

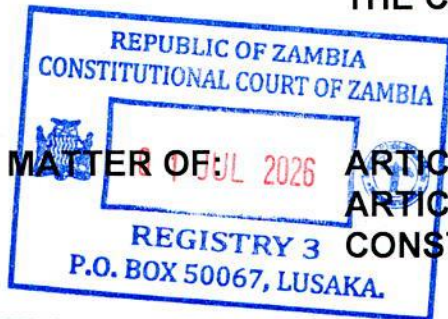
IN THE CONSTITUTIONAL COURT OF ZAMBIA
HOLDEN AT LUSAKA
(Constitutional Jurisdiction)

2026/CCZ/007

IN THE MATTER OF: ARTICLE 1 AND 2 AS READ WITH ARTICLE
128 (1) (a) (b) and ARTICLE 128 (3) (b) (c) OF
THE CONSTITUTION

AND

IN THE MATTER OF: JUL 2026 ARTICLE 8, ARTICLE 45, ARTICLE 100
ARTICLE 118 AND ARTICLE 173 OF THE
CONSTITUTION



BETWEEN:

PEOPLE'S PACT FOR THE COUNTRY'S
TRANSFORMATION

PETITIONER

AND

ELECTORAL COMMISSION OF ZAMBIA

1ST RESPONDENT

ATTORNEY GENERAL

2ND RESPONDENT

Coram: Shilimi-DPC, Mulongoti, Mwandenga, Kawimbe and Mulife JJC
on 12th June and 1st July, 2026

For the Petitioner: In Person

For the 1st Respondent: Mr. A.M Musoka and Mr. C. Siame- In House
Counsel

For the 2nd Respondent: Mr. P. Kachimba, Principal State Advocate,
Ms N. Mulalelo Senior State Advocate and
Ms T. Tembo State Advocate

J U D G M E N T

Mulongoti, JC delivered the Judgment of the Court

Cases referred to:

1. Jonas Zimba v Attorney General 2022/CCZ/007
2. Lewanika and others v Chiluba (1998) Z.R. 79
3. Electoral Commission of South Africa v. uMkhonto weSizwe (MK) Party (2024) ZACC
4. N.P. Ponnuswami v Returning Officer AIR (1952) 64
5. Stephen Katuka v Electoral Commission of Zambia 2016/CC/0025
6. Raila Odinga v IEBC (2017), Supreme Court of Kenya
7. Christine Mulundika and 7 Others v The People (1995) Z.R. 20
8. New Nation Movement NPC v President of the Republic of South Africa (2020) ZACC 11
9. The Attorney General v Roy Clarke 2004 Z.R. 277 (SC)
10. Benjamin Mwelwa v Attorney General and Others 2020/CCZ/007
11. Isaac Mwanza (suing as member and in the interest of the Zambia Civil Liberties Union) v The National Assembly of Zambia and Others 2024/CCZ/002
12. Kabisa Ngwira v National Pensions Scheme Authority 2019/CCZ/0017
13. Mputa Ngalande v Attorney General 2025/CCZ/0019
14. Charles Longwe v Batuke Imenda, Hakainde Hichilema and Others 2026/CCZ/009
15. Zambia Consolidated Copper Mines v Jackson Munyika Siame and 33 others 2004 Z.R. page 193 (SC)
16. Miza Phiri v Attorney General 2004/CCZ/0025

Legislation referred to:

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

The Electoral Process Act as Amended by Act No. 12 of 2026.

The Electoral Commission of Zambia Act No. 25 of 2016

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

Other works referred to:

Oxford Dictionary Thesaurus, Edited by Sara Hawker, Oxford University Press, New York, 2002 p309 and 377

Introduction and background

[1] The People's Action for the Country's Transformation (the petitioner), filed this Petition supported by an affidavit verifying facts sworn by its chairman Peter Chazy Sinkamba, against the Electoral Commission of Zambia (1st respondent) and the Attorney General (2nd respondent).

