

IN THE CONSTITUTIONAL COURT OF ZAMBIA
AT THE CONSTITUTIONAL COURT REGISTRY
HOLDEN AT LUSAKA

(CONSTITUTIONAL JURISDICTION)



2026/CCZ/010

IN THE MATTER OF: ARTICLES 1(1), (5), 2,128(1)(a) OF THE CONSTITUTION OF ZAMBIA, CHAPTER 1 OF THE LAWS OF ZAMBIA AS READ TOGETHER WITH ORDER IV RULE 3 OF THE CONSTITUTIONAL COURT RULES, 2026

IN THE MATTER OF: INTERPRETATION OF ARTICLE 51(a) AS READ WITH ARTICLE 52(1)(2) OF THE CONSTITUTION OF ZAMBIA CHAPTER 1 OF THE LAWS OF ZAMBIA AND ITS EFFECT ON PERSONS WHO ARE MEMBERS OF A POLITICAL PARTY AT THE TIME OF NOMINATIONS

IN THE MATTER OF: ELIGIBILITY OF PERSONS CONTESTING AS INDEPENDENT CANDIDATES IN AN ELECTION

BETWEEN

CONSORTIUM OF CIVIL SOCIETY ORGANISATIONS FOR
GOOD GOVERNANCE AND CONSTITUTIONALISM constituting of:

ZAMBIAN CIVIL LIBERTIES UNION	1 ST APPLICANT
HONOR FOR JUSTICE FOUNDATION	2 ND APPLICANT
SOUTHERN AFRICAN CENTRE FOR CONSTRUCTIVE RESOLUTION OF DISPUTES	3 RD APPLICANT
GOVERNANCE ELECTIONS ADVOCACY RESEARCH SERVICES INITIATIVE ZAMBIA	4 TH APPLICANT
CENTRE FOR PEACE, RESEARCH & ADVOCACY	5 TH APPLICANT
CENTRE FOR PROTECTION OF HUMAN RIGHTS AND ADVANCEMENT OF DEMOCRACY	6 TH APPLICANT
COMMUNITY ACTION AGAINST POLITICAL VIOLENCE	7 TH APPLICANT
UBUNTU ROYAL HOMES FOR ORPHANS AND DISADVANTAGED	8 TH APPLICANT

CLIFFTON MAYABA CHIFUWE

9TH APPLICANT

AND

ATTORNEY GENERAL

1ST RESPONDENT

ELECTORAL COMMISSION OF ZAMBIA

2ND RESPONDENT

**CORAM: Munalula – PC, Shilimi – DPC, Mwandenga, Kawimbe and Siloka, JJC
on 22nd July, 2026 and 31st July, 2026**

For the 1st to 8th Applicants: Mr. I Mwanza – Consortium of Civil Society
Organisations for Good Governance and
Constitutionalism Chairperson

For the 9th Applicant: Mr. E. Sakala of Messrs. JB Sakala and Company

For the 1st Respondent: Mr. M. Muchende SC.-Solicitor General, Mr. C. Mulonda
- Chief State Advocate, Mr. N. Mwiya - Acting Deputy
Chief State Advocate, Ms. C. Watopa - Principal State
Advocate and Ms. R. S. Mulolani - Acting Senior State
Advocate from Attorney General's Chambers

For the 2nd Respondent: Mr. A. Siwila, of Messrs. Mambwe, Silwila & Lisimba
Advocates, Mr. E. Phiri, Mr. B. Mwanza Jnr, Mr. Z. M.
Mubiana of Messrs. Nsapato and Co.

