Munaile, SCZ Judgment No. 14 of 2007**
- (24) **Gift Luyako Chilombo v Biton Manje Hamaleke, CCZ Appeal No. 2 of 2016**
- (25) **Steven Katuka (Suing as Secretary General of the United Party for National Development) & Another v Attorney General & Others, Selected Judgment No. 29 of 2016**
- (26) **Mutale v Attorney General, [1976] ZR 139**
- (27) **Lumwana Mining Company Limited v Hansa Limited, CAZ Application No. 86/2024**
- (28) **Moses Sakala v The Attorney General & Others, 2023/CCZ/0025**

**Other works referred to:**

- (1) **M.M Munalula, *Legal Process: Zambian Cases, Legislation and Commentaries* (University of Zambia**
- (2) **Black's Law Dictionary (10<sup>th</sup> deluxe ed. 2014) (Bryan A. Garner ed.)**

(3) Ed Mick Woodley (ed.), *Osborne's Concise Law Dictionary* (12th edn, Sweet & Maxwell, 2013).

## 1.0 INTRODUCTION

1.1 This ruling is in respect of the 1<sup>st</sup> respondent's application by way of notice of motion to raise preliminary issue dated 5<sup>th</sup> June 2026. The notice of motion was filed pursuant to **Order 3 Rule 2, Chapter 27 of the Laws of Zambia as well as Order 14A and Order 18 Rule 19(1) and Order 33 Rule 3 and 7 of the Rules of the Supreme Court (White Book) 1999 Edition**. The notice of motion set out the following questions for determination:

- (1) Whether this Court has Jurisdiction to hear and determine this petition:
  - a. Where the dispute for determination concerns internal political party nomination and adoption processes of would-be Members of Parliament;
  - b. Where the petition was filed in contravention of Rule 4 (3)(c) of the High Court (Election Petition) Rules, Statutory Instrument No. 31 of 2026 of the Electoral Process Act Chapter 13 of the Laws of Zambia.
- (2) Whether the petition discloses any reasonable cause of action against the 1<sup>st</sup> respondent relating to any breach of the Republican Constitution and or the Electoral Process Act Chapter 13 of the Laws of Zambia.
- (3) Whether or not this matter should not be dismissed for want of jurisdiction and probable and reasonable cause of action.
- (4) Whether or not the petitioner should not be condemned in costs occasioned by this action.

1.2 The notice of motion is supported by an affidavit and skeleton arguments.

1.3 The petitioner opposed the application, by filing affidavits in opposition and skeleton arguments dated 8<sup>th</sup> June 2026.

1.4 In reply, the 1<sup>st</sup> respondent filed an affidavit accompanied by skeleton arguments dated 9<sup>th</sup> June, 2026.

## **2.0 BACKGROUND**

2.1 The petitioner, **Kayombo Saviye**, filed a petition dated 28<sup>th</sup> May 2026 in which he sought the following reliefs:

- (i) A declaration that the nomination of the 1<sup>st</sup> respondent was irregular and invalid as he was not the duly adopted candidate under the United Party for National Development (UPND) ticket.
- (ii) A declaration that the petitioner is the duly adopted parliamentary candidate for Chavuma constituency under the UPND ticket.
- (iii) An order directing the 2<sup>nd</sup> respondent to accept the nominations of the Petitioner as a candidate for Chavuma constituency under UPND ticket as he is the one who was duly adopted by the Party.
- (iv) Any other reliefs the Court deems fit.
- (v) Legal costs.

2.2 The 1<sup>st</sup> respondent opposed the petition and, in addition, filed the present notice of motion. The 2<sup>nd</sup> respondent also opposed the Petition.

## **3.0 THE PETITIONER'S AFFIDAVIT IN SUPPORT OF THE NOTICE OF MOTION**

3.1 The 1<sup>st</sup> respondent deposed as follows:

3.2 He stated that he underwent the adoption process of the UPND. On 3<sup>rd</sup> June 2026, he was served with the following documents:

- (i) A nomination petition, the subject of these proceedings;
- (ii) An affidavit verifying Facts;
- (iii) The petitioner's list of documents;
- (iv) A bundle of documents;
- (v) A list of authorities; and
- (vi) skeleton arguments.

3.3 Upon perusal of the list of authorities, the 1<sup>st</sup> respondent discovered that it was not accompanied by copies of the authorities listed therein. He conducted a search on the record of this matter and confirmed that no copies of the said authorities were on file.

3.4 The 1<sup>st</sup> respondent deposed that a nomination petition must be accompanied by a list of authorities together with copies thereof.

- 3.5 Having examined the petition, the 1<sup>st</sup> respondent noted that the allegations contained therein do not refer to, relate to, or concern any breach of the Constitution or the Electoral Process Act, Chapter 13 of the Laws of Zambia.
- 3.6 He further stated that the issues for determination before this Court concern and relate to the adoption processes of candidates within a political party, namely the UPND. He asserted that these are internal affairs of the said political party, as is evident from the petition, the facts verifying the petition, and the party letters exhibited as “**VL2a**” and “**VL2b**”.
- 3.7 Accordingly, the 1<sup>st</sup> respondent filed a notice of motion to raise preliminary issues.
- 3.8 Finally, the 1<sup>st</sup> respondent deposed that the petition against him does not disclose a reasonable cause of action.

#### **4.0 THE PETITIONER’S AFFIDAVITS IN OPPOSITION TO THE NOTICE OF MOTION**

- 4.1 The petitioner filed two affidavits: one sworn by himself and another by Patrick Kaunda Musenga.
- 4.2 The petitioner averred as follows:
- 4.3 He is the duly adopted candidate of the UPND to contest the parliamentary elections scheduled for 13<sup>th</sup> August 2026, for Chavuma Constituency in the Northwestern Province of Zambia.
- 4.4 In response to the affidavit in support of preliminary issues sworn by the 1<sup>st</sup> respondent, the petitioner deposed that the purpose of filing copies of authorities before Court is to facilitate access to authorities not readily available.
- 4.5 Authorities difficult to access include decided cases, books, and foreign judgments, whereas Zambian Acts of Parliament are accessible to litigants and judicial officers at all times, being in the public domain.
- 4.6 The purported authorities filed by the 1<sup>st</sup> respondent, appearing on pages 1 to 5 of the copy of authorities, do not qualify as authorities as they do not disclose their nature, subject, or source.

- 4.7 A notice of motion to raise preliminary issues must cite the law or rules relied upon.
- 4.8 The petitioner contended that the law or rules relied upon in the notice to raise preliminary issues are incorrect, rendering the 1<sup>st</sup> respondent's application incompetent.
- 4.9 Order 14A of the Rules of the Supreme Court, 1999 Edition, applies only to matters commenced by writ of summons. Order 33 Rule 3 applies to matters commenced by originating summons. Order 18 Rule 19(1) applies to pleadings. Order 3 Rule 2 of the High Court Rules confers discretionary power on the Court to do what is necessary for justice.
- 4.10 The Petitioner stated that this matter was commenced by way of petition. Accordingly, the notice of motion ought not to have been made pursuant to the laws cited therein.
- 4.11 The 1<sup>st</sup> respondent's claim that the dispute is an internal political party nomination issue is denied. The petition concerns the eligibility of the 1<sup>st</sup> respondent for nomination as a UPND parliamentary candidate for Chavuma Constituency.
- 4.12 The petitioner deposed that eligibility for nomination as a parliamentary candidate is a constitutional and legal issue provided for under the Constitution of Zambia and other laws, which confer jurisdiction on this Honourable Court to determine the validity of such nomination when challenged.
- 4.13 The challenge of nomination of a parliamentary candidate is not an internal party matter but a constitutional and public issue.
- 4.14 The petitioner was prevented from filing nominations by the police and officials of the 2<sup>nd</sup> respondent, as evidenced by "**KS1**", a video depicting the police and officials of the 2<sup>nd</sup> respondent stopping the petitioner from filing nominations under the UPND ticket, as the 1<sup>st</sup> respondent had already filed nominations under the same ticket.
- 4.15 The 2<sup>nd</sup> respondent set the time for filing nominations by the UPND candidate between 12:20 hours and 13:00 hours, but the 1<sup>st</sup> respondent filed nominations at approximately 08:30 hours, before the official opening time of 09:00 hours. Exhibit "**KS2**" is a copy of the timetable for filing nominations for Chavuma parliamentary elections.