[2] The petitioner was prompted to file the Petition after the 1st respondent issued a Schedule of Provincial Pre-Processing of Presidential Supporters in the Provincial Centers from 11th to 15th May, 2026 with a Note ('directive') which stated in part that:

Please note that during nominations, all aspiring candidates must present an adoption certificate to the returning officer. The adoption certificate must be signed by both the president and the secretary general of the sponsoring political party, as reflected in the records of the registrar of societies. Any letter signed by an individual whose name does not match the official records will result in the invalidation of the nomination papers. Candidates standing for president who are not the official heads of their sponsoring party must produce a confirmation letter-signed by both the president and the secretary - general stating that they have been sponsored by that party, in addition to the adoption certificate.

Petitioner's case

[3] It is the petitioner's case that the 1st respondent's directive requiring an adoption certificate to be signed by the president and secretary general of a political party; failing which a candidate's adoption would be invalidated, contravenes Articles 8, 45, 100, 118 and 173 of the Constitution of Zambia as amended by the Constitution of Zambia (Amendment) Act No. 2 of 2016 (the Constitution).

[4] The petitioner avers that the requirement that the adoption certificate be signed by both the president and the secretary general of a sponsoring political party adds a layer of qualification not provided in Article 100 of the Constitution.

[5] Additionally, that the 1st respondent's demand of dual signatures on adoption certificates creates a gatekeeper mechanism that allows a single office bearer to veto a candidate's constitutional right to be nominated, thereby violating Article 8 on national values and principles, Article 45 on credible and impartial electoral system, and Article 173 which requires the 1st respondent to maintain the highest standards of professional ethics and to be accountable for administrative acts.

[6] As a result of the alleged contravention of the Constitution, the petitioner seeks:

- (i) A declaration that the 1st respondent's decision to demand dual signatures on adoption certificates is unconstitutional as it contravenes Articles 8, 45, 100 and 173 of the Constitution.
- (ii) A declaration that the 1st respondent is restricted to the qualifications set out in Article 100 and cannot create additional criteria for the validity of a nomination.
- (iii) Any other relief that the Court will deem fit.

Petitioner's skeleton arguments in support of the Petition

[7] The petitioner argues that the 1st respondent's directive violates Article 45(2) of the Constitution, which mandates that the electoral system must be transparent and credible.

[8] The petitioner further argues that the public service obligations enshrined under Articles 8 and 173 are not merely aspirational; they are mandatory commands guiding all State organs. Thus, the 1st respondent has a structural constitutional duty to uphold good governance and integrity. By engineering a mandatory rule not contemplated by the framers of the Constitution in Article 100, the 1st respondent is acting outside the bounds of constitutionalism.

[9] The petitioner maintains that an administrative body like the 1st respondent cannot legally legislate new qualifications for the presidency

through an administrative directive. Therefore, the 1st respondent's decision/directive must comply strictly with the National Values and Principles (Article 8) and the Values and Principles of Public Service (Article 173).

[10] To buttress the submissions it is argued that public officers, including the commissioners and staff of the 1st respondent, are bound by Article 173(1), which explicitly requires:

- (i) Efficient and effective use of resources;
- (ii) Impartial, fair, and equitable provision of services; and
- (iii) Accountability for administrative acts.

[11] That the dual-signature requirement is inherently unfair and inequitable, as it improperly encroaches upon the internal management of political parties and creates an avenue for administrative bias or internal manipulation. The decision of this Court in **Jonas Zimba v Attorney General**¹, was relied upon in which it was established that Article 8 principles are justiciable and must guide all State organs in their decision-making processes.

[12] Furthermore, that Article 173 of the Constitution mandates '*impartial, fair, and equitable service*', however, by the 1st respondent's requirement for two specific signatures, a structural mechanism for victimization is created, where a single party official (e.g., a rogue or disgruntled secretary-general) could arbitrarily veto a constitutionally qualified candidate by simply refusing to sign the adoption certificate.

[13] The petitioner posited that the qualifications for the office of President are explicitly and exhaustively set out in Article 100. The 1st respondent, as an administrative body, cannot enlarge or vary these qualifications through subsidiary directives. By requiring specific internal party signatures to validate a nomination, the 1st respondent is effectively creating a new 'disqualification' for candidates who possess the democratic support of their party but lack a specific signature due to internal administrative disputes.