JUDGMENT

Shilimi – DPC, delivered the Judgment of the Court

Case referred to:

1. Ngcobo and Others v Salimba CC; Ngcobo v Van Rensburg 1999(2) SA 1057 (SCA);
2. Shaik Ahmed v State of Telangana, Crl. A. No. 533 of 2021
3. Goodyear India Ltd v Executive Officer, Panchayat Samiti, Ballabgarh AIR 1969
4. Governance Elections Advocacy Research Services Initiative Zambia v Attorney General and Electoral Commission of Zambia 2022/CCZ/0020
5. William Omondi v Independent Electoral and Boundaries Commission and Others Petition No. 288 of 2014

6. Mputa Ngalande v Attorney General 2025/CCZ/0019
7. Hakainde Hichilema and another v Attorney General, 2016/CCZ/0033

Legislation referred to:

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

The Constitutional Court Act No. 8 of 2016

The Electoral Process Act, Chapter 13 of the Laws of Zambia

The Constitutional Court Rules, Statutory Instrument No. 33 of 2026

The Constitution of Kenya, 2010

Others materials referred to:

The Final Draft Report of the Technical Committee on Drafting the Zambian Constitution, 2013

Report of the Parliamentary Select Committee appointed to scrutinise the Constitution of Zambia (Amendment) Bill, N.A.B. No. 7 of 2025 (Select Committee)

Dr. Churchill Ewumbue – Monono “Independent Candidature and the Electoral Process in Africa” (2006) Journal of African Elections, Volume 5, No. 1

INTRODUCTION

1. In this matter the Applicants moved us through Originating Summons filed under Order IV Rule 3(1) of the Constitutional Court Rules, Statutory Instrument No. 33 of 2026 (CCR) to interpret Article 51 as read with Article 52(1) and (2) of the Constitution of Zambia, Chapter 1 of the Laws of Zambia (Amendment) Act No. 2 of 2016 and Act No. 13 of 2025 (The Constitution). They cite the Attorney General as (the 1st

Respondent) and the Electoral Commission of Zambia as (the 2nd Respondent)

2. The Applicants seek from this Court interpretation of the following questions:

- i) **Whether, on a proper interpretation of Article 51(a) of the Constitution, the requirement that a person contesting as an independent candidate “is not a member of a political party and has not been a member of a political party for at least two months immediately before the date of the election” constitutes a qualification that must be satisfied for a person to be eligible to be nominated for election as an independent candidate for a National Assembly seat relating to the first-past-the-post electoral system for Members of Parliament and election to councils contesting for constituency-based seats in Zambia under Article 47 (2) and (3) of the Constitution of Zambia as amended by the Constitution of Zambia (Amendment) Act No. 13 of 2025?**
- ii) **Whether, on a proper interpretation of Article 51(a) as read with Article 52(1) and 52(2) of the Constitution, the qualification to be nominated for an election as an independent candidate is required to exist retrospectively, including at or by the time of filing nominations, or can be attained at a future date after filing of nominations at least two months immediately before the date of the election?**
- iii) **Whether, if the answer to the question in Paragraph (2) above is that the qualification can be attained at a future date after filing of nominations, a person may challenge the nomination of an independent candidate under Article 52(4) of the Constitution at a future date after the filing of nominations but at least two months immediately before the date of the election, if the nominated candidate fails to comply with the requirement of Article 51(a) of the Constitution?**

3. Simply put, the Applicants’ position is that the requirement in Article 51(a) of the Constitution has two limbs. That the first limb pertaining

to an independent candidate not belonging to a political party has to be met when a person files in their nominations and the second limb of Article 51(a) of having not been a member of a political party for at least two months before elections, is a conjunctive requirement. They argue that to take the view that compliance with Article 51(a) in its entirety can only be attained at least two months before elections would result in an absurd outcome creating favourable nomination conditions for independent candidates. This would be contrary to the holistic purpose of Articles 51 and 52 of the Constitution of Zambia.

4. The 1st Respondent however, takes a contrary view. He argues that Article 51(a) of the Constitution while applicable to nominations of independent candidates only becomes operative at least two months before elections. That this in no way creates favourable conditions for independent candidates as their eligibility can be questioned post elections pursuant to section 97(2)(c) of the Electoral Process Act. It therefore refutes the absurdity argument advanced by the Applicants.
5. The 2nd Respondent on the other hand, agrees with the Applicant's position that a candidate ought to meet the non-partisan requirement on or before the nomination date.