- 4.16 The filing of nominations by the 1<sup>st</sup> respondent outside the set time resulted in the petitioner's nominations not being accepted, constituting a violation of the Electoral Act and not a UPND party issue.
- 4.17 The petitioner deposed that the timetable issued by the 2<sup>nd</sup> respondent was an exercise of its constitutional authority to conduct elections transparently and orderly. By filing nominations at 08:30 hours instead of the appointed time of 12:20 hours, the 1<sup>st</sup> respondent contravened constitutional provisions. Exhibit "**KS3**" is a copy of the report published in *Kalemba* showing that the 1<sup>st</sup> respondent entered the nomination centre at 08:30 hours.
- 4.18 The petitioner, being the duly adopted UPND candidate for Chavuma Constituency, could not file nominations due to the illegal and violent acts of the 1<sup>st</sup> respondent.
- 4.19 Being prevented from filing nominations despite being duly adopted by the Party discloses a cause of action against both respondents.
- 4.20 The Petitioner asserted that the 1<sup>st</sup> respondent was not adopted as parliamentary candidate for Chavuma Constituency by UPND, as shown in exhibit "**KS4**", a copy of the petitioner's Adoption Certificate.
- 4.21 The petitioner's list of authorities comprised the Constitution of Zambia (Amendment) Act No. 2 of 2016 and the High Court (Election Petition) Rules, 2026, Statutory Instrument No. 31 of 2026.
- 4.22 Copies of the above authorities were prepared and submitted for filing together with all accompanying documents, but after reviewing the documents for over thirty minutes, registry staff refused to accept the copies of authorities and returned them to Patrick Kaunda Musenga, the Legal Assistant who accompanied the petitioner.
- 4.23 Registry staff informed Patrick Kaunda Musenga, in the Petitioner's presence, that the copies of authorities were Acts of Parliament already available to the Court and litigants, and therefore need not be filed.
- 4.24 Counsel had taken the copies of authorities for filing together with all relevant documents, but the registry staff refused to accept them. Guided by the registry staff, the petitioner did not contest their decision, as the said authorities were indeed Acts of Parliament available to all.

- 4.25 In light of the above depositions, this Court has jurisdiction to hear the petition on its merits in the interest of justice, as the petition raises triable issues.
- 4.26 Accordingly, the application by the 1<sup>st</sup> despondent to raise preliminary issues is misconceived and lacks merit.
- 4.27 I now turn to the second affidavit in opposition.
- 4.28 Patrick Kaunda Musenga (Mr. Musenga) averred as follows:
- 4.29 On 28<sup>th</sup> May 2026, Mr. Musenga was assigned to file documents for commencement of the petition and was accompanied by the petitioner.
- 4.30 The documents delivered for filing at the Principal Registry comprised:
- (i) A nomination petition;
  - (ii) An affidavit verifying facts;
  - (iii) The Petitioner's list of documents;
  - (iv) The Petitioner's list of authorities;
  - (v) Skeleton arguments;
  - (vi) A bundle of documents;
  - (vii) Copies of the Constitution of Zambia (Amendment) Act No. 2 of 2016 and the High Court (Election Petition) Rules, 2026, Statutory Instrument No. 31 of 2026.
- 4.31 Upon arrival at the Principal Registry, Mr. Musenga submitted all the above documents to the registry attendant, who passed them to another officer seated behind for checking and verification before processing. Mr. Musenga was requested to wait while the documents were examined.
- 4.32 After approximately thirty minutes, the registry attendant recalled Mr. Musenga and commenced processing the documents. The attendant returned the copies of the Constitution and the High Court (Election Petition) Rules, 2026, advising that they were not required.
- 4.33 The registry staff informed Mr. Musenga that the copies of authorities were Acts of Parliament already available to the Court and to litigants.
- 4.34 Mr. Musenga reiterated having taken the copies of authorities for filing together with all relevant documents required to accompany a nomination petition, but the registry refused to accept them. Exhibits collectively marked "**PKM1**" are the copies of authorities returned.
- 4.35 Mr. Musenga received back the said copies and retained them.

- 4.36 Guided by the registry staff, Mr. Musenga asserted that he did not contest their decision, as the authorities concerned were Acts of Parliament available to all.

**5.0 THE 1<sup>ST</sup> RESPONDENT'S AFFIDAVIT IN REPLY TO THE PETITIONER'S AFFIDAVITS IN OPPOSITION**

- 5.1 In reply, the 1<sup>st</sup> respondent deposed that he was the sole candidate adopted by the UPND for nomination in the Chavuma Constituency parliamentary election scheduled for 13<sup>th</sup> August 2026, and that he successfully filed his nomination with the 2<sup>nd</sup> respondent.
- 5.2 Upon his Advocates' advice, the 1<sup>st</sup> respondent stated that paragraphs 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 16, 17, 18, 19, 26, 27 and 28 of the Petitioner's affidavit in opposition are not facts but conclusions, arguments, opinions, and extraneous matters.
- 5.3 The 1<sup>st</sup> respondent denied the petitioner's claim that he was stopped from filing a nomination. He stated that the petitioner was advised his nomination could not be accepted under the UPND, since the 1<sup>st</sup> respondent had already filed under the same party and was accordingly advised to resolve the matter with the UPND.
- 5.4 Contrary to the petitioner's claims, the nomination centre was opened at 09:00 hours by the 2<sup>nd</sup> respondent. The 1<sup>st</sup> respondent had been advised by Chavuma Town Council officials, and believed it to be true, that a video of the announcement for opening of the nomination centre is available on the Chavuma Town Council Facebook page. He accessed the said video at the link <https://fb.watch/HDJa5xPgPe/>.
- 5.5 The 1<sup>st</sup> respondent arrived at the nomination centre at around 09:20 hours and upon arrival found the 2<sup>nd</sup> respondent's officials and police officers.
- 5.6 He further asserted that the petitioner, whom he knew before 20<sup>th</sup> May, 2026, was not present when he arrived at the nomination centre.
- 5.7 After introducing himself to the 2<sup>nd</sup> respondent's officials, he was advised that the nomination period was open and had been extended to 23<sup>rd</sup> May, 2026. He was further advised that if he was ready, he was free to proceed to file his nomination, as the independent candidate scheduled to file at 09:00 hours had not shown up.

- 5.8 Additionally, the 1<sup>st</sup> respondent was informed that the said independent candidate had told the 2<sup>nd</sup> respondent's officials that, in light of the extension of the nomination period to 23<sup>rd</sup> May 2026, he needed to put his house in order before filing his nomination.
- 5.9 The 1<sup>st</sup> respondent notified the 2<sup>nd</sup> respondent's officials that he was ready and presented his documents at about 09:30 hours. The officials thereafter began processing the nomination application.
- 5.10 He asserted that it was during this period that the petitioner arrived with a group of unruly people and forced themselves into the nomination centre, causing a scene that disrupted the processing of his nomination and resulted in suspension of the process by the 2<sup>nd</sup> respondent's officials.
- 5.11 Due to the resulting chaos, the police intervened to restore calm at the centre.
- 5.12 The 1<sup>st</sup> respondent and the petitioner were subsequently called by the 2<sup>nd</sup> respondent's officials, who consulted the UPND leadership by phone on loudspeaker and were advised that the officially adopted UPND candidate was the 1<sup>st</sup> respondent.
- 5.13 The 2<sup>nd</sup> respondent's officials accordingly proceeded to process nomination applications for other candidates and only resumed processing the 1<sup>st</sup> respondent's nomination in the afternoon. Around 15:00 hours, his nomination was declared valid and successful.
- 5.14 The 1<sup>st</sup> respondent asserted that all those who wished to participate in the forthcoming parliamentary elections were free to file their nominations up to 23<sup>rd</sup> May 2026.
- 5.15 Following the close of the nomination period, the 1<sup>st</sup> respondent has not received any information from the UPND that his adoption certificate was wrongly or erroneously issued.
- 5.16 He added that when the Petitioner queried the 2<sup>nd</sup> respondent's officials over why his nomination was processed before the time set for the UPND candidate, the Petitioner was informed that strict observance of the timetable was not required, as the 2<sup>nd</sup> respondent had granted an extension announced on 19<sup>th</sup> May 2026, and the officials had discretion to attend to any candidate present at the centre.
- 5.17 The 1<sup>st</sup> respondent stated that events narrated by the petitioner relating to attempts to file copies of authorities were within the petitioner's peculiar

knowledge. He maintained that a search on the record of proceedings showed the petition was not accompanied by copies of authorities listed in the List of Authorities.

- 5.18 In response to Mr. Musenga's affidavit, the 1<sup>st</sup> respondent averred that Mr. Musenga's assertion regarding filing of documents and being notified by Registry staff that copies of the Constitution and the High Court (Election Petition) Rules, 2026 were not required, was within Mr. Musenga's peculiar knowledge.
- 5.19 The 1<sup>st</sup> respondent stated that he had not seen any name of any registry staff alleged to have refused to receive the said documents.
- 5.20 He further stated that he had not been served with any affidavit sworn by the Chief Marshal or any Registry Clerk deposing that they refused to receive documents attempted to be filed by Mr. Musenga for any reason.
- 5.21 In conclusion, the 1<sup>st</sup> respondent asserted that he had not been served with any copies of authorities in their jackets intended to be filed as alleged by Mr. Musenga, save for the copies exhibited in "PKM1" to Mr. Musenga's affidavit.