[14] In support of this argument the petitioner relied on the Supreme Court decision in the case of **Lewanika and others v Chiluba**², which holds that **where the Constitution has prescribed qualifications, they cannot be varied by any other authority unless the Constitution itself allows it.**

[15] The petitioner further relied on the case of **Electoral Commission of South Africa v uMkhonto weSizwe (MK) Party**³, where that country's Constitutional Court clarified that the role of the Electoral Commission is to apply the qualifications set out in the Constitution, not to interpret them in a way that creates additional barriers to entry for candidates.

[16] The petitioner also cited the case of **N.P. Ponnuswami v Returning Officer**⁴ where the Supreme Court of India held that:

The right to stand for election is a statutory right, but where the Constitution provides the framework, an administrative officer cannot exercise discretion to reject a nomination based on criteria external to that framework.

[17] The petitioner has urged the Court to be guided by Article 118(2)(e) of the Constitution, which provides that **justice shall be administered without undue regard to procedural technicalities**. That by its directive the 1st respondent is attempting to use a 'procedural technicality' to override the substantive constitutional right for one to stand for office. Therefore, the Court should promote accountability as per Article 118(1) and protect the sovereign will of the people. That this is in line with our decision in **Katuka v Electoral Commission of Zambia**⁵, which dealt with the technicalities of candidate withdrawals and in which the Court emphasized that the

Electoral Commission of Zambia must act on formal, clear communication but it remains a public body established to serve the people, not to be driven by administrative whims.

[18] Reliance was also placed on the case of **Raila Odinga v IEBC**⁶ in which the Supreme Court of Kenya noted that while procedures are important, they must serve the substantive right of the people to choose their leaders. Technical hurdles imposed by an electoral body that hinder this right are unconstitutional.

[19] Relying on the **Raila Odinga**⁶ case the petitioner concluded that the 1st respondent's directive is *ultra vires* the Constitution. To reinforce this argument, the petitioner referred to the case of **Christine Mulundika and 7 Others v The People**⁷ where the Supreme Court held that any administrative requirement that restricts a fundamental right (in this case, the right to participate in governance) must be strictly provided for by law. And the case of **New Nation Movement NPC v President of the Republic of South Africa**⁸ which holds that the State must act reasonably to facilitate the exercise of the right to stand for office. Imposing hurdles that make it harder to stand for office without a compelling constitutional reason is a violation of that right.

[20] The petitioner concluded by stating that the 1st respondent's directive constitutes an unconstitutional amendment to Article 100 by administrative fiat and that it violates the principles of Article 45 and fails the ethical standards of Articles 8, 118, and 173 of the Constitution.

[21] The Petitioner prays that this Court adopts the 'substance over form' approach mandated by Article 118 to protect the democratic rights of the people of Zambia.

[22] In its reply and oral submissions, the petitioner submitted that any statutory definition within the Electoral Process Act No.35 of 2016 (EPA) as amended by (EPA) Act No. 12 of 2026 which mandates that an adoption certificate must be signed exclusively by both the president and secretary-general of a political party is *pro tanto* unconstitutional, null, and void to the extent that it conflicts with Articles 1(1), 1(2), and 100 of the Constitution.

[23] That Parliament cannot use ordinary subsidiary legislation or amendments to an Act of Parliament, such as the EPA as amended by EPA (Amendment) Act No. 12 of 2026, to alter the structural landscape of constitutional qualifications or introduce operational 'gatekeeper' restrictions that are absent from the text of the Constitution itself.

[24] The petitioner contends that the joint-signature directive does not constitute a mere 'procedural requirement' within the boundaries of Article 52(1) and (2) of the Constitution, as argued by the 1st respondent. The petitioner admitted though, that Article 52 permits regulations governing the manner, day, time, and place of filing nominations, but argued that it cannot be expanded to validate statutory definitions that impair substantive political rights, subvert internal party constitutions, or establish an administrative veto power for individual party office-bearers.