APPLICANTS' CASE

6. In the Affidavit in support of the Originating Summons, Isaac Mwanza in his capacity as Chairperson of the 1st to 8th Applicants and Clifton Mayaba Chifuwe jointly deposed that the Consortium of Civil Society Organisations for Good Governance and Constitutionalism comprises 11 registered organisations. That their application before us has been necessitated by the questions that arose among members of the public after the 2nd Respondent had held the nomination process relating to the forthcoming 13th August, 2026 General Election in which some persons were declared as duly nominated candidates to contest as independent candidates even though they were still members of their respective political parties.
7. The questions that arose relate to the point in time at which the requirements of Article 51(a) of the Constitution relating to non-partisanship must be satisfied. This is despite the 2nd Respondent issuing correspondence produced as "CC1" in the affidavit in support of the Originating Summons, indicating that Article 51 (a) of the Constitution allowed persons to be nominated as independent candidates notwithstanding their existing membership in the United Party for National Development (UPND). That what matters is that

they officially resigned from the party by 13th June, 2026 (a period of at least two months immediately before the date of election).

8. According to the deponents, there are differing views concerning the application and interpretation of Article 51(a) of the Constitution in relation to persons who were members of political parties at the time of filing nominations.
9. In their Skeleton Arguments, the Applicants argued that the interpretation by the 2nd Respondent would mean that a person may remain a member of a political party at the time of nomination, validly secure nomination as an independent candidate, continue to retain membership of that political party after the close of nominations, and only cease such membership at any time before the expiry of the two-month period immediately preceding the election. That this would effectively extend the nomination process for independent candidates beyond the prescribed nomination period applicable to all other candidates and permit a candidate to perfect a constitutional qualification after being declared duly nominated.
10. The Applicants contended that this interpretation would render an independent candidate's eligibility remaining contingent on future events and a challenge can only arise after a resignation from a political party with the effect of extending the seven-day period

within which a nomination ought to be challenged under Article 52(4) of the Constitution.

11. That, that interpretation would not only undermine the certainty, finality and equal treatment of candidates in the nomination process, but would create a separate and favourable nomination regime for persons contesting as independent candidates.
12. The Applicants further, stated that Article 51(a) of the Constitution requires that at the time of nominations, a person must not be a member of a political party and must not have been such a member for at least two months immediately before the date of the election. They argued that both requirements must coexist and must be satisfied simultaneously when filing in nomination papers. That they are cumulative requirements as opposed to being alternative.
13. They so reasoned on the basis of the word “and” used in the provision and that both requirements have to be fulfilled. The cases of **Ngcobo and Others v Salimba CC; Ngcobo v Van Rensburg¹; Shaik Ahmed v State of Telangana² and Goodyear India Ltd v Executive Officer, Panchayat Samiti, Ballabgarh³** were cited as authority.
14. Further, and with regards to the first limb of Article 51(a) of the Constitution, the Applicants argued that a candidate must meet the requirement of not being a member of a political party at the time of

presenting nomination papers and not at a future date. Our decision in **Governance Elections Advocacy Research Services Initiative Zambia v Attorney General and Electoral Commission of Zambia**⁴ was cited as recognising the mandatory eligibility requirements that must exist before a person can lawfully qualify as an independent candidate.

15. The Applicants contended that the constitutional status of an independent candidate is incompatible with continuing political party membership.
16. Emphasising the importance of the nomination process for purposes of verifying eligibility and as a gateway to candidature, the Applicants maintained that for a person to be duly nominated as an independent candidate, he must not be a member of a political party at the date of nominations.
17. The second limb of Article 51(a) of the Constitution was said to be a provision setting out a requirement for a cooling-off period so as to avoid party defections shortly before elections. According to the Applicants, it is meant to supplement the first limb in that a person must not be a member of a political party and ought to have ceased to be a member of a political party at least two months before an election. That the second limb does not negate the first limb.