## **6.0 SUMMARY OF SKELETON ARGUMENTS**

### **THE 1<sup>ST</sup> RESPONDENT'S SKELETON ARGUMENTS**

- 6.1 It was argued that the application was properly brought under **Order 3 Rule 2 of the High Court Rules, Chapter 27 of the Laws of Zambia ("HCR"), together with Order 14A, Order 18 Rule 19(1), and Order 33 Rules 3 and 7 of the Rules of the Supreme Court (White Book, 1999 Edition) ("RSC")**. It was submitted that these provisions empower the Court to determine questions of law or construction as preliminary issues where such determination may dispose of the matter or materially shorten the proceedings.
- 6.2 The purpose of **Order 14A**, it was contended, is to enable the Court to deal with clear points of law at an early stage without the need for a full trial, particularly where facts are not in dispute and where such determination will save time and costs.
- 6.3 Regarding the question of jurisdiction, reliance was placed on **Articles 70 and 71 of the Constitution of Zambia (Amendment), Act No. 2 of 2016**,

- which set out qualifications for election to Parliament and the validity of nominations, and on **Section 31 of the Electoral Process Act No. 35 of 2016**, which prescribes the procedure for lodging nomination papers and affidavits.
- 6.4 It was argued that the Petition is founded on alleged breaches of internal adoption and nomination processes of the UPND, a political party, and that this Court is thereby being invited to examine party rules and processes. It was submitted that this Court, sitting to determine a nomination petition, has no jurisdiction to adjudicate internal party matters, as its mandate is confined to determining whether a nomination for candidature in an election was valid in law. Validity, it was argued, cannot be ascertained by reference to internal party procedures.
- 6.3 It was further contended that the petitioner failed to comply with **Rule 4(3)(c) of the High Court (Election Petition) Rules, Statutory Instrument No. 31 of 2026**, which imposes a mandatory requirement that a petition be filed together with copies of authorities listed in the filed list of authorities. The omission was said to render the petition incompetent and to divest the Court of jurisdiction.
- 6.4 Authorities were cited in support, namely *JCN Holdings Limited v Development Bank of Zambia (1)*, *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd (2)*, and *Elias Tembo v Florence Chiwala Salati & Others (3)*, all emphasising that jurisdiction is foundational and cannot be conferred by consent or waiver. The Supreme Court's decision in *Lukasu Properties Limited v African Banking Corporation Zambia Limited (4)* was also cited to show that failure to comply with mandatory procedural requirements is fatal. Similarly, in *Isaac Mwanza & Another v Chitalu Chilufya & Others (5)*, the Court held that failure to file requisite documents with a petition is a fundamental omission that renders the petition incompetent.
- 6.4 Turning to the issue of cause of action, reference was made to Dr Patrick Matibini SC's commentary in *Zambian Civil Procedure (LexisNexis, 2017)*, defining a cause of action as facts which found a claim or relief. The case of *Coburn v College (6)* was cited, where Lord Esher MR held that a cause of action exists if pleaded facts, if not traversed, would prima facie entitle the plaintiff to relief. It was argued that the petition is

premised on alleged wrongs in party internal processes, such as adoption certificates and lists of adopted candidates, but fails to demonstrate how the 1<sup>st</sup> respondent is personally responsible.

- 6.5 It was submitted that the petition does not allege that the 1<sup>st</sup> respondent lacked constitutional qualifications, filed defective nomination papers, committed fraud or misrepresentation, or procured unlawful acceptance of his nomination. The grievance, if sustainable, ought to have been directed against the party or its organs, not against the 1<sup>st</sup> respondent, who merely benefited from adoption and filed nomination papers accepted by the Returning Officer.
- 6.6 It was further argued that the petition does not cite any provision of the **Constitution** or the **Electoral Process Act** breached by the 2<sup>nd</sup> respondent, the Electoral Commission of Zambia, so as to render the nomination invalid. In consequence, the petition was said to disclose no reasonable cause of action against either respondent. Counsel described the Petition as “wanting in cause of action” and “dead on arrival.”
- 6.7 As to costs, it was urged that the Petitioner should be condemned in costs occasioned by this action.
- 6.8 In conclusion, it was submitted that the preliminary objection is meritorious, that this Court has no jurisdiction to entertain the Petition, and that the Petition discloses no reasonable cause of action against the 1<sup>st</sup> respondent. The Court was urged to dismiss the Petition as incompetent, with costs, and to grant such further relief as it may deem fit.

#### **THE PETITIONER’S SKELETON ARGUMENTS**

- 6.9 The petitioner relied on the affidavits filed in opposition to the 1<sup>st</sup> respondent’s application to raise preliminary issues. It was argued that **Practice Direction No. 1 of 2002** makes it mandatory that the correct provision of the law be cited for any application before Court.
- 6.10 It was contended that **Order 14A Rule 3 of the RSC**, sets out requirements that must be satisfied when invoking that provision, including the filing of a notice of intention to defend, comprising a memorandum of appearance and a defence. The 1<sup>st</sup> respondent, it was argued, has not met those requirements.

- 6.11 It was submitted that in *African Banking Corporation Zambia v Mubende Country Lodge Limited (7)*, the Supreme Court held that the filing of a memorandum of appearance together with a defence is a prerequisite to launching an application under **Order 14A and Order 33 of the RSC**.
- 6.12 It was argued that in the present matter, which was not commenced by writ of summons and statement of claim, there is no defence or memorandum of appearance that could be filed by the 1<sup>st</sup> respondent. It follows, therefore, that the 1<sup>st</sup> respondent cannot properly launch an application under **Order 14A or Order 33 of the RSC**. On this basis, it was maintained that the application was made under the wrong law.
- 6.13 It was further argued that in *Kashikoto Conservancy Limited v Darrel Alexander Watt (8)*, it was held that where a trial is required to enable a logical resolution after hearing both parties, it is not fit to dismiss a matter on a preliminary point of law. It was contended that the present matter requires hearing from both sides and therefore cannot be dismissed under the orders relied upon. It was emphasised that the preconditions for reliance on **Order 14A and Order 33 of the RSC** are that the applicant must have filed a defence, and the 1<sup>st</sup> respondent has not filed any defence, underscoring that the rules relied upon are inapplicable.
- 6.14 It was submitted that **Order 18 Rule 19(1) of the RSC**, gives the Court power to amend or strike out pleadings. However, pleadings in Zambia refer to the writ of summons, statement of claim, memorandum of appearance, defence, and reply. A nomination petition, it was argued, is not a pleading within that meaning, and therefore **Order 18 Rule 19(1)** does not apply.
- 6.15 It was contended that **Rule 4(3) of the High Court (Election Petition) Rules, 2026** sets out the documents that must accompany a petition, namely, an affidavit verifying facts, skeleton arguments, a list of authorities and copies of those authorities, a list and description of documents, and a bundle of documents.
- 6.16 It was argued that the petitioner did file the requisite documents. Attention was drawn to the use of the semi-colon in paragraphs (c) and (d), and it was submitted that in terms of punctuation rules, the semi-colon

functions similarly to a comma, and the qualifier “if any” in paragraph (d) means that not all authorities must be filed in every case.

- 6.17 It was argued that where the authorities relied upon are Acts of Parliament, there is no necessity to file them, as they are laws of Zambia accessible to litigants and judicial officers at any time. Thus, it was maintained that the **Constitution and High Court (Election Petition) Rules, 2026** need not be filed as copies.
- 6.18 It was further argued that the intention behind requiring copies of authorities is to facilitate access to materials that are not easily available, such as decided cases, books, and foreign judgments. Zambian Acts of Parliament, by contrast, are in the public domain and readily accessible. Accordingly, it was contended that the petitioner was in compliance with the rules, and that the 1<sup>st</sup> respondent’s contention of non-compliance is misconceived.
- 6.19 In conclusion, it was argued that the application to raise preliminary issues was made under the wrong law, that the preconditions for reliance on **Order 14A** and **Order 33** were not met, that **Order 18 Rule 19(1)** does not apply to nomination petitions. Further the petition was properly accompanied by the requisite documents under **Rule 4(3) of the High Court (Election Petition) Rules, 2026**. The Court was urged to dismiss the preliminary objection and that the petition proceed to be heard on its merits.