1st respondent's case

[25] In response to the Petition, the 1st respondent filed an Answer which is supported by an affidavit in opposition sworn by Brown Kasaro in his capacity as Chief Electoral Officer and skeleton arguments.

[26] The 1st respondent avers that in performing its functions, it is guided by the Constitution and the relevant electoral laws such as the EPA as amended in 2026 and the regulations promulgated under the EPA.

[27] The 1st respondent contends that among its functions is the duty to implement the electoral process and it has no mandate to approve political party adoptions as alleged. Its function is merely to conduct

nominations for independent candidates and candidates sponsored by political parties.

[28] The 1st respondent denies the allegation that its directive that adoption certificates be signed by the president and secretary general of the sponsoring political party, adds a layer to the qualifications for nomination of presidential candidates.

[29] That the directive is in fact a legal requirement under the current law and aids the 1st respondent to ascertain whether a candidate has indeed been sponsored by a political party.

[30] In its skeleton arguments, the 1st respondent submits that in interpreting the Constitution we should follow our decision in **Jonas Zimba v Attorney General**¹ which holds that when interpreting the Constitution all relevant provisions must be brought to bear and not interpreted in isolation.

[31] With that in mind, it is argued that the directive on adoption certificate is in line with Article 52(1) and (2) of the Constitution as amended by the Constitution of Zambia (Amendment) Act No.13 of 2025 (the Constitution), which empower the returning officer to reject a candidate's

nomination papers if they do not meet the qualifications for the office or the procedural requirements specified for election to that office. That the requirement for an adoption certificate from a political party sponsoring a candidate to be presented to the returning officer forms part of the procedural requirements envisaged under Article 52(2) of the Constitution.

[32] Thus, Article 100 of the Constitution which spells out explicitly and exhaustively the qualifications for the office of the President, as argued by the petitioner, must be read with the provisions of Article 52 which goes a step further to provide an additional ground upon which a presidential nomination may be rejected—namely, the failure to comply with the procedural requirements specified for election to that office.

[33] The 1st respondent posited that Article 100 must equally, be read with Article 229 (1) which creates the 1st respondent and 229 (2) (a) of the Constitution which provides that among its functions it is required to implement the electoral process. That such mandate necessarily includes the authority to undertake all acts incidental and necessary to the discharge of its functions.

[34] That in executing its duties, the 1st respondent is also governed by the EPA, the Electoral Commission of Zambia Act No. 25 of 2016 and the Electoral Process (General) Regulations, Statutory Instrument No. 63 of 2016, among others. Section 4(2)(k) of the Electoral Commission of Zambia Act No. 25 of 2016 (ECZA) was cited, which provides as follows:

(2) Without prejudice to the generality of subsection (1), the functions of the Commission are to— (k) do all such other things as are necessary to the performance of its functions under this Act.

[35] Accordingly, that section 4(2)(k) above, empowers it to do all such other things as are necessary or incidental to the performance of its functions, which includes the authority to establish administrative procedures incidental to the performance of those functions. In support of this proposition, the 1st respondent cited the case of **The Attorney General v Roy Clarke**⁹, in which the Supreme Court observed thus:

We have reproduced these passages, to emphasize that for an administrative decision to escape interference by the court it must be one that any other reasonable authority can come to. This we affirm against the backdrop of the well settled principle that public bodies derive authority from the Constitution and Statutes, and may exercise administrative powers necessary to give effect to those functions.

[36] Consequently, that the foreign cases cited by the petitioner are not only distinguishable from the present case but also hold no binding effect within this jurisdiction.

[37] The 1st respondent urged the Court to dismiss the petitioner's allegations that the directive constitutes an unconstitutional amendment to Article 100 of the Constitution by administrative fiat. That the petitioner has failed to adduce cogent evidence in support of this claim according to the well-settled principles of law. To support this position, the case of **Benjamin Mwelwa v Attorney General and Others**¹⁰ was cited, where this Court stated:

it is not sufficient to allege breach of a statutory or constitutional provision without setting out the facts, in sufficient detail, which are the basis of the claim against the respondents and entitle the petitioner to the reliefs sought.

[38] The 1st respondent amplified that, pursuant to Articles 100 read with Article 52 of the Constitution, it requires of aspiring presidential candidates to submit a nomination paper and an affidavit as set out in Forms GEN 2 and GEN 4 of the Electoral Process (General) Regulations, Statutory Instrument No. 63 of 2016, respectively. Thus, the presidential nomination paper prescribed under Form GEN 2 requires a presidential

candidate to indicate whether they are sponsored by a political party (including the party symbol) or whether they intend to contest as an independent candidate in accordance with Regulation 9(1) and (2) of the Electoral Process (General) Regulations, Statutory Instrument No. 63 of 2016, which provides as follows:

(1) If a question arises in respect of the allocation and registration of a symbol under regulation 8 regarding whether the nomination of a candidate is supported by a political party, that question shall be referred to and determined by the Commission.

(2) The Commission shall consult the leader or secretary of a political party before determining the question referred to in sub-regulation (1)

[39] Therefore, the 1st respondent recognizes party presidents and general secretaries of political parties as the duly authorized persons to determine the adoption of presidential candidates sponsored by political parties in an election. In that regard, requiring an adoption certificate to be signed by both the secretary-general and party president, in accordance with the records of the registrar of societies, is not inconsistent with existing procedures.

[40] The 1st respondent concluded its arguments by relying on the EPA as amended by Act No. 12 of 2026 which enacts that an adoption certificate means:

a certificate signed by the president and secretary-general of a political party, or in the absence of the secretary-general, the president and deputy secretary-general of a political party, as prescribed, specifying a candidate who is sponsored by that political party for an election to the office of President, Member of Parliament, mayor, council chairperson or councillor

[41] Accordingly, it was argued that the requirement for the production of an adoption certificate is therefore not intended to introduce additional qualifications, but rather to provide a legal mechanism through which the 1st respondent may ascertain and confirm the authenticity of a candidate's sponsorship by a political party.

[42] During the hearing Mr. Musoka who appeared on behalf of the 1st respondent briefly augmented the written submissions. He submitted that the requirement that the adoption certificate be signed by the president and secretary general of a sponsoring political party applies to candidates who are sponsored and not independent candidates. It does not therefore add an extra layer of qualifications stipulated in Article 100 of the Constitution.

2nd respondent's case

[43] The 2nd respondent did not file an Answer to the Petition but during the hearing, the principal state advocate, Mr.Kachimba, made oral submissions on points of law. He submitted on the supremacy of the Constitution to the effect that any law which is inconsistent with the provisions of the Constitution is null and void to the extent of the inconsistency.

[44] He went on to submit that Article 100 should be read with Article 52 of the Constitution as elucidated by this Court in the case of **Jonasimba**¹. And that had the petitioner done so he would have come to a simple conclusion that the requirement of the two signatures on the adoption certificate does not contravene Article 100 of the Constitution.

Consideration and Decision

[45] We have considered the Petition, the Answer, the respective affidavits and the competing arguments of the parties.

[46] At the outset we wish to state that the Petition is assailing the decision/directive of the 1st respondent, a public body established under

Article 229(1) of the Constitution. Article 229 (2) provides for its functions as follows:

- a) to implement the electoral process;
- b) conduct elections and referenda;
- c) register voters;
- d) settle minor electoral disputes, as prescribed;
- e) regulate the conduct of voters and candidates;
- f) accredit observers and election agents, as prescribed;
- g) delimit electoral boundaries; and
- h) perform such other functions, as prescribed.

[47] It is settled law that 'as prescribed' referred to in Article 229(2) (d)(f) and (h) above, means provided in an Act of Parliament which in this case is the EPA No. 35 of 2016 as amended by Act No.12 of 2026 and the ECZA.

[48] The petitioner contends that the directive is unconstitutional as it adds a layer to the exhaustive list of qualifications and disqualifications for nomination as a presidential candidate in Article 100 and results in the 1st respondent contravening Articles 8, 45, 100, 118 and 173 of the Constitution.

[49] Bearing in mind, the allegations and arguments of the petitioner, as we see it, the articles of the Constitution which are brought into focus by

the petitioner are Articles 45 (2) on free and fair elections, independence, accountability, efficiency and transparency of the electoral process and most importantly Article 100 which provides:

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 the person's assets and liabilities, as prescribed;**
- i) pays the prescribed election fees 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.**

[50] The 1st respondent, in denying that it contravened Article 100, has brought into focus Articles 52 and 229 of the Constitution. According to the 1st respondent the directive was issued in furtherance of its constitutional functions/duties in line with Articles 52 (1) and (2) and 229 (1) and (2) (a) of the Constitution as well as section 4 (2) (k) of the

Electoral Commission of Zambia Act No.25 of 2016, Regulation 9 (1) of the Electoral Process (General) Regulations Statutory Instrument No.63 of 2016 and the EPA as amended by Act No. 12 of 2026.

[51] For completeness, we find it prudent to reproduce articles of the Constitution and other provisions of the law the 1st respondent has relied upon. We begin with Article 52 (1) and (2) which provide:

52 (1) A person who intends to be a candidate for election as President, Member of Parliament for a constituency-based seat, mayor, council chairperson, or councillor for a ward-based seat, 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 for a constituency-based seat, mayor, council chairperson, or councillor, for a ward-based seat 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.

[52] Article 229 (2)(a) of the Constitution as reproduced above empowers the 1st respondent to implement the electoral process.

Regulation 9 (1) and (2) of the Electoral Process (General) Regulations provide:

- (1) If a question arises in respect of the allocation and registration of a symbol under regulation 8 regarding whether the nomination of a candidate is supported by a political party, that question shall be referred to and determined by the Commission.
- (2) The Commission shall consult the leader or secretary of a political party before determining the question referred to in sub-regulation (1)

[53] The EPA as amended by Act No.12 of 2026 reads:

An adoption certificate means a certificate signed by the president and secretary general of a political party, or in the absence of the secretary general, the president and deputy secretary-general of a political party, as prescribed specifying that a candidate who is sponsored by that political party for an election to the office of President, Member of Parliament, mayor, council chairperson or councillor.

[54] Considering the facts of this case, the cardinal issue that arises for our determination is, whether the 1st respondent contravened various articles of the Constitution particularly, Article 100, thereof when it issued the directive that a candidate's adoption certificate should be signed by the president and secretary general of the sponsoring political party, for it to be valid. Key to the issue, is the question, whether the 1st respondent is empowered by the Constitution and other pieces of legislation, to issue directives such as the one in contention, as it discharges its constitutional functions. As we consider the issue we are alive to the petitioner's

argument that the EPA amendment of 2026 which gives the meaning of adoption certificate became law at a time when the Petition was pending hearing before this Court and thus we should disregard it. Furthermore, that the amendment is unconstitutional.

[55] It is common cause that the 1st respondent is a public body which discharges public functions and is amenable to constitutional scrutiny or check to ensure it acts *intra vires* the Constitution and or legislation which govern it.

[56] Before we delve into determination of the issue, we restate the jurisdiction of the Court as provided in Article 128 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 the violation or contravention of the 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;**
- e) whether or not a matter falls within the jurisdiction of the Constitutional Court.**

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

- (3) Subject to Article 28, a person who alleges that –**
- (a) an Act of Parliament or Statutory Instrument;**
 - (b) an action, measure or decision taken under law; or**

(c) an act, or omission, measure or decision by a person or an authority; contravenes this Constitution, may petition the Constitutional Court for redress.

[57] The petitioner filed the Petition pursuant to Article 128(1)(a) and(b) and 128(3)(b)(c) of the Constitution alleging contravention of the Constitution by the 1st respondent as aforesated.

[58] Decisions by this Court abound in which we have illuminated that before we can determine whether or not the Constitution has been contravened, we ought to interpret the provisions in issue in the Petition. Some of the decisions include **Isaac Mwanza (suing as member and in the interest of the Zambia Civil Liberties Union) v The National Assembly of Zambia and Others**¹¹ and **Kabisa Ngwira v National Pensions Scheme Authority**¹².

[59] It is also vital, as aptly submitted by both parties, based on our decision in **Jonasimba**¹ and several other cases such as **Mputa Ngalande v Attorney General**¹³ that as we interpret the Constitution, no single provision is to be segregated from the others and considered alone but all other provisions bearing upon a particular subject are to be brought into view and interpreted as provisions in a living document, while taking into account their historical context, the prevailing circumstances and societal needs.

[60] We have highlighted the provisions in issue in the Petition as argued by the petitioner and the respondents, if necessary we will refer to other provisions which touch on the issues in controversy. Article 100 of the Constitution is clear and unambiguous as it merely provides for the qualifications and disqualifications for nomination as a presidential candidate. Furthermore, in the circumstances of this case an interpretation of that article does not arise as the allegation is that the directive adds to the list in Article 100.

[61] With regard to Articles 52(1) and (2) and 229 (2) (a) of the Constitution which the 1st respondent relied upon and urged us to read these together with Article 100. Our interpretation and understanding is that Article 229 (2) (a) provides for the function of the 1st respondent as to implement the electoral process. Implement is simply to execute as defined by the Oxford English Dictionary and Thesaurus that it means to 'carry out, fulfill, execute, perform, discharge, accomplish, achieve, realize, bring about, enact'. To us, the fundamental or core function of the 1st respondent is to implement the electoral process. This is the primary reason for its existence even as the name suggests.

[62] It is common cause that apart from the Constitution, the 1st respondent is governed by various pieces of legislation such as the EPA. The EPA provides for the duties and functions of the 1st respondent pre-election such as conducting nominations of aspiring candidates to the various elective offices; during the election for instance regulating conduct of voters on voting or poll day; and post the election such as announcing election results.

[63] Article 52 (1) and (2) of the Constitution speak to the 1st respondent's function of implementing the electoral process pre-election namely conducting or processing the nominations of aspiring candidates. We stated the nexus between Articles 52 and 100 of the Constitution in the case of **Charles Longwe v Batuke Imenda, Hakainde Hichilema and others**¹⁴ that Article 52 provides for nominations and the function or duty of the 1st respondent during the nominations is to ensure that an aspiring candidate possesses all the qualifications set out in Article 100 of the Constitution in respect of Presidential candidates.

[64] Under Article 52 (1) an aspiring Presidential candidate, Member of Parliament or councillor must file or present their nomination paper supported by an affidavit stating that the candidate qualifies to be elected

to the office they are vying for, to the returning officer. In the affidavit the aspiring candidate will adduce evidence of their qualifications in line with Article 100 for Presidential candidates and Article 70 for Parliamentary candidates.

[65] Pursuant to Article 52 (2) of the Constitution, a returning officer has a mandatory duty to reject the nomination paper if the candidate does not meet the constitutional qualifications or procedural requirements specified for election to that office as directed by the 1st respondent.

[66] On top of that Article 52(1) of the Constitution empowers the 1st respondent to prescribe 'in the manner...' the candidates should present or file their nomination paper before the returning officer. According to the Oxford English Dictionary and Thesaurus, the term 'manner' is defined as 'way, means, method, approach, technique, procedure, methodology, fashion, mode'. Guided by this definition of the term 'manner', we surmise that the 1st respondent is empowered in performing its functions under Article 52 (1) and (2) to direct the manner of doing so.

[67] Our interpretation of Article 52 (1) and (2) of the Constitution therefore, is that the 1st respondent in discharging its functions can dictate

and direct the exact 'method, mode, approach, methodology or means' of how the nomination of a candidate is to be done.

[68] We are of the firm view that the directive that the adoption certificate presented by a candidate be signed by the president and secretary general falls within the 'manner' and is part of the procedural requirement referenced in Article 52(1), and section 4(2)(k) of the ECZA as submitted by the 1st respondent. It does not add to the qualifications under Article 100 of the Constitution. Additionally, the directive of requiring the signature of the president and secretary general of a sponsoring political party to sign the adoption certificate is in accordance with the EPA (Amendment) Act No.12 of 2026 which gives its meaning and Article 229 (2) (h) that the 1st respondent is to perform such other functions as prescribed.

[69] We are alive to the petitioner's argument that the amendment cannot be relied upon as it came into effect while the Petition was pending hearing. This allegation was not pleaded in the Petition but since none of the respondents objected to it, we will consider it. It is a general principle of law that the law does not apply retrospectively particularly, where it would have prejudicial effect on vested rights. See **Zambia Consolidated**

Copper Mines v Jackson Munyika Siame and 33 others¹⁵. In the circumstances of this case the question of the petitioner's vested rights is not in contention and cannot arise.

[70] Be that as it may be, having found that the 1st respondent's directive is *intra vires* the Constitution as this was done in fulfillment of its functions in Article 52 (1) and (2) of the Constitution read with Article 100 and 229 (2) (a) of the Constitution, the issue is thus unhelpful to the petitioner's case.

[71] We are of the firm view therefore, that even without reliance on the 2026 amendment to the EPA, the 1st respondent has the mandate to prescribe procedural requirements including the manner in which this should be done. As such even without the amendment, our finding is that the directive fell within the 1st respondent's constitutional functions.

[72] The petitioner also alleged that the amendment is unconstitutional and be declared null void. This was also not pleaded, however, the respondents did not object to this submission as well. We will therefore consider it, so that all issues in controversy are dealt with. Our brief answer to this is that the issue is otiose. Having found that the directive upon which the amendment was based, was *intra vires* Article 52 (1) and

(2) read with Article 229 (2) (a) (h) and 100 of the Constitution, it follows that the amendment in issue is equally *intra vires* the Constitution.

[73] With regard to the argument on transparency and credibility based on the petitioner's allegation that the directive contravenes Article 45 (2), it is our considered view that the directive actually enhances transparency as all are aware of the candidates who have been adopted by the party. Furthermore, contrary to the petitioner's argument that the 1st respondent creates an unfair gate-keeper mechanism, we opine that the procedural requirement and mandatory duty of the 1st respondent to immediately reject a candidate who does not meet the qualifications, affords the candidate or political party time to amend their nomination or file correct documentation. It is also noteworthy that the decision of the 1st respondent on nominations is not final and is open to challenge in Court by anybody pursuant to Article 52(4) of the Constitution. This equally enhances democracy, transparency and constitutionalism.

[74] Accordingly, it is our finding that Article 45 which provides for electoral systems and process was not contravened by the directive which rather enhances transparency, credibility and fairness. It minimizes disagreements within the political party and also assists the 1st

respondent to speedily ascertain that a candidate has indeed been sponsored by a political party which has signed the adoption certificate, as stipulated.

[75] On the facts of the case as presented by the petitioner, we find that the allegations of contravention of Article 8 which provides for national values and principles, Article 118 on principles of judicial authority and Article 173 on guiding values and principles for the public service, were equally not proved. The numerous authorities cited by the petitioner do not aid its case as pleaded. Equally unhelpful are the averments that a rogue secretary general might refuse to sign the adoption certificate and that some political parties are not headed by presidents. These averments are speculative. Authorities abound where we have stated that this Court will not exercise its jurisdiction on speculative or academic questions. See **Miza Phiri v Attorney General**¹⁶

Conclusion

[76] In light of the preceding paragraphs, we find that the petitioner has failed to prove the allegations in the Petition. We accordingly refuse to grant the declarations sought. We dismiss the petition for lack of merit.


[77] We order each party to bear own costs.



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A. M. SHILIMI
DEPUTY PRESIDENT
CONSTITUTIONAL COURT



.....
J. Z. MULONGOTI
CONSTITUTIONAL COURT JUDGE



.....
M. Z. MWANDENGA
CONSTITUTIONAL COURT JUDGE



.....
M. MAPANI - KAWIMBE
CONSTITUTIONAL COURT JUDGE



.....
K. MULIFE
CONSTITUTIONAL COURT JUDGE