18. The Applicants further submitted that to accept the 2nd Respondent's initial interpretation of Article 51(a) of the Constitution would result in a candidate's qualification remaining uncertain and any challenges to the nomination would have to await future events occurring after close of nominations. That a harmonious reading of Article 51 and 52 of the Constitution cannot permit the rolling or continuing nominations for independent candidates. In their view, Article 52 of the Constitution does not contemplate a system where constitutional qualifications remain outstanding and are fulfilled after nomination. That it is concerned with qualifications existing at the date of nomination.
19. Drawing from the Kenyan jurisdiction, the Applicants cited the High Court case of **William Omondi v Independent Electoral and Boundaries Commission and Others**⁵ in which Article 85(a) of the Kenyan Constitution, said to be similarly couched to Article 51(a) of the Constitution, was interpreted as proscribing a person seeking an election as an independent candidate from being member of a political party and this status should be maintained for the prescribed period preceding the election.

1ST RESPONDENT'S CASE

20. The 1st Respondent's position as gathered from the Affidavit evidence is that the requirement of an independent candidate not being a member of a political party for at least two months is tied to the election date and not the nomination date. In taking this position, the deponent noted that there were attempts to amend Article 51(a) of the Constitution so as to tie the two months period to the nomination date as opposed to the election date, but however, the provision was maintained in its current form. Exhibit "MDK1" was a copy of the **Report of the Parliamentary Select Committee appointed to scrutinise the Constitution of Zambia (Amendment) Bill, N.A.B. No. 7 of 2025** (Select Committee).
21. It was further deposed that the application of Article 51(a) of the Constitution is prospective and the timeline set by the Constitution of two months from date of elections cannot be changed by any court or authority.
22. In his Skeleton Arguments, the 1st Respondent urged us to consider the views of the **Final Draft Report of the Technical Committee on Drafting the Zambian Constitution, 2013** (Technical Committee). It was submitted that the expressed intention of the framers of the Constitution was to introduce a requirement for independent candidates not to belong to a political party for a period of at least two months preceding the date of elections.

Further that, although the Report of the Select Committee had varying views on Article 51(a) of the Constitution, it was resolved that the provision be maintained as opposed to tying the two months to nominations.

23. According to the 1st Respondent, the first limb of Article 51(a) of the Constitution is a general principle to the effect that an independent candidate shall not be a member of a political party. The second limb comes in as a modifier which places a limitation on the application of the first limb, namely that it is to apply at least two months immediately before the date of the election. That therefore, the constitutional requirement under Article 51(a) of the Constitution is not supposed to be fulfilled at the point of filing in the nomination papers.

24. The 1st Respondent further argued that for as long as the amount of time remaining before the election is more than two months, the requirement for an independent candidate not to belong to a political party is not operative and there is no basis at law to require an independent candidate to demonstrate that they do not belong to a political party.

25. As regards the interplay between Article 51(a) and Article 52(1) and (2) of the Constitution, the 1st Respondent argued that a person who satisfies the requirements of Regulation 12 of the Electoral

(General) Regulations 2016 complies with Article 52 of the Constitution. This is because the remaining aspect of not belonging to a political party will become operative two months before elections and must be complied with at that time.

26. Responding to the last question, the 1st Respondent argued that a challenge to nominations is to be brought within 7 days in line with Article 52(4) of the Constitution. Where this time lapses, recourse can be had to section 97(2)(c) of the Electoral Process Act which provides for disqualification as a ground for voiding an election.

2ND RESPONDENT'S CASE

27. In its Affidavit in opposition to the Originating Summons, the 2nd Respondent indicated that it was not averse to an interpretation of Article 51(a) of the Constitution by this Court. It questioned the validity of declarations made by some persons as having not been members of a political party at the time of filing nominations and yet shortly afterwards, these candidates were reportedly communicating their resignations on social media. Sworn affidavits by the said persons collectively marked as "BK2" were produced.
28. Further, the 2nd Respondent pointed out that there was need to ascertain if the independent candidates can be disqualified from participating in the forthcoming election for having given false

declarations that they did not belong to a political party when they in fact did.

29. In its Skeleton Arguments, the 2nd Respondent called on this Court to interpret Article 51(a) of the Constitution as requiring independent candidates not be members of a political party at the time of filing in their nomination papers.
30. According to the 2nd Respondent, interpreting the provision literally reveals that to qualify to contest as an independent candidate, a person should not be a member of a political party and should not have been a member of a political party at least 2 months before the election. Further, that at the time of filing in their nomination papers as independent candidate, they ought to demonstrate that they are in fact an independent candidate.
31. The 2nd Respondent also argued that this literal interpretation accords with the purpose of Article 51(a) of the Constitution, namely, the provision of a legal framework that prescribes qualifications for persons who are not members of any political party. That therefore, the only rational meaning that can be ascribed to the provision is that one ought to meet the non-partisan requirement on or before the date of nomination.
32. Further, that, this interpretation is buttressed by the context of Article 52(1) and (2) giving the 2nd Respondent the power to reject

nomination papers if a person does not meet the requirements which have to be fulfilled at the point of nomination.

APPLICANTS' REPLY

33. In reply, the Applicants largely maintained their position and argued on the issue of constructive resignation and actual resignation. However, seeing as this argument was only raised in reply, without the other parties being occasioned an opportunity to respond, we shall not consider the argument.

HEARING

34. During the hearing, the parties relied on their respective Affidavits, List of Authorities and Skeleton Arguments. They also made brief oral submissions in support of their written Submissions. For brevity, we will not recite the oral submissions which augmented the written submissions.

INTERPRETATION

35. We have considered the originating summons and arguments of the parties tendered in support and rebuttal to the issues raised. We wish to state, at the outset, that the Court's interpretative jurisdiction is set out in Article 128(1)(a) of the Constitution, section

8(1)(a) of the Constitutional Court Act No. 8 of 2016 (The Act) and Order IV Rule 3(1) of the CCR.

36. Article 128(1)(a) of the Constitution provides as follows:

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

(a) a matter relating to the interpretation of this Constitution;

...

37. Further, section 8(1) of the Act states that:

8(1) Subject to Article 28 of the Constitution, the Court in exercise of its original and final jurisdiction may determine-

(a) a matter relating to the interpretation of the Constitution;

...

38. Finally, Order IV Rule 3(1) of the CCR provides that:

3(1) A matter relating to the interpretation of the Constitution shall be commenced by originating summons in Form III set out in the first schedule.

39. The Constitution and the Act give the Court jurisdiction to hear and determine matters relating to the interpretation of the Constitution while the CCR provides the mode of commencement for a matter relating to interpretation of the Constitution as Originating Summons.

40. We shall now proceed to elucidate our interpretative approach.

The Constitution gives clear guidance on how it must be interpreted. Article 267(1) of the Constitution provides that:

267(1) This Constitution shall be interpreted in accordance with the Bill of rights and in a manner that: -

- (a) Promotes its purposes, values and principles;
- (b) Permits the development of the law; and
- (c) Contributes to good governance.

41. Article 267 of the Constitution requires us to apply purposive interpretation because where a court reads a constitutional text literally, it risks missing the spirit and purpose of the provision in question. Thus, in the case of **Mputa Ngalande v Attorney General**⁶, we stated that

The Court is also required in constitutional interpretation to read all the relevant provisions as an integrated whole and not in a narrow or pedantic sense that does not achieve its objective.

42. The Constitution must also be read as a whole. In the case of **Hakainde Hichilema and another v Attorney General**⁷, we stated that:

The entire Constitution has to be read together as an integrated whole with no particular provision destroying the other but sustaining the other. No one provision of the Constitution is to be considered alone but that all provisions bearing on the same subject are brought into view and interpreted so as to give the greater purpose of the instrument.

43. In interpreting the provisions bearing on the questions for interpretation, we will therefore look at the said provisions purposively and as a whole to give effect to the objectives of the Constitution.

44. The main provision that the Applicants seek interpretation of is Article 51(a) of the Constitution which provides that-

51. A person is eligible for election as an independent candidate for a National Assembly seat if the person—

- (a) is not a member of a political party and has not been a member of a political party for at least two months immediately before the date of the election;

...

45. This provision lays down the constitutional requirements for persons who intend to contest parliamentary elections as independent candidates. Independent candidature is an essential feature of a participatory democracy, as it not only allows for non-party aligned individuals to exercise their political rights, it also provides an apolitical avenue of participating in elections. Dr. Churchill Ewumbue-Monono in an article titled **Independent Candidature and the Electoral Process in Africa** has observed the following:

The shortcomings of party-centred elections have led to a re-examination of the role in the electoral process of independent candidates, who are perceived by most observers as the conscience of the society and the voice of the silent majority. They are also catalysts of campaign debates on the real issues affecting the electorate, which political parties and professional political consultants would like sidelined. Moreover, they are usually exempt from the dirty politics of big party machines, although they are not totally free from intrigue, which is the stock in trade of politics (Mwalimu 2006).

46. A feature of the Constitution of Zambia since 1991, independent candidature was only substantively provided for in the 2016 Constitution. Article 51 of the Constitution as amended in 2016 is therefore a whole new provision as regards nominations of

independent candidates under Zambia's electoral system. It aligns with the electoral principles of citizens being free to exercise their political rights and the need for fair representation of various interest groups in society as assured in Article 45 (1) of the Constitution. Article 51(a) of the Constitution expressly provides that for a person to contest as an independent candidate, they shall not be a member of a political party and their non-membership should have been for a minimum period of two months before an election.

47. The crux of the Applicants' questions appears to be whether the requirement of not belonging to a party ought to be satisfied at the point a candidate is filing in their nomination papers or at a later time, namely two months before elections.

48. We have sought to examine the intention of the framers of the Constitution. The intended meaning of Article 51 of the Constitution was set out in the **Final Draft Report of the Technical Committee on Drafting the Zambian Constitution, 2013**. The Committee stated at page 206 as follows:

The Committee amended the Article by splitting it into three (3) Articles, namely; Independent candidates, Nominations and unopposed candidates, which Articles were numbered 78, 79 and 80, respectively, in order to simplify the provision.

The Committee agreed that the new Article 78 on independent candidates would only provide for the basic requirements and clarify that independent candidates would only contest constituency-based

seats. The Committee also provided that the independent candidates should not have been members of a political party for less than two (2) months preceding the date of elections ...

49. Further, the Select Committee also considered a proposal for the amendment of Article 51 of the Constitution as follows:

Clause 3 – Amendment of Article 51

The clause provides for the amendment of Article 51(a) by the deletion of the words “of the election” and the substitution of the words “for nominations”, so as to clarify that a person is eligible for election as an independent candidate if the person is not a member of a political party and has not been a member of a political party for at least two (2) months prior to the nomination date.

50. This proposal was however rejected by the Select Committee. The Committee stated at page 16 of the report as follows:

Clause 3 – Amendment to Article 51.

The Committee expresses concern on the provisions in clause 3, as it infringes on the rights of persons who opt to stand as independent candidates if not adopted by their political parties. In this regard the Committee recommends that clause 3 be deleted.

51. From the above reports, it is clear to us that the intention of the framers of the Constitution was to the effect that independent candidates should not have been members of a political party for less than two months preceding the date of elections.

52. It is noteworthy that the 2010 Kenyan Constitution has a similar provision to Article 51(a) of the Constitution. Article 85(a) of the Kenyan Constitution provides as follows:

85. Any person is eligible to stand as an independent candidate for election if the person –

(a) is not a member of a registered political party and has not been a member for at least three months immediately before the date of the election.

53. The Applicants argue that Article 51(a) of the Constitution has two limbs to it, the first requiring non-membership to a political party at the point of filing nominations, with the second limb referring to two months before elections being an additional requirement. They base this on the notion that this is the only interpretation that accords with the purposes of the Constitution on independent candidates and that any other interpretation would negate Article 52 of the Constitution and create favourable nomination process for independent candidates.
54. We have ruminated on this argument and in the face of a clear intention of the framers of the Constitution to the contrary find it difficult to accept it.
55. Article 51(a) of the Constitution in our view points to an expressed intention to tie the non-membership to two months before election. There is no mention of non-membership being fulfilled at the point of nomination. To accede to the Applicants view would amount to us adding to eligibility requirements. This would be contrary to the provision of Article 45(2)(c) of the Constitution which speaks of a transparent electoral process which in our view presupposes clearly

spelt out requirements that are predictable and clear to both the candidates and the electorate throughout the electoral process.

56. Article 51(a) of the Constitution makes no reference to the time of nominations, the period included is a minimum of two months before elections. The concern as to whether this implies that a nomination challenge can then only arise post the seven-day period set out in Article 52 of the Constitution is valid. However, as submitted by the 1st Respondent, the grounds upon which an election can be voided quite rightly includes disqualification. If indeed it turns out that a candidate who contested as an independent candidate was actually a member of a political party within the two-month period before elections, an election outcome can be challenged by way of an election Petition.

57. We do not find this to be an absurd outcome but rather an expressed intention of the framers.

58. Given the rationale for the Select committee's rejection of an amendment to Article 51 of the Constitution to align it with nominations rather than the election, the Electoral Commission of Zambia (ECZ) could have pre-empted the problem before us by aligning their nomination timetable for independent candidates with the two-month constitutional deadline. We say so because a reading of Articles 51 and 52 of the Constitution together provide

clear direction as to how the two months may be utilised, as follows: Firstly, Article 51(a) of the Constitution provides that an independent candidate should not be a member of a political party at least two months before the election. Secondly, Article 52(1) provides for the filing of a nomination on a date set by the ECZ. Thirdly, Article 52(4) provides that a nomination challenge must be made within seven (7) days of the close of nominations and the case must be heard and determined with twenty-one (21) days of its filing giving a total of roughly thirty (30) days. Finally, Article 52(5) of the Constitution provides that processes in clauses 1 to 4 must be concluded at least thirty (30) days before a general election.

59. Based on our interpretation of Article 51(a) of the Constitution, the position on the first question raised by the Applicants is that the requirement that a person contesting as an independent candidate "is not a member of a political party and has not been a member of a political party for at least two months immediately before the date of the election" constitutes a qualification in relation to the nominations of independent candidates. However, since the Constitution does not refer to the requirement being fulfilled at the time of filing nominations, the relevant period is a minimum of two months before elections.

60. It follows therefore, as regards the second question that there is no retrospective application of Article 51(a) of the Constitution as the relevant period is two months before elections.
61. With regards to the third question, a challenge relating to the requirement in Article 51(a) of the Constitution can only be brought post elections in line with the Electoral Process Act.
62. We order each party to bear their own costs.



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M. M. MUNALULA, JSD
PRESIDENT – CONSTITUTIONAL COURT



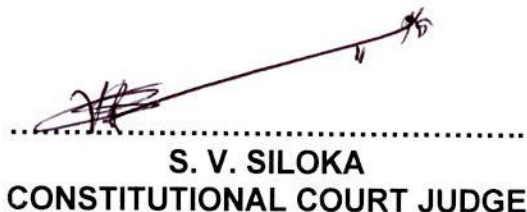
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A. M. SHILIMI
DEPUTY PRESIDENT – CONSTITUTIONAL COURT



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M. Z. MWANDENGA
CONSTITUTIONAL COURT JUDGE



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M. M. KAWIMBE
CONSTITUTIONAL COURT JUDGE



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S. V. SILOKA
CONSTITUTIONAL COURT JUDGE