#### **THE 1<sup>ST</sup> RESPONDENT’S SKELETON ARGUMENTS IN REPLY**

- 6.20 In reply, it was submitted that in the petitioner’s response the petitioner raised three grounds: that the preliminary objection is incompetent as it was brought pursuant to a wrong provision of the law; that the Petitioner complied with **Rule 4(3) of the High Court (Election Petition) Rules of 2026**; and that the petition does not concern internal matters of a political party but discloses a cause of action against the 1<sup>st</sup> respondent.
- 6.21 Having set out those grounds, the 1<sup>st</sup> respondent turned first to the competence of the petitioner’s affidavit in opposition, arguing that certain paragraphs in the affidavit in opposition are defective. Paragraphs 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 16, 17, 18, 19, 26, 27 and 28 contain conclusions, legal arguments, opinions and extraneous matters, contrary to **Order 5**

- Rules 15, 16 and 17 of the HCR.** Those rules require affidavits to contain statements of fact within the deponent's knowledge or belief, and not legal argument or prayer.
- 6.22 It was contended that this Court has power to expunge paragraphs which offend the rules. Reliance was placed on among others cases, ***Kalusha Bwalya v Chardore Properties Ltd (9)***, where offending paragraphs were struck out. It was further submitted, citing ***Intelligent Mobility Solutions v Lamise Trading Ltd (10)***, that errors in substance cannot be cured, and inadmissible matter cannot be rendered admissible by rules of court. The Supreme Court in ***Twampane Mining Co-operative Society Ltd v Storti Mining Ltd (11)*** reiterated that strict compliance with procedural rules is required.
- 6.23 It was further argued that the preliminary objection is properly before this Court. The application was made pursuant to **Order 3 Rule 2 of the HCR** and **Orders 14A, 18 Rule 19(1), and 33 of the RSC**. These provisions vest the Court with jurisdiction to determine questions of law or construction of documents as preliminary issues where such determination may dispose of the matter or materially shorten proceedings.
- 6.24 It was contended that **Order 14A** is not restricted to writ proceedings. Authorities such as ***Dr. Godfrey Hampwaye & Others v The Council of the University of Zambia (12)*** and ***African Banking Corporation Zambia Ltd*** (supra) confirm its wider application. Reference was also made to ***John Sangwa v Sunday Bwalya Nkonde SC (13)*** where the Supreme Court discussed how **Orders 14A, 18 and 33** may be used to determine preliminary issues even in matters commenced otherwise than by writ. The Supreme Court held that the High Court may entertain preliminary objections in petitions, including those under the Bill of Rights, by virtue of its inherent jurisdiction under the **High Court Act**.
- 6.25 It was argued that the petitioner's contention that the Court lacks jurisdiction because the 1<sup>st</sup> respondent has not filed a memorandum of appearance and defence is misconceived. Jurisdiction is the authority of the Court to adjudicate matters formally placed before it, as explained in ***Hirdyanath Roy & Ors v Ram Chandra Barua Sarma & Ors (14)***. It was emphasised that Courts possess inherent jurisdiction to act where no

- specific statutory provision exists. **Order 14A** enables the Court to deal with clear points of law at an early stage, saving time and costs. An answer and affidavit in opposition suffice to meet the conditions for invoking **Order 14A**, as recognised in *Dr. Godfrey Hampwaye* (supra).
- 6.26 It was further argued that the petitioner did not comply with **Rule 4(3)(c) of the High Court (Election Petition) Rules, 2026**. The petitioner's reliance on the words "if any" in paragraph (d) of the rule is misplaced. Paragraph (c) is a stand-alone requirement, and the absence of "if any" indicates that compliance is mandatory. The option in paragraph (d) exists because a petitioner may not have documents to file in a bundle, but paragraph (c) requires filing of authorities. The petitioner's argument was described as flawed and overly ambitious.
- 6.27 It was noted that the petitioner has not substantively responded to the jurisdictional issues raised in the 1<sup>st</sup> respondent's skeleton arguments, save through the impugned paragraphs of the affidavit. Should the Court allow those paragraphs to stand, the 1<sup>st</sup> respondent relies on its earlier skeleton arguments in support.
- 6.28 For these reasons, it was submitted that the preliminary objection is good in law and meritorious. The petition does not disclose a reasonable cause of action against the 1<sup>st</sup> respondent, and this Court has no jurisdiction to entertain it. The 1<sup>st</sup> respondent accordingly prayed that the petition be dismissed as incompetent, with costs and such further relief as the Court may deem fit.

## **7.0 THE HEARING**

- 7.1 When the 1<sup>st</sup> respondent's notice of motion came up for hearing on 10<sup>th</sup> June 2026, Counsel for the petitioner and the 1<sup>st</sup> respondent made oral submissions in support of their respective positions, relying on the rival affidavits and skeleton arguments. I have considered those oral submissions. However, I observed that the arguments advanced orally substantially reflected the matters already set out in the skeleton arguments filed by the parties. In view of this, the oral submissions shall not be reproduced here. I will refer to them in the analysis and determination section of this Ruling.

## 8.0 ISSUES FOR DETERMINATION

8.1 The issues for determination, as set out in the 1<sup>st</sup> respondent's notice of motion are as follows:

**(i) Whether this Court has jurisdiction to hear and determine this petition:**

**(a) Where the dispute for determination concerns internal political party nomination and adoption process of would be Members of Parliament;**

**(b) Where the petition was filed in contravention of Rule 4 (3) (c) of the High Court (Election Petition) Rules, Statutory Instrument No. 31 of 2026 of the Electoral Process Act, Chapter 13 of the Laws of Zambia.**

**(ii) Whether the petition discloses any reasonable cause of action against the 1<sup>st</sup> respondent relating to any breach of the Republican Constitution and or the Electoral Process Act, Chapter 13 of the Laws of Zambia;**

**(iii) Whether or not this matter should not be dismissed for want of jurisdiction and probable and reasonable cause; and**

**(iv) Whether or not the petitioner should not be condemned in costs occasioned by this action.**

8.2 Before proceeding to determine the issues set out above, there are objections respectively raised by the petitioner and the 1<sup>st</sup> respondent which must first be addressed.

8.3 The objection raised by the petitioner bears on whether I should proceed to determine the 1<sup>st</sup> respondent's notice of motion. The objection raised by the 1<sup>st</sup> respondent, on the other hand, is directed at certain impugned paragraphs of the petitioner's affidavit in opposition. I will deal with these objections in a manner that facilitates a clear and efficient resolution of the issues raised.

8.4 In my view, since the 1<sup>st</sup> respondent challenges specific paragraphs of the petitioner's affidavit in opposition to the notice of motion, that objection directly affects the evidential foundation of the petitioner's objection. It is therefore logical that I address the 1<sup>st</sup> respondent's objection first.

**SUB-ISSUE 1: THE 1<sup>ST</sup> RESPONDENT'S OBJECTION**

8.5 The 1<sup>st</sup> respondent, in the skeleton arguments in reply, objected to certain portions of the petitioner's affidavit in opposition. Specifically, paragraphs 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 16, 17, 18, 19, 26, 27 and 28 were impugned on the ground that they contain conclusions, legal arguments, opinions, and extraneous matter, contrary to **Order 5 Rules 15, 16 and 17 of the HCR.**

**The Court's determination**

8.6 In order to resolve the objection under this head, it is necessary to set out the provisions relied upon.

8.7 **Order 5 Rule 15** provides:

**An affidavit shall not contain extraneous matter by way of objection or prayer or legal argument or conclusion.**

8.8 **Rule 16** provides:

**Every affidavit shall contain only a statement of facts and circumstances to which the witness deposes, either of his own personal knowledge or from information which he believes to be true.**

8.9 **Rule 17** provides:

**When a witness deposes to his belief in any matter of fact, and his belief is derived from any source other than his own personal knowledge, he shall set forth explicitly the facts and circumstances forming the ground of his belief.**

8.10 It is thus established law that an affidavit must be strictly confined to factual matters and should not contain extraneous material such as legal arguments, objections, prayers, or conclusions. Affidavit evidence is

treated as equivalent to oral testimony, and whatever could not properly be stated by a witness in the box ought not to appear in an affidavit. (See ***African Banking Corporation Zambia Limited (T/A Atlas Mara) v Mattaniah Investments Limited (In Receivership) & Others*** (15))

- 8.11 The Nigerian Supreme Court in the persuasive case of ***Bamaiyi v State*** (16) recognised that it may sometimes be difficult to discern extraneous matter in an affidavit. Uwaifo J.S.C at page 289 gave guidance in the following terms:

***The problem is sometimes how to discern any particular extraneous matter. The test for doing this, in my view, is to examine each of the paragraphs deposed to in the affidavit to ascertain whether it is fit only as a submission which Counsel ought to urge upon the court. If it is, then it is likely to be either an objection or legal argument; or it may be conclusion upon an issue which ought to be left to the discretion of the court either to make a finding or to reach a decision upon through its process of reasoning.***

***But if it is in the form of evidence which a witness may be entitled to place before the court in his testimony on oath and is legally receivable to prove or disprove some fact in dispute, then it qualifies as a statement of facts and circumstances which may be deposed to in an affidavit.***

- 8.12 This test provides a clear standard: if a paragraph reads like a submission of counsel, it is extraneous; if it reads like evidence a witness could give on oath, it is admissible. Applying that test, I examined each of the impugned paragraphs. The relevant portions are set out below, with my findings.
- 8.13 Paragraph 4 - "...the intention to file copies of authorities before Court is to make it easier for the Court to have access to authorities that are not easy to find." This is commentary on practice, not fact. It is in the nature of legal argument and therefore inadmissible.

- 8.14 Paragraph 5 - *“That the difficult authorities to find are decided cases, and Zambian Acts of Parliament are not difficult to find...”*. This is opinion on accessibility of authorities and is inadmissible.
- 8.15 Paragraph 6 - *“That I am further advised by my Advocates...that the purported authorities too filed by the 1<sup>st</sup> Respondent .... are not authorities at all...”*. Although the source of information is disclosed, the content is a conclusion on the nature of authorities filed. That is legal argument, not fact, and is inadmissible.
- 8.16 Paragraph 7 - *“That I am advised by my Advocates...that the Notice of Motion to Raise Preliminary Issues must cite the law / Rules relied upon...”* This is a statement of legal requirement. It is argument fit for counsel’s submissions, not affidavit evidence. It is therefore inadmissible.
- 8.17 Paragraph 8 - *“That I repeat paragraph 7 above and state...that the law / Rules relied upon in the Notice to Raise Preliminary Issues are wrong rules making the 1<sup>st</sup> Respondent’s Application incompetent.”* This is a conclusion on competence of the application. It is not evidence but a legal argument.
- 8.18 Paragraph 9 - *“That I am advised by my Advocates...that Order 14A of the Rules of the Supreme Court, 1999 Edition, only applies to matters commenced by Writ of Summons, Order 33 Rule 3 of the Rules of the Supreme Court 1999 applies to matters commenced by way of Originating Summons, Order 18 Rules 19 (1) of the Rules of the Supreme Court 1999 Edition applies to pleadings while Order III of the High Court Rules gives discretionary power to the Court to do anything necessary for doing justice.”* This is a statement of law rather than fact and is therefore inadmissible.
- 8.19 Paragraph 10 *“...That I repeat paragraphs 7, 8 and 9 above and state...that this matter was commenced by way of Petition and therefore the Notice of Motion should not have been made pursuant to the laws cited.”* This is a procedural conclusion. It is not factual evidence and not admissible.
- 8.20 Paragraph 11 - *“That the 1<sup>st</sup> Respondent claim that the dispute is an internal political party nomination is not true in that this Petition is on the eligibility of the 1<sup>st</sup> Respondent for nomination ...”*. This is a factual assertion about the nature of the dispute and is admissible.
- 8.21 Paragraph 12 - *“...that the eligibility of one to be nominated as a parliamentary candidate on a political party is a constitution and legal issue which the Constitution of Zambia and other laws provides for and gives*

- this...Court jurisdiction to determine the validity of such nomination when challenged.*” The statement on eligibility is factual and admissible. The assertion on jurisdiction is a legal conclusion and fit only for submissions.
- 8.22 Paragraph 13 - *“That the challenge of nomination of a parliamentary candidate is not an internal political party issue but a constitutional and public issue.”* This is a conclusion on the nature of the issue and is inadmissible.
- 8.23 Paragraph 16 - *“...That the filing of nominations by the 1<sup>st</sup> Respondent against the set time resulting in my nominations not to be accepted and not to be filed at the agreed time is a violation of the Electoral Act.....”* The averment that nominations were filed outside the set time is factual and admissible. The further assertion that this amounted to a violation of the Act is a legal conclusion.
- 8.24 Paragraph 17 - *“...that the production of the timetable by the 2<sup>nd</sup> Respondent was an exercise of its constitutional authority to conduct election in a transparent and orderly manner .....having violated the timetable issued by the 2<sup>nd</sup> Respondent ....the 1<sup>st</sup> Respondent contravened constitutional provisions.”* Although production of a timetable is factual, the assertion of contravention of constitutional provisions is a legal conclusion.
- 8.25 Paragraph 18 - *“That Petitioner who is the duly adopted Parliamentary candidate .....could not filed (sic) his nominations due to the illegal and violent acts of the 1<sup>st</sup> Respondent.”* The statement that the Petitioner was prevented from filing nominations is factual and admissible. The description of the acts as “illegal” is a legal conclusion.
- 8.26 Paragraph 19 - *“That the fact that I was prevented from filing my nominations .....by the acts of the Respondents herein .....discloses a cause of action against both Respondents.”* The averment that the Petitioner was prevented from filing nominations is factual and admissible. The assertion that this discloses a cause of action is a legal conclusion.
- 8.27 Paragraph 26 - *“That arising from the above, this Court has powers to hear my petition on merit in the interest of justice as my petition raises triable issues.”* This averment is not factual but amounts to a legal conclusion and a prayer and is inadmissible.

- 8.28 Paragraph 27 - *“That I verily believe that this application by the 1<sup>st</sup> Respondent to raise preliminary issues has been misconceived and lacks merit.”* This statement is not factual but a conclusion on the merits of the application and is inadmissible.
- 8.29 Paragraph 28 - *“That in the interest of justice, this application should not be entertained by this Court.”* This averment is not factual but constitutes a prayer and is inadmissible.
- 8.30 In light of the foregoing findings on the impugned paragraphs, the 1<sup>st</sup> respondent’s objection succeeds in part. Paragraphs 4, 5, 6, 7, 8, 9, 10, 13, 17, 26, 27 and 28 are inadmissible and are accordingly expunged from the affidavit for offending **Order 5 Rule 15 of the HCR**. Paragraphs 12, 16, 18 and 19 are admitted only to the extent that they contain factual averments, with their legal conclusions expunged from the affidavit. Paragraph 11 remains admissible.
- 8.31 As persuasively held in the Tanzanian Court of Appeal case of ***Severian Wilbard v The Republic & Benard Mwesiga (17)***, citing ***Jamal S. Mkumba & Another v Attorney General (18)***, offensive paragraphs may be expunged while the remainder of the affidavit stands. I am satisfied that, notwithstanding the expunging of the offending portions of the petitioner’s affidavit in opposition, the affidavit retains sufficient factual material to support the petitioner’s opposition to the preliminary issue.
- 8.32 I now turn to consider the objection raised by the petitioner.

#### **SUB - ISSUE 2: THE PETITIONER’S OBJECTION**

- 8.33 I have considered the arguments and counterarguments advanced in the skeleton arguments on this issue.
- 8.34 In oral submissions, Counsel for the petitioner, Mr. Mwila, reiterated that Practice Direction No. 1 of 2002 requires any application before the Court to be supported by the correct law. Counsel further emphasized, consistent with the 1<sup>st</sup> respondent’s own submission, that jurisdiction of the Court is everything. It was contended that reliance on the wrong provisions of law meant that no valid notice of motion was before the Court. Counsel also submitted that, following the coming into force of the **High Court (Election Petition) Rules, 2026**, any application made in a

petition must find its authority in those rules. Building on this, Counsel argued that the reliance on the wrong provisions rendered the notice of motion incompetent.

- 8.35 Counsel referred to *Isaac Mwanza & Another* (supra), where the Court stated that the **High Court (Election Petition) Rules, 2026** are comprehensive on what petitioners are required to do, and that resort to the **RSC** only arises where there is a deficiency. In the present notice of motion, the 1<sup>st</sup> respondent cited the **RSC** and **Order 3 Rule 2 of the HCR**, yet **Rule 17 of the High Court (Election Petition) Rules, 2026** provides that, subject to **subsection (3)**, a party may make an interlocutory application to be heard and determined by the Court. Counsel cited the **Intestate Succession Rules, Statutory Instrument No. 38 of 2023**, which prescribe how a Court is moved, and argued that, similarly, this Court cannot be moved under **Order 3 Rule 2 of the HCR**. Counsel reiterated that, on this basis, the notice of motion was incompetent.
- 8.36 In response Counsel for the 1<sup>st</sup> respondent, Mr. Mataliro, submitted that Practice Direction No. 1 of 2002 had been complied with. This was on the basis that **Rule 3 of the High Court (Election Petition) Rules, 2026** provides for practice and procedure applicable in a nomination petition, and that **Order 3 Rule 2 of the HCR** is captured under this Rule. Counsel referred to paragraphs 58 to 61 of the Supreme Court decision in *John Sangwa* (supra), which extensively discussed the jurisdiction of the High Court in entertaining preliminary issues and the applicability of **Orders 14A, 18, and 33 of the RSC**. Counsel further argued that **Rule 17 of the High Court (Election Petition) Rules, 2026** does not exclude reliance on other laws to bring an interlocutory objection, but merely confirms the inherent jurisdiction of the Court to entertain preliminary issues.
- 8.37 In conclusion, Counsel submitted that the petitioner's submissions be dismissed and that the preliminary issue be allowed to stand.

#### **The Court's determination**

- 8.38 The issues in contention essentially turn on the applicability of **Orders 14A, 33 Rules 3 and 7, and 18 Rule 19(1) of the RSC**, together with **Order 3 Rule 2 of the HCR**, to the 1<sup>st</sup> respondent's notice of motion.

- 8.39 The petitioner contends that the 1<sup>st</sup> respondent's interlocutory application ought to have been made pursuant to the **High Court (Election Petition) Rules, 2026**, specifically **Rule 17(1)**, which provides that:

**Subject to subrule (3), a party may make an interlocutory application to be heard and determined by the Court.**

- 8.40 **Rule 17(1)** empowers a party to take out interlocutory applications in a petition, subject to the timeline restriction in **subrule (3)**. In my view, **Rule 17(1)** serves only to notify parties of their entitlement to bring interlocutory applications. Accordingly, I do not accept the petitioner's position that **Rule 17(1)** renders the rules self-contained, for the following reasons.
- 8.41 **Rule 3** of the same rules provides that-

**The jurisdiction vested in the Court to hear and determine a nomination petition or an election petition shall, as regards practice and procedure, be exercised in the manner provided by the Act, these Rules, the High Court Act, or any other written law, or by such order of the Court made under the Act or any other written law.**

- 8.42 A plain interpretation of the above provision is that the rules do not oust other sources of procedure. Accordingly, reliance on them is permissible where the rules are silent or where the Court directs otherwise. Even assuming the petitioner were correct, the application would still fall to be determined, as it is trite that reference to a wrong provision of the law does not vitiate the exercise of power so long as such power exists and can be traced to a legitimate source in law. See **Mildred Luwaile v Attorney General (19)**, Constitutional Court, at page J29, paragraph 92. Considering the foregoing, the petitioner's argument on this issue lacks merit.
- 8.43 Notwithstanding the above conclusion, and in view of the arguments which still turn on the competency of the provisions relied upon, it is cardinal that I now address these provisions in the following order: **Order**

**3 Rule 2 of the HCR, Order 18 Rule 19(1) of the RSC, and thereafter Orders 14A and 33 Rules 3 and 7 of the RSC.**

8.44 **Order 3 Rule 2 of the HCR** provides as follows:

**Subject to any particular rules, the court or a judge may, in all cases and matters, make any interlocutory order, which it or he considers necessary for doing justice, whether such order has been expressly asked by the person entitled to the benefit of the order or not.**

8.45 From the wording of this provision, it is evident that interlocutory orders are issued during ongoing proceedings, prior to the final resolution of the case. This position was reinforced by the Supreme Court in *Hakainde Hichilema & Others v The Government of the Republic of Zambia (20)*, at page J38, paragraph 9.12, in the following terms:

**Looking at the provisions of Order 3 Rule 2 of the HCR, it is clear that the Order only applies to interlocutory orders and not final orders.....**

8.46 In further illustration, I refer to *Tedworth Properties Inc. v Anti-Corruption Commission & Another (21)*, where the Court of Appeal, at page J14, paragraphs 7.5–7.6, stated:

**7.5 The dismissal of the petition in the present matter finally determined the entire matter. It was therefore a final order, .....to the extent that the learned Judge relied on Order 3 Rule 2 as the procedural basis for dismissing the petition, that reliance was misplaced.**

**7.6 We therefore agree with the appellant that Order 3 Rule 2, strictly speaking, could not lawfully ground the dismissal of the petition.**

8.47 It is clear that the issues sought to be determined in this case, if determined in favour of the 1<sup>st</sup> respondent, would dispose of the matter entirely. Therefore, the 1<sup>st</sup> respondent's reliance on **Order 3 Rule 2** is

misplaced and inapplicable, as the provision cannot lawfully ground the dismissal of the petition.

8.48 Turning next to **Order 18 Rule 19 of the RSC**, I refer to **subrules (1) and (3)**. The provision states as follows:

**The Court may at any stage of the proceedings order to struck out or amended any pleading or the indorsement of any writ in the action, or anything in any pleading or in the indorsement, on the ground that-**

**(a) it discloses no reasonable cause of action or defence, as the case may be; or**

**(b) it is scandalous, frivolous or vexatious; or**

**(c) it may prejudice, embarrass or delay the fair trial of the action; or**

**(d) it is otherwise an abuse of the process of the Court; and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.**

**(2) .....**

**(3) This rule shall, so far as applicable, apply to an originating summons and a petition as if the summons or petition, as the case may be, were a pleading. [Court’s emphasis]**

8.49 Notably, **Order 1 Rule 4 of the RSC** provides that:

**“pleading” does not include a petition, summons, or Part One of a preliminary act.**

8.50 Notwithstanding this definition, which excludes a petition, **Order 18 Rule 19(3)** requires courts, when dealing with matters by petition, to treat the petition as a pleading for purposes of **Order 18 Rule 19(1)**. This renders the provision applicable to proceedings by petition. Accordingly, the petitioner’s contention that **Order 18 Rule 19(1) of the RSC** is inapplicable to matters by petition is without merit and must fail.

- 8.51 Turning lastly to **Orders 14A and 33 Rule 3 and 7 of the RSC**, the Supreme Court in *African Banking Corporation Zambia* (supra), at page J36, clarified that **Order 33 Rule 3** cannot be invoked independently or to the exclusion of the mandatory requirements of **Order 14A**, which require the filing of a notice of intention to defend as a pre-requisite to raising a preliminary point of law.
- 8.52 Furthermore, as interpreted by the Court of Appeal in *Eastern and Southern Africa Trade v Finsbury Investment Limited (22)*, at page J31, the Court must first issue an order under **Order 33 Rule 3** specifying the question(s) to be tried before invoking **Order 33 Rule 7**.
- 8.53 In this case, no order pursuant to **Order 33 Rule 3** was issued. Under the circumstances, the requisite procedural condition for invoking **Order 33 Rule 7** remains unsatisfied. Consequently, **Orders 33 Rules 3 and 7** cannot be invoked concurrently with **Order 14A** in this case.
- 8.54 The only applicable provision for consideration is **Order 14A**, which does not require a prior order of the Court. Therefore, the question is whether **Order 14A** was properly invoked by the 1<sup>st</sup> respondent.
- 8.55 In *Dr. Godfrey Hampwaye & Others* (supra), a matter commenced by way of petition, the respondent raised a notice of motion under **Order 14A of the RSC** challenging the petition. In opposing the application, the petitioners contended that the respondent had not entered a valid notice of intention to defend because its answer was filed without an opposing affidavit. In dismissing the notice of motion, the Constitutional Court, at page R14, paragraphs 5.11 to 5.13, held as follows:

**5.11 In their plain and ordinary meaning, the words used in Order IV rule 4 (1) entail that there is a mandatory requirement that a respondent in filing an answer to a petition should ensure that it is supported by an opposing affidavit. In other words, a respondent cannot opt to file an answer without an opposing affidavit and anything short of that requirement does not comply with Order IV rule 4 (1) of the CCR.**

**5.12 In this case, the respondent did not comply with the mandatory requirements of Order IV rule 4 (1) of the CCR when**

**it filed its answer without an opposing affidavit. The respondent, therefore, did not give proper notice of intention to defend for purposes of Order 14A of the RSC.**

**5.13 The respondent's notice of motion is therefore improperly before us and cannot be entertained. [Court's emphasis]**

- 8.56 The above authority makes it clear that, provided the mandatory requirements for invoking **Order 14A** are satisfied, a party may lawfully raise a preliminary issue in a matter commenced by way of petition.
- 8.57 It follows that the petitioner's contention that **Order 14A** can only be invoked in matters commenced by writ and originating summons is incorrect.
- 8.58 Turning now to whether the 1<sup>st</sup> respondent satisfied the requirements of invoking **Order 14A, Rule 5 (1) and (2) of the High Court (Election Petition) Rules, 2026** provides as follows:

**(1) A respondent may, within two days of receipt of a nomination petition referred to under rule 4, respond to the nomination petition by filing an answer in Form II set out in the First Schedule on payment of a fee set out in the Second Schedule.**

**(2) An answer referred to under subrule (1) shall be accompanied by-**

**(a) An affidavit in opposition;**

**(b) Skeleton arguments of not more than fifteen pages, in font size 12 and with double spacing;**

**(c) A list of authorities and copies of those authorities;**

**(d) A list and description of documents to be relied on, if any;  
and**

**(e) A bundle of documents, if any.**

- 8.59 A perusal of the record reveals that after service of the petition, the 1<sup>st</sup> respondent filed his answer to the petition together with an affidavit in opposition verifying the facts, among other documents, thereby complying

with **Rule 5 of the High Court (Election Petition) Rules, 2026**, while simultaneously satisfying the requirements for invoking **Order 14A**.

8.60 Having found that the 1<sup>st</sup> respondent duly satisfied the mandatory requirements for invoking **Order 14A**, I hold that the notice of motion is competently before me and shall therefore proceed to determine it.

## **9.0 DETERMINATION OF THE NOTICE OF MOTION**

9.1 In my view, having considered the issues set out for determination in the notice of motion, the threshold issue is **Issue 1(b)**, which challenges the competence of the petition at the time of filing. As this goes to the very foundation of the petition, it must be resolved before the Court can properly turn to the other issues raised.

**Issue 1(b): Whether this Court has jurisdiction to hear the matter and determine this Petition, where the petition was filed in contravention of Rule 4(3)(c) of the High Court (Election Petition) Rules, 2026**

9.2 Counsel for the 1<sup>st</sup> respondent, Mr. Mataliro, submitted that this limb of the issue pertains to breach of **Rule 4(3)(c) of the High Court (Election Petition) Rules, 2026**. The question was whether the petitioner satisfied the requirements of the law when moving this Court or filing this petition.

9.3 Counsel argued that the petitioner did not file the list of authorities as demanded by the provision. The effect of this failure, he submitted, rendered the petition incompetent, as the rule is couched in mandatory terms and does not give room to options.

9.4 Citing *Isaac Mwanza & Another* (supra), Counsel contended that the Court in that case found failure to comply fatal, rendering the petition incompetent. He concluded that similarly in this case, the petition offends **Rule 4(3)(c)** and is therefore incompetently before this Court.

9.5 In answer to these submissions, Counsel for the petitioner, Mr. Mwila, contended that the issue regarding the alleged violation of the rule was misleading.

9.6 Counsel submitted that the list of authorities referred to only two: the **Constitution** and the **High Court (Election Petition) Rules, 2026**, and these were filed before this Court.

- 9.7 The question for determination, Counsel argued, is whether the petitioner is required to file Acts of Parliament the Court already has. In other words, whether copies of authorities inclusive of Acts of Parliament must be filed.
- 9.8 Counsel further submitted that the **Constitutional Court Rules, Statutory Instrument No. 33 of 2026**, have similar provisions to **Rule 4(3)**. According to Counsel, the rules of Court referred to are unreported cases and excerpts of other works, and each case must be looked at differently. The petitioner should not be faulted for not filing authorities which the Court has at its disposal.
- 9.9 Additionally, Counsel submitted that a clear perusal of **Rule 4(3)** and paragraphs (a)–(e) shows that the paragraphs are connected. The punctuation separating them is a semi-colon, which functions like a comma but with a longer pause. Counsel highlighted the words “if any” in paragraphs (d) and (e), showing the paragraphs are connected. Therefore, where the Court has only Acts of Parliament, it does not become mandatory to file them, as doing so would not reflect the true intent of the lawmakers, which is that the law must be given a purposive definition.
- 9.10 Counsel also submitted that the case relied on by the 1<sup>st</sup> respondent, **Isaac Mwanza & Another**, is distinguishable. In this case, the rest of the requirements of the rules were complied with, in addition to filing the list of authorities.
- 9.11 Co-Counsel for the petitioner, Mr. Katati, added that the petitioner’s second affidavit in opposition clearly stated that the authorities listed were submitted to the registry to be filed with all documentation. However, the registry rejected and returned them, stating they were not needed. The petitioner cannot therefore be faulted.
- 9.12 In reply, Mr. Mataliro submitted that contrary to the submission that **Rule 4(3)(c)** is not mandatory and therefore breach is not fatal, the correct position is that a petitioner has a statutory mandatory obligation to comply with the rule.
- 9.13 Counsel further submitted that reliance on **Order 17 Rule 1 of the Constitutional Court Rules, 2026**, was misleading, as **Rule 4(3)** is different. **Rule 4(3)** requires a list of authorities and copies of those authorities, while **Rule 17(2)(c)(d) of the Constitutional Court Rules, 2026** refers specifically to unreported cases and excerpts of other works.

The reliance on similarity was therefore flawed. **Rule 4(3)(c)** must be interpreted and given effect according to its letter, without interpolation.

- 9.14 Counsel also argued that the literal rule of statutory interpretation must be applied to **Rule 4(3)(c)** before resorting to the purposive or mischief rule.
- 9.15 Counsel submitted that the contention relating to copies required to be filed was mitigatory, not substantive.
- 9.16 In summing up the oral submissions, Counsel argued that the position that paragraphs (c), (d), and (e) are connected by a semi-colon was flawed. The words “if any” cannot be dragged into paragraph (c). Had the drafters intended that, they would have added “if any.”

#### **The Court’s determination**

- 9.17 In resolving the issue framed for determination under this head, my starting point is to consider whether the provisions of the **High Court (Election Petition) Rules, 2026** were complied with, and if not, to determine the effect of lodging a nomination petition without meeting the established legal requirements.
- 9.18 The Supreme Court in *Matildah Mutale v Emmanuel Munaile (23)* stated as follows:

**According to the learned authors of Odgers on Civil Court Actions, Practice and Precedents, 24<sup>th</sup> Edition....it is stated at page 27 that a petition is “a rare form of bringing proceedings...and in cases where it is required by a particular statute or rule....”**

**Further, under Order 5, rule 5, of the RSC, 1999 edition (4), it is provided that:**

**“proceedings may be begun by originating motion or petition if, but only if, by these rules or by under any Act the proceedings in question are required or authorized to be so begun.”**

From the foregoing exposition of the law, we can say that a petition is a rare mode of commencing an action in this jurisdiction and its application is specially provided or authorized by an Act of Parliament. And as the learned trial judge rightly observed, it is that particular statute that gives authority to commence an action by petition that should give guidance on the type or form of petition to be filed with the Court. (Court's emphasis)

- 9.19 The Supreme Court's position is clear and requires no further elaboration.
- 9.20 As demonstrated in the parties' skeleton arguments and oral submissions, the centre of the dispute in this case is whether **Rule 4(3)(c) of the High Court (Election Petition) Rules, 2026**, is couched in mandatory terms, requiring the filing of a list of authorities and copies of those authorities, including statutes.
- 9.21 It is necessary to refer to **Rule 4(3)**. The said provision is couched as follows:

**(3) A nomination petition referred to under Subrule (1) shall be accompanied by—**

**(a) an affidavit verifying facts;**

**(b) skeleton argument of not more than fifteen pages, in font size 12 and with double spacing;**

**(c) a list of authorities and copies of those authorities;**

**(d) a list and description of documents to be relied on, if any;**

**and**

**(e) a bundle of documents, if any. [emphasis for the Court]**

- 9.22 Having reproduced the rule at the centre of the dispute, it is now imperative to consider the principles governing the use of the word "shall",

in order to appreciate the effect of **Rule 4(3)(c)** and the consequences of non-compliance.

- 9.23 In ***Gift Luyako Chilombo v Biton Manje Hamaleke (24)*** where the Constitutional Court stated the following at pages J36–J37:

**....In its ordinary usage, “shall” is a word of command and is normally given a compulsory meaning because it is intended to show obligation and is generally imperative or mandatory. It has a potential to exclude the idea of discretion and impose an obligation which would be enforceable particularly if it is in the public interest.**

- 9.24 Further, the Constitutional Court cited at page J37, cited its decision in ***Steven Katuka (Suing as Secretary General of the United Party for National Development) & Another v Attorney General & Others (25)***, where it at page 68, stated that in determining the meaning and words used in the Constitution, the words should be understood according to their plain meaning or normal meaning. Whereas in that case, the plain meaning of the words did not resolve the issue, resort had to be had to the purposive approach.

- 9.25 Similarly, the Supreme Court in ***Matildah Mutale*** (*supra*) held:

**The fundamental rule of construction of Acts of Parliament is that they must be construed according to the words expressed in the Acts themselves. If the words of the statute are precise and unambiguous, then no more can be necessary than to expound on those words in the ordinary and natural sense.**

- 9.26 The learned author **M. M. Munalula**, in ***Legal Process: Zambian Cases, Legislation and Commentaries***, regarding the literal rule of interpretation at page 168 stated:

**Granted that words have a certain elasticity of meaning, the general rule remains that the judges regard themselves as bound by the words of a statute when these words clearly**

govern the situation before the court. The words must be applied with nothing added and nothing taken away. More precisely, the general principle is that the Court can neither extend the statute to a case not within its terms through perhaps within its purpose (the *casus omissus*) nor curtail it by leaving out a case that the statute literally includes, though it should not have.

- 9.27 In *Mutale v Attorney General (26)*, Bweupe J, as he then was, stated that in the construction of a statute, words should be given their literal meaning, which is not necessarily the dictionary meaning but the meaning in the sense in which the words are used in common parlance, that is to say the popular sense.
- 9.28 By contrast, the purposive rule focuses on the intention underlying the enactment of a statute. In *Lumwana Mining Company Limited v Hansa Limited (27)*, the Court of Appeal, at page R28, paragraph 8.17 held that the purposive rule of interpretation requires Courts to interpret a statute in a manner that gives effect to the legislature's intended purpose.
- 9.29 Similarly, in *Moses Sakala v The Attorney General & Others (28)* the Constitutional Court, at page J19, paragraph 7.7, the Court held:

**.....courts in interpreting statutes must start by taking the words used therein at face value and should apply the words as written. It is through this means, that Courts can be able to ascertain the true meaning of enactment, or words used in statutes.**

- 9.30 The Court went on to state at para. 7.8 that:

**Where, however, there is ambiguity in the natural meaning of the words used, the court may resort to the purposive rule of interpretation. This rule focuses on the purpose or intention behind a particular statute, by considering the overall objective and context in determining the most reasonable interpretation so as to avoid absurdity.**

- 9.31 From the guidance of the authorities cited above, it is clear that in interpreting statutory provisions the Court must, as a general rule, apply the literal rule by giving the words used by the legislature their ordinary and natural meaning. The purposive rule is only applied where literal interpretation would lead to absurdity, in order to ascertain the legislature's intention. It is not a matter of preference.
- 9.32 Upon a careful examination of **Rule 4(3) of the High Court (Election Petition) Rules, 2026** I find the provision to be precise and unambiguous on the form of the nomination petition, and therefore not warranting a purposive approach to interpretation.
- 9.33 Proceeding further, it is not in dispute that the petitioner did not file the petition together with copies of the list of authorities as required by **Rule 4(3)(c)**. The issue, however, is the consequence of that partial non-compliance. I will begin by considering the effect of the word 'and' as used in **Rule 4(3)(c)**, followed by the meaning of the word "authorities".
- 9.34 **Section 4(4) of the Interpretation and General Provisions Act, Chapter 2 of the Laws of Zambia**, provides that where the words 'or,' 'other,' and 'otherwise' are used in any written law they shall be construed disjunctively and not as implying similarity, unless qualified by the word 'similar' or another of like meaning. By contrast, the word 'and' in **Rule 4(3)(c)** must be construed conjunctively, thereby requiring compliance with each element it joins. This conclusion directs attention to the combined effect of the obligations imposed.
- 9.35 In my view, the use of 'and' joins two distinct obligations, making compliance joint and inseparable. Had the drafters intended an alternative, they would have used 'or' as contemplated by **Section 4(4) of the Interpretation and General Provisions Act**. Consequently, **Rule 4(3)(c)** requires the petitioner to file both a list of authorities and copies thereof; filing only one limb does not satisfy the rule.
- 9.36 The petitioner further submitted that the use of the words 'if any' in **Rule 4(3)(d) and (e)** suggests that compliance with the rules is optional. I find this not to be the correct position of the law, as **subrule 3(b)** and **subrule 3(c)** are distinct provisions. The import of **subrule 3(d)** is that a petitioner may, at his discretion, attach a list and description of documents intended

to be relied upon. That provision is permissive rather than mandatory, and its scope does not extend to the obligations created under **subrules 3(b) and 3(c)**.

9.37 Another argument raised by the petitioner concerns the meaning of the term “authorities” in **Rule 4(3)(c)**. The petitioner submitted that the word “authorities” does not include Acts of Parliament, but is limited to decided cases and textbooks, which are difficult to access. Support was grounded on **Order 17 Rule 2 of the Constitutional Court Rules, 2026**. It was further submitted that Acts of Parliament are readily accessible and in the public domain, and therefore do not fall within the “authorities” referred to in **Rule 4(3)(c)**. The 1<sup>st</sup> respondent, however, argued that this interpretation was flawed, noting that **Rule 4(3)(c)** and **Order 17 Rule 2 of the Constitutional Court Rules, 2026** are couched differently. While the **Constitutional Court Rules, 2026** explicitly state the nature of the authorities to be filed, the **High Court (Election Petition) Rules, 2026** do not.

9.38 Having considered these rival submissions, I find it necessary to address the meaning of the term “authorities” in **Rule 4(3)(c)**, as this was an issue of contention. The rules themselves do not define the term, and I therefore turn to other persuasive sources, namely *Black’s Law Dictionary* and *Osborne’s Concise Law Dictionary*.

9.39 *Black’s Law Dictionary, Deluxe Tenth Edition*, at page 159, defines “authority” as:

**4. A legal writing taken as definitive or decisive, esp., a judicial or administrative decision cited as a precedent...The term includes not only the decisions of tribunals but also statutes, ordinances, and administrative rulings.**

9.40 From the definitions cited above, it is clear that the term encompasses not only case law and legal textbooks, but also statutory enactments made by Parliament, such as statutes. In the absence of legislative specificity, the term “authorities” as used in **Rule 4(3)(c)** covers all forms of legal authorities, including Acts of Parliament. Had the drafters intended to exclude Acts of Parliament, they would have expressly done so. The petitioner’s arguments therefore fail. I hold in this case that it was

mandatory for the petitioner to file a list of authorities and copies of those authorities.

- 9.41 For completeness, I shall at this point address the petitioner's submission that Mr. Musenga was obstructed by registry staff from filing the copies of the authorities, an assertion supported by Mr. Musenga himself.
- 9.42 Where a party alleges that filing was actively obstructed by Registry staff, it is incumbent upon that party to demonstrate what steps were taken to address the alleged refusal. In this matter, no evidence has been placed before the Court to show that any effort was made to address, escalate or formally record the alleged refusal.
- 9.43 The petitioner's and Mr. Musenga's explanations, standing on their own and unsupported by any proactive steps, are insufficient to justify the failure to file copies of the authorities listed in the list of authorities, especially considering the nature of the petition and the mandatory nature of **Rule 4(3)(c)**. The petitioner's explanation is therefore not accepted.
- 9.44 As to the fate of the petition, I was invited to distinguish between the *Isaac Mwanza & Another* case and the present case.
- 9.45 I agree that in *Isaac Mwanza & Another*, unlike in the present matter, the petitioners were found to have filed a petition which did not comply with **Rule 4(3)**, in that only a petition and affidavit verifying facts were filed without accompanying documents. In this case, the only default was failure to file copies of the authorities.
- 9.46 In light of my finding that it was mandatory to file a list of authorities and copies of authorities, the distinction in *Isaac Mwanza & Another* cannot salvage the petitioner's partial compliance with **Rule 4(3)(c) of the High Court (Election Petition) Rules, 2026**.
- 9.47 Further, I again refer to *Matildah Mutale* (supra), equally cited in *Isaac Mwanza & Another*, in support of that Court's decision to determine that the petition before it was incompetent. Of relevance, the Supreme Court stated as follows:

**Having come to the conclusion that is mandatory for the petitioner to sign the petition personally, we find that section 96(3) is at par with sections 98(3) and 101(1) of the same Act as**

**the consequence of filing a petition that was not signed by the petitioner makes the petition misconceived.**

- 9.48 I also recall the principle set out in *Matildah Mutale* that it is a particular statute which gives authority to commence an action by petition, and that statute should give guidance on the type or form of the petition to be filed with the Court.
- 9.49 The right to challenge a nomination of a candidate is conferred under **Article 52(4) of the Constitution**, and the **High Court (Election Petition) Rules, 2026** prescribe the form of a petition to be filed, as earlier stated under **Rule 4(3)**. A nomination petition is sui generis and therefore cannot be equated to an ordinary civil suit. It requires strict adherence to the prescribed rules under the **High Court (Election Petition) Rules, 2026**.
- 9.50 The very object of the **High Court (Election Petition) Rules, 2026** will be defeated if the presentation of a petition which does not conform to mandatory requirements is treated casually or lightly.
- 9.51 Having found that the petitioner failed to comply with **Rule 4(3)(c) of the High Court (Election Petition) Rules, 2026**, the next question is the effect of such non-compliance.
- 9.52 Jurisdiction is paramount and goes to the root of the matter. It is the lifeline of any case.
- 9.53 It was established in *Owners of the Motor Vessel "Lillian S"* (supra) that once a court finds it has no jurisdiction, it must take no further step.
- 9.54 Similarly, as already noted in *Matildah Mutale*, the Supreme Court held that failure to comply with mandatory statutory requirements renders a petition incompetent.
- 9.55 In the present case, the petitioner's failure to file both a list of authorities and copies of those authorities, as required by **Rule 4(3)(c) of the High Court (Election Petition) Rules, 2026**, renders the petition incompetent at the time of filing. I therefore have no jurisdiction to entertain the matter, and the petition must consequently be dismissed.

**10. CONCLUSION**

10.1 In light of the foregoing, and for the avoidance of doubt, I hereby make the following final orders:

- (i) The nomination petition filed by the petitioner on 28<sup>th</sup> May 2026, is hereby dismissed for being incompetent and want of jurisdiction.
- (ii) Given the nature of the petition, I order that each party shall bear their own costs.

**DATED THIS 12<sup>TH</sup> DAY OF JUNE 2026**



**T.S. Musonda**

**HIGH COURT JUDGE